



July 29, 2020

Brian Brooks
Acting Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th St SW
Washington, DC 20219

Re: Proposed Payments Charter

Dear Acting Comptroller Brooks,

The undersigned trade associations representing banks and credit unions of all sizes write to you to share our concern with the Office of the Comptroller of the Currency's (OCC) proposed narrow-purpose payments charter. Given the significant implications for the banking system we would urge the OCC to undertake an open and transparent process before considering this new charter.

We believe that innovations in financial services have tremendous potential to benefit customers as they have throughout the history of banking. Innovation can promote financial inclusion, make it possible to extend credit to many more borrowers, and give customers improved transparency into the financial products they use every day. In many ways, fintech was born in America's banks.

Today, innovations are emerging from both the traditional banking sector and from non-bank technology firms. We believe that when banks and technology companies partner, they can deliver customers the best of both worlds: innovative services that customers demand from a partner that they can trust with their financial future.

We believe in the continued evolution of banking, allowing banks to offer innovative products that help banks connect with customers in new ways. We support competition in banking and are strong proponents of diversity in financial services as demonstrated by the broad representation of our collective membership.

The benefits of financial innovation are only realized when they are delivered responsibly, in a way that does right by customers. This means getting regulation right is critical. Regulation must be flexible enough to allow innovations to be driven from within traditional banks. We must also ensure that

customers receive the protection they deserve wherever they get their financial services through consistent regulation and oversight.

The OCC Should Undertake an Open and Transparent Process in Considering New Charters.

The OCC's work to promote innovation builds on a strong base of continued innovation in banking and a long history of customer trust. As the OCC moves forward it should be careful not to introduce risks that might undermine this trust or establish asymmetries that would encourage regulatory arbitrage.

We have serious concerns around the recent discussion of a narrow-purpose payments charter. These charters could introduce serious risks that would undermine the valuable role that national banks play in our dynamic economy. We believe that a payments-focused charter introduces serious unintended consequences.

When the OCC proposed its lending-focused Special Purpose National Bank "fintech" charter in 2016, many of the undersigned trades commented on the importance of existing rules and oversight being applied consistent with those for any national bank. We noted that a bank charter is a clear signal to customers that the consumer is dealing with a trusted partner. Any fintech company that is granted a national bank charter will receive the instant credibility that comes with being a chartered financial institution. Likewise, any missteps by a fintech operating through a national bank charter will inevitably reflect on all banks.

Through our comments, we have raised questions around how regulations would be tailored to new business models and whether oversight would be consistent to that of other banks. We have not yet seen a clear indication of how these principles would be applied to a narrow-purpose charter, such as a payments charter. We would urge the OCC to clarify its expectations before proposing any narrow purpose charters.

Specifically, we encourage the OCC to continue to proceed carefully, deliberately, and transparently as it has throughout its deliberations on new charters. The issues being considered have broad implications for the banking system and longstanding policy determinations. Any change being contemplated should be subject to robust public comment well before considering a new charter.

Working with the other agencies carefully and cooperatively is also important before any new special purpose charter is approved to ensure that no current policy lines are directly or inadvertently moved as a consequence of this action. Answers to many difficult policy questions should be reached before considering any individual special purpose charter application, including how to ensure that regulations and consumer protection are applied evenly; what protections must be in place to preserve the existing separation of banking and commerce; and to ensure even application of OCC policy objectives, including those related to financial inclusion and CRA responsibilities.

The OCC Should Ensure that Bank Holding Company Oversight is Applied.

Moreover, depending on the activities a special purpose national bank conducts, its holding company may not be considered a bank holding company, subject to the Federal Reserve Board's oversight. The BHCA is triggered if the special purpose national bank is considered a bank under the BHCA definition which is one that either (i) has FDIC insurance or (ii) both accepts demand deposits and makes commercial loans. The OCC contemplates the possibility of a narrow purpose bank charter applicant that would not take deposits and, therefore, would not have FDIC insurance, or meet the definition of a

bank. While limited purpose charters in the past have a specific exemption from “bank” status under the BHCA, no such specific exemption exists for the special purpose charter under consideration by the OCC, and the Federal Reserve Board has not yet publicized its views on the potential application of the BHCA to such a charter.

Through its authority under the BHCA, the Federal Reserve Board serves an important role in supervising banking organizations on a consolidated basis (i.e., banks together with their owners and affiliates). If this kind of oversight matters for full service national banks, that same oversight would be important for a special purpose national bank.

Importantly, the BHCA reflects Congress’s policy determinations regarding oversight and supervision of holding companies that engage in activities beyond the bank subsidiary. Any change to this balance would represent a significant policy change. We believe that such a significant policy change should be subject to scrutiny in the public notice and comment process, and not simply by issuing a special purpose national charter.

Recent legal action has raised additional uncertainty around the OCC’s authority to issue such charters.

Given the concerns outlined above, we would oppose any effort by the OCC to offer a narrowly focused payments charter. We look forward to a continued discussion around these important issues and stand ready as the OCC looks to help promote innovation in banking.

Sincerely,

American Bankers Association
Bank Policy Institute
Consumer Bankers Association
Credit Union National Association
Independent Community Bankers of America
National Association of Federally-Insured Credit Unions
The Clearing House