

It's Ba-ack! OCC Planning A New Fintech Charter: "Payments Charter 1.0"

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On June 25, 2020, Acting Comptroller Brian Brooks announced in an [American Bankers Association's podcast](#) that the Office of the Comptroller of the Currency (the "OCC") is planning to introduce "Payments Charter 1.0", which would effectively be a "national version of a state money transmission license."

The Payments Charter would effectively streamline licensing requirements as companies which obtain the Payments Charter could function as a national platform regulated by the OCC, and not have to manage holding 49+ different state licenses. According to Brooks, the Payment Charter would preempt state licensing requirements and as such, multi-jurisdictional companies would no longer have to engage in state by state regulatory due diligence. The first roll out of the Payments Charter would not include access to the Federal Reserve Payment System. However, depending on the success of the first roll out, the OCC plans to roll out "Payments Charter 2.0" eighteen months after which would include direct access to the Payment System.

In 2015, the OCC announced the availability of a Fintech Charter that was intended to grant National Bank Act charters to nondepository institutions. However, the Fintech Charter was met with litigation from both state and local government regulators, with the United States District Court ultimately concluding that the Fintech Charter was beyond OCC's authority. The decision is currently on appeal with the Second Circuit. As such, the unveiling of the Payments Charter comes as a surprise to many; however Brooks noted that the goal is to set a "level playing field." In addition, Brooks has also maintained that the OCC views the definition of a "bank" to include any entity that conducts the following activities: lending, taking deposits, or money payments.

Nonetheless, the Payments Charter may still be met with fierce opposition from both state and local regulators. The payments industry (which includes remittances, bill payment, and prepaid cards) has traditionally been regulated by states, and not federal authorities; existing state regulators may view Payments Charter as an unnecessary and threatening incursion on state powers. Moreover, traditional banks may also oppose the implementation of the Charter as the Charter (as currently planned) subjects regulated companies to fewer rules and regulations than those imposed on a traditional bank, such as being subject to the Community Reinvestment Act (the "CRA") requirements. Brooks indicates that he is mindful of these issues, and noted that regulated Payment Charter companies may eventually be subject to the CRA as well.

This announcement, coming on the heels of the OCC's recent Advance Notice of Proposed Rulemaking (ANPR) regarding digitization of banking activities (Link to other blog) demonstrates an increased focus by the OCC on enhancing innovation in US financial services. We will be watching closely to see how this latest attempt at a fintech-related Charter will play out.

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