

November 25, 2020

Ranking Member Sherrod Brown
Senate Committee on Banking, Housing and Urban Affairs
Washington, DC 20510

Dear Ranking Member Brown,

Thank you for your strong commitment to opposing the Office of the Comptroller of the Currency (OCC)'s efforts to help tech companies dodge regulatory oversight, mix commerce and banking activities, and avoid compliance with consumer protection laws. Strong regulation and accountability are necessary as tech firms seek the types of regulatory arbitrage and charter shopping opportunities that caused the last crisis – often under the false claim of “innovation” aimed at “helping traditionally underserved communities.” Financial companies must not be allowed to hide from financial stability and consumer protection rules behind the “fintech” moniker.

We are especially grateful to you for speaking out against the FDIC and OCC's finalization of the true lender and nonbank interest rate (aka “valid when made”) rules earlier this year. These two rules encourage predatory lending by allowing online non-bank lenders to launder their loans through banks to offer high-cost triple-digit loans in states where such loans are illegal and large loans at double digit rates far in excess of state law limits. The true lender rule ignores the centuries-old rule that courts may look beyond ruses and contrivances to the substance to prevent usury evasions. The nonbank interest rate rule improperly regulates the rates of nonbanks, even when there is no significant impact on the bank, and goes against the intended purpose of a national bank charter by treating preemption as a right that a bank can give away to the highest bidder. By providing express regulatory approval for rent-a-bank schemes, the OCC has openly encouraged non-bank lenders to disregard state usury laws that states have had since the time of the American Revolution to protect consumers from unaffordable debt traps. It is critical that the FDIC and OCC reverse course and prohibit rent-a-bank models that enable predatory lending and allow online lenders to ignore state consumer protections.

We appreciate your work leading a bipartisan coalition opposing Facebook's attempt to supplant the U.S. dollar with an electronic currency controlled by Silicon Valley. While widespread adoption of electronic payment platforms could promote access to more affordable banking services, their infrastructure should remain a public good and should not require consumers to give up fundamental privacies in order to participate in the economy. As it has with FedNow, the United States government should be leading the way on inclusiveness in banking through democratically accountable and public means. Handing over public goods to private, profit-

seeking entities will only provide more avenues for financial predators to skim from the hard-earned paychecks of working families.

We also thank you for your steady opposition to the OCC's proposed fintech and payments special purpose charters over the tenures of several Comptrollers. Regulators must not allow nonbank entities to gain access to bank special purpose national bank charters or other fintech specific charters to circumvent consumer protections or financial stability rules. The OCC's payments charter raises related concerns. As a banking regulator, the OCC does not have authority to approve charters for financial companies that are not banks and that do not have the necessary safeguards required of banks. Nor should it – financial companies should all compete on an even playing field. Further, given the inherent privacy risks and increased use of personal data by companies calling themselves “fintechs”, the OCC and other regulators should also be especially attentive to the heightened dangers posed by the collection, storage, and use of such data, and any unintended consequences, including discriminatory outcomes.

We are also grateful for your partnership in opposing the OCC's misguided changes to the Community Reinvestment Act (CRA) that were finalized this spring. Before the onset of the COVID-19 pandemic, black homeownership was already at historically low levels nationwide and the racial wealth gap was widening, leaving communities of color with far less wealth and fewer resources for emergencies. COVID-19 has been particularly devastating for African Americans, low-income families, and immigrants, who are bearing the brunt of the resulting economic fallout as well. The CRA is an anti-redlining statute that was put in place to address the longstanding exclusion of communities of color and low-and-moderate income families from access to adequate financial services and affordable sustainable credit, but the OCC's final rule goes against the very intent of the statute and will instead exacerbate the economic damage that communities of color are experiencing as a result of the ongoing pandemic. The OCC's rule must be reversed and replaced with a framework that centers investment in communities of color and low- and moderate-income communities.

For years, the OCC has used its authority to increase the power enormous financial companies have over markets and our daily lives, and help communities of color has often been part of its purported justification. By redefining the business of banking, undermining state laws, and failing to aggressively enforce the separation of commercial and banking activities, the OCC fueled the 2008 financial crisis, and continues to fuel the concentration, predation, and systemic fragility that define our banking system to this day. The Acting Comptroller is no exception in this long tradition.

As we transition to a new administration, we are counting on you to make sure the country's new leadership will have the opportunity to select its own Comptroller, and that the new Comptroller will be willing to work with you to protect working families, the economy, and small businesses from the unholy alliance between Silicon Valley and Wall Street.

Sincerely,

Americans for Financial Reform
Center for Responsible Lending
Consumer Action
Consumer Federation of America
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
National Urban League
New Jersey Citizen Action
Public Citizen
Public Good Law Center
Student Borrower Protection Center
Texas Appleseed
The University of Iowa College of Law
U.S. PIRG