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**National Association of Federally-Insured Credit Unions**

**Carrie R. Hunt**  
Executive Vice President of Government  
Affairs and General Counsel

March 24, 2021

Blake Paulson  
Acting Comptroller  
Office of the Comptroller of the Currency  
400 7th Street SW, Suite 3E-218  
Washington, DC 20219

**RE: Novel Chartering Activities**

Dear Mr. Paulson:

On behalf of the National Association of Federally-Insured Credit Unions (NAFCU), I am writing to share our concerns regarding the Office of the Comptroller of the Currency's (OCC) recent changes to its chartering policies. NAFCU advocates for all federally-insured not-for-profit credit unions that, in turn, serve over 124 million consumers with personal and small business financial service products. In general, NAFCU advocates for a level playing field for traditional financial institutions and fintech companies, including payments-focused firms.

Competitive fairness depends critically upon transparency and the OCC's commitment to presenting new chartering options through full notice and comment rulemaking procedures. In this regard, the OCC's payments charter, introduced last year through a trickle of press releases and interviews by the Former Comptroller, represents the opposite approach—and one that could introduce novel stability risks across the broader financial sector. Likewise, the OCC's Interpretive Letter 1176 signals a significant change in expectations for state trust companies that hope to convert to national trust banks. This Interpretive Letter has already prompted an influx of applications from companies who facilitate transactions involving digital assets—the type of novel, complex activity that a regulator should carefully evaluate with input from financial sector stakeholders.

To mitigate financial stability risks, we urge the OCC to suspend approval and future processing of payments charter applications until a comprehensive chartering framework for non-deposit taking firms is formally proposed and made available for public comment. Such a framework should devote substantial discussion to how capital and liquidity standards will apply to entities that do not accept deposits but are given national bank privileges. For novel trust charter applicants that leverage state law to expand the domain of permissible fiduciary activities beyond what has traditionally been permitted for national trust banks, we recommend the same caution and a commitment to transparent rulemaking.

NAFCU believes that regulators, including the OCC, should not give preference to fintech as a *new* model of banking ready to replace traditional institutions, but rather seek to modernize

traditional supervisory frameworks to ensure that the promise of better, more efficient service or expanded access to credit is predicated on responsible innovation rather than regulatory arbitrage. We encourage the OCC to work with other FFIEC member agencies, including the National Credit Union Administration (NCUA), if it intends to introduce specialized chartering options that could impact overall sector stability.

## **General Comments**

NAFCU recognizes that innovation depends on a fair, but flexible, regulatory regime for financial technology. Many credit unions partner with fintech companies to improve member service and historically these partnerships have proven invaluable to the growth and competitiveness of our industry. At the same time, we have cautioned that frameworks designed to encourage innovation must not favor certain market participants at the expense of others.

Public comments from the Former Comptroller about new chartering options for fintech companies (with potentially reduced regulatory expectations) raise serious questions about how the OCC will fulfill its duties as a prudential regulator.<sup>1</sup> Furthermore, the Former Comptroller's suggestion that institutions "that lack scale [...] will find themselves under pressure to consider unbundling or spinning off various functions" suggests a casual disregard for the benefits of traditional banking models.<sup>2</sup> These types of comments and assumptions, which preceded the highly informal introduction of a new chartering option for non-deposit taking payments firms, would ordinarily be presented through a proposed rulemaking. Lack of transparency has also entangled the OCC in yet another lawsuit which calls into question whether a limited purpose payments charter is permissible under the National Bank Act.<sup>3</sup> NAFCU recommends the OCC recalibrate its current approach for those interested in the payments charter by suspending approval of pending applications and by initiating a notice and comment rulemaking process.

While preventing "leakage" of financial services activities into unregulated areas in the short-term is a commendable goal, the reality of a specialized payments charter may be the same as with the OCC's general fintech charter. Companies that have the ability and desire to operate outside of a regulated space will continue doing so until regulatory barriers are lowered, possibly to such an extent that there is no meaningful containment of risk. In the absence of legislative action, the OCC must resort to enticing new entrants to accept some form of oversight in order to bring them within the supervisory fold. Such a strategy is hardly conducive to maintaining a safe and sound banking system.

NAFCU also recommends that the OCC promulgate new standards applicable to national trust bank applications through a public rulemaking process rather than an interpretive letter. The OCC's assessment of the potential financial stability risks would benefit from public input,

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<sup>1</sup> See Cocheo, Steve, "Fintech Charters Signal a Tectonic Realignment in Banking," July 22, 2020, available at <https://thefinancialbrand.com/98636/occ-comptroller-brian-brooks-fintech-charter-payments-innovation-crypto-branch/>.

<sup>2</sup> See *id.*

<sup>3</sup> See Conference of State Banking Supervisors, Press Release, "CSBS Files New Complaint Against OCC," (December 22, 2020), available at <https://www.csbs.org/newsroom/csbs-files-new-complaint-against-occ>.

particularly when early evidence suggests that applicants interested in leveraging Interpretive Letter 1176 are engaged in complex activities involving digital assets. Business models that depend significantly upon markets for digital assets will likely necessitate new supervisory frameworks, and these are still in their infancy. Accordingly, NAFCU recommends that the OCC take a more prudent approach before tacitly authorizing national trust banks to engage in activities that might encompass cryptocurrency custodial services or operating stablecoin networks.<sup>4</sup> Specifically, the OCC should present new chartering policies for trust banks through notice and comment rulemaking, and should suspend future approvals of novel trust banks until such action is taken.

For the time being, NAFCU believes that a traditional, national bank charter will be sufficient in most cases to serve the needs of large fintech companies and further the aim of supporting de novo chartering. Embracing narrower, specialized charters with divergent regulatory standards is more likely to drive consolidation within the financial sector as innovative firms seek to achieve greater economies of scale to offset regulatory disadvantages. Already, there is evidence of this occurring within the credit union industry. Furthermore, additional chartering activity from narrowly focused fintechs would do little to alleviate the substantive concerns associated with consolidation in the banking industry since the resulting firms would not necessarily be full-service banks. Lastly, encouraging disaggregation of traditional banking services could ultimately result in less operational resiliency within the financial sector.

## **Conclusion**

Credit unions are committed to providing access to safe and affordable products and services for their members. In response to the growing importance of financial technology, credit unions, like banks, have invested heavily in innovative solutions to better meet the financial needs of their membership, but this investment is unsustainable in an environment where the playing field has been tilted in favor of fintech entrants. To support a fair and competitive marketplace for financial services, we encourage the OCC to present its chartering ideas in the context of a transparent rulemaking process so that all industry participants are able to provide their perspectives on what degree of supervision and regulation is appropriate for fintech companies. In addition, the OCC should wait until disputes over the legality of its existing fintech charter are resolved before proceeding with additional variants of a special purpose national bank charter.

NAFCU also encourages the OCC to work with other FFIEC member agencies to ensure that plans for specialized charters do not impair overall sector stability, whether in terms of consumer protection or safety and soundness. The input of all prudential regulators is necessary to inform this analysis, which must be regarded as an essential part of any rulemaking. Should you have any questions or require additional information, please do not hesitate to contact me or Andrew Morris, NAFCU's Senior Counsel for Research and Policy, at (703) 842-2266 or amorris@nafcug.org.

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<sup>4</sup> See OCC, Interpretive Letter # 1170 (July 2020), 3, available at <https://www.occ.gov/topics/charters-and-licensing/interpretations-and-actions/2020/int1170.pdf>.

Office of the Comptroller of the Currency

March 24, 2021

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Sincerely,

A handwritten signature in cursive script that reads "Carrie R. Hunt". The signature is written in black ink and includes a horizontal flourish at the end.

Carrie R. Hunt

Executive Vice President of Government Affairs and General Counsel