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We Must Stop Paving Over Aging Payment Pipes

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I—like many of you, I'm sure—live in a city and state with rapidly deteriorating infrastructure. My ride to work each day is punctuated with potholes that I have memorized through my instinct of self-preservation. There is a bridge in my neighborhood that has been closed for over a year, and occasionally, I wake up to a boil water alert caused by the most recent water main break. A year or so ago, the city finally paved one of the main streets in my neighborhood, which was beginning to look like part of a war zone. Everyone was ecstatic, until the following week when another water main break forced the city to dig up the street to fix the leak, and the resulting hole with dirt and gravel backfill still remains. Countless promises of infrastructure spending and improvements from federal, state, and city leaders have come and gone, but my bridge is still out and my streets are still not paved.

Throughout history, the primary distinguishing factors of successful civilizations have been their ability to develop infrastructures that allow economic and social development. From ancient Rome's aqueducts and roads to the terraced farming of the Incas at Machu Picchu, the ability of a country to not only innovate but to also harness those innovations for the betterment of society is what makes them notable in the annals of humankind, and also ensures they stay relevant in a world that has always been subject to change. Even for our country, innovations such as the formation of the electrical power grid and the creation of the federal interstate system placed us on an economic pedestal that many in the world envy today. However, the funny thing about the world is that it never stops changing, and those societies that want to remain relevant must also change with it. Innovation is the product of a nation's creativity, but creating the infrastructure necessary to use such innovation is a function of a nation's political will and foresight.

I think few would dispute that we are on the edge of a period of tremendous technological innovation that is likely to impact financial services for decades, not only in our country but throughout the world. Financial technology, or fintech, has the potential to dramatically change the economic direction of our country. Where it takes us, though, and whether or not we allow it to take us as far as it takes other countries will depend largely on the legal infrastructure we intentionally build for it. Just as a proud owner of a brand new sports car would have no interest in driving it on my city's uneven roads, opting instead for the Autobahn, the champions of this fintech innovation will gravitate to those countries that have carefully laid a path to prosperity through a legal framework that encourages innovative commerce. However, speed limits are also necessary in order to make sure fintech does not trample our core American beliefs in the process.

There is evidence that our country's lack of focus on this issue has already given the world a head start on us in the race to the digital future. A recent study by Ernst & Young found that the adoption of fintech is accelerating worldwide. Money transfer and payment fintech adoption in 2018 was 75%, compared with 50% in 2017 and 18% in 2015. Nevertheless, consumer use of fintech in the United States is at 46%, noticeably below the global average of 64% and way behind the adoption levels of China and India (87%) and Russia and South Africa (82%). Even our less-developed South American neighbor Colombia dwarfed the US adoption rate at 76%. As a matter of fact, the US finished in the bottom four of 27 markets. A June 12, 2019, article in *American Banker*, "Why US Consumers Are Less Willing to Embrace Fintechs," which looked at the EY study, stated that observers believe the lack of a regulated open banking model could be a substantial contributor to our country's lack of relative progress in the space.

Unfortunately, like its unrealized promises with respect to our physical infrastructure, our federal government has done little to build our technical infrastructure. While we wait, other countries are at least beginning to lay roads, even if they are ones that we might not build here. Despite its apparent political dysfunction at times, Europe has had real-time payments for over a decade while we still try to overlay real-time patches, such as Zelle, PayPal, and Venmo, over our traditional batch processing systems of debit and check processing or ACH. Such solutions feel a lot like my city paving roads over aging pipes. Many American businesses may consider Europe's General Data Protection Regulation and Revised Payment Service Directive examples of misguided European legislation that will place burdens on business innovators while also increasing financial competition from commerce in a way that may destabilize European banking markets. However, Europe is at least trying to develop laws that encourage a uniform approach to the balancing of personal freedoms against economic progress so that its ultimate destination is one it chooses instead of one it is carried to. Despite any substantive objections to those laws we may have, they provide a consistent legal framework for businesses operating in Europe that must know what the speed limit is for the length of the highway.

Meanwhile, in the United States, trying to drive this new sports car of fintech on quarter-century-old payment processing, such as debit payment systems and ACH, and legislation, such as the Electronic Funds Transfer Act, the Gramm-Leach-Bliley Act, and the ESIGN Act, is awkward at best. The problem is compounded by the fact that some states are now trying to fill in the potholes with their own legislation and creating more questions about how laws should be applied to businesses operating in numerous states. To be fair, the federal executive branch is at least trying to lay some pavement. The Consumer Financial Protection Bureau and the Office of the Comptroller of the Currency have announced regulatory sandboxes and alternative charters to encourage innovation, even though they have drawn the ire of state attorneys general and banking departments concerned about preemption. The Federal Reserve is studying the wisdom of its entrance into the real-time payment space, despite objections from The Clearing House, which arrived there first. The United States Treasury even established the Financial Innovation Partnership with the United Kingdom last month, with a stated goal of building "on existing regulatory cooperation by discussing regulatory developments and sharing experiences on technical issues related to innovation in financial services," a noteworthy development in this period of ever-increasing nationalism and isolationism. However, executive solutions are not enough and Congress must find some way to stop planning its next press conference and start planning our economic future.

Doing so would require a comprehensive piece of legislation that balances our constitutional and ideological priorities of states' rights and personal freedoms against our national interest in economic development. Such legislation must create a logical real-time payment infrastructure that not only encourages commerce but also improves economic equality by allowing those on the bottom of our socioeconomic ladder to have faster access to their money. It also needs to establish consistent rules for handling information necessary for such transactions by not only defining who actually owns customer data but also establishing how businesses can get access to it and how it can be used to improve our everyday lives without sacrificing the principles we hold so dear. Most important, though, this critical policy solution to a problem affecting interstate commerce must be comprehensive, addressing more than just privacy, and it has to be federal in nature in order to preempt conflicting state laws that create uncertainty for those innovators who want to operate in our country. Otherwise, they will take their fine economic machines to smoother roads, even if they don’t like the speed limits.

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