

FinTech Regulation (#52 and 75)

As detailed in Chapters 8, 9, and 10, innovation advances competition and in turn benefits consumers through greater choice, improved products, lower prices, and greater financial inclusion. Technology-enabled financial services, or FinTech, is at the center of innovation today. FinTech companies provide or support a wide array of consumer financial services, including payments, savings, peer-to-peer lending, and financial management. By using digital technology, FinTech companies can provide these services in new ways, allowing consumers to transfer funds through mobile devices, automate savings decisions, obtain loans without stepping foot inside a bank, and receive credit decisions and budgeting recommendations that consider a vast amount of data.

Regulatory uncertainty and unnecessary regulatory costs threaten to inhibit FinTech-based innovation, however. In particular, non-bank FinTech companies engaged in payments, remittances, or lending services are generally subject to state law and must register or acquire a license from each state in which they operate. A company with a nationwide footprint thus may need 50 separate licenses and adjust its practices to conform with each state's laws. As a result, a non-bank FinTech lender would be subject to different maximum-allowable interest rates depending on the state, whereas a federally chartered bank providing the same service could charge the interest rate that its home state allows, regardless of the consumer's location. These costs, and the competitive disadvantages from a segmented regulatory regime, are significant.

Federal policymakers should address these regulatory hurdles and promote competition and innovation by enabling FinTech companies to operate nationwide. Specifically, following on the NCCF's recommendation that Congress create a federal consumer financial protection agency that could issue federal charters to non-bank finance companies, the Taskforce recommends that Congress authorize the Bureau to issue federal licenses to non-bank FinTech companies engaged in payments, remittances, or lending services. Licenses should provide that these institutions are governed by the regulations of their home states, even when providing services to consumers located in other states, similar to the National Bank Act's treatment of federally chartered banks,

The Dodd-Frank Act created in the Bureau a unique agency well-situated to regulate entities engaged in interstate activities. And by making the Bureau the licensing agency, Congress would assure that consumer protection concerns are at the forefront. The Bureau could supervise licensed entities to ensure compliance with applicable federal and state laws, just as it already does with respect to many other bank and non-bank institutions.

Permitting non-bank FinTech companies to operate nationwide while subject to a single set of laws would ensure consistency, thus reducing unnecessary regulatory costs and promoting competition. It would also promote regulatory competition between states and ensure that states retain their role as laboratories of experimentation. Each state would have an incentive to establish workable consumer protection regulations to attract FinTech companies.

As an alternative to Bureau-issued licenses, Congress could clarify the OCC's authority to issue federal charters to non-bank FinTech companies. The OCC recently took steps to issue charters to such companies engaged in lending, and it has announced its intent to do the same with money transmitters. These efforts are subject to legal uncertainty, however, because of questions about whether a non-bank can engage in "banking" under the National Bank Act. If

--	--

Congress elects not to authorize the Bureau to issue federal licenses, it should clarify the OCC's authority. This alternative option would ensure that FinTech companies operating nationwide companies are subject to a single set of laws. Moreover, the OCC has significant expertise in FinTech generally and in these services specifically, and it may be well-positioned to supervise non-bank FinTech companies who operate nationally.

Apart from licensing, the Bureau should consider the costs and benefits to consumers of preempting state law in specific cases where the potential for conflict can impede provision of valuable products and services, such as regulation of FinTech companies engaged in money transmission. For example, state laws governing money transmitters vary greatly, and in some cases impose significant barriers to market entry. It may be that consumers would benefit from greater competition and choice if the Bureau preempted certain of those state requirements.

Recommendations:

52. ***Congress should authorize the Bureau to issue licenses to non-depository institutions that provide lending, money transmission, payments services. Licenses should provide that these institutions are governed by the regulations of their homes states, even when providing services to consumers located in other states, similar to the National Bank Act's treatment of federally chartered banks. In the alternative, Congress should clarify that the OCC has the authority to issue charters to non-depository institutions engaged in lending, money transmissions, or payments services.***
75. ***The Bureau should consider the benefits and costs of preempting state law in some specific cases where the potential for conflict can impede provisions of valuable products and services, such as regulation of FinTech companies engaged in money transmission.***

TF Member acknowledgement	Todd:	Jean:	Howard:	Bill:	Tom:
Please type "Approve," "Conditionally approve" (subject to specific edits), "Reject," or specific commentary (you may also use the Comment feature)					

--	--