THE BROOKINGS INSTITUTION

WEBINAR

FIXING AMERICA'S PAYMENT SYSTEM: THE ROLE OF BANKS AND FINTECH

A CONVERSATION WITH ACTING COMPTROLLER OF THE CURRENCY BRIAN BROOKS

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Keynote:

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Panel Discussion:

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P R O C E E D I N G S

MR. KLEIN: Good afternoon. I'm Aaron Klein, a fellow at the Brookings Institution and policy director for our Center on Markets and Regulation. It's gives me great pleasure to welcome Brian Brooks, the acting comptroller of the currency. Mr. Brooks became the acting comptroller of the Office of the Comptroller of the Currency which supervises nearly 1200 national banks, federal savings associations, and agencies of foreign banks.

Together, they constitute approximately 70 percent of all banking business in the United States. In addition to serving as comptroller, he is also a director of the FDIC, a member of the Financial Stability Oversight Counsel and the Federal Financial Institution's Examination Counsel. So as you can see, Brian is deeply enmeshed in financial regulation on a variety of platforms. Prior to becoming acting comptroller, he was senior deputy comptroller and chief operating officer.

Prior to joining the OCC, Brian has a long and distinguished history. He was chief legal officer at Coinbase. He was executive vice president and general counsel at Fannie Mae. He served as vice chairman of One West. He was a manager partner of O'Melveny and Myers. We can go on and on all the way back to his law degree from the University of Chicago, a wonderful institution where I'm proud to say my mother was one of the first female graduates.

We're here, Brian, to talk about your ideas and proposal to fix the nation's payment system, and I encourage the audience to engage on Twitter with the hashtag fix payments. It is insane to me that I can go on my TV and screen any amount of content in the universe and have it immediately accessible.

I can go onto my phone and deposit a check or a payment instrument but when it comes to actually getting that money that I can use, it is a multi-day wait, and that wait, as we've been documenting for years, is devastating for the half of Americans who live paycheck-to-paycheck or constantly live on the edge. One might think that if technology can move getting a DVD from Blockbuster to Netflix, we ought to be able to get payments moving around America immediately like they do the rest of the world.

So, Brian, what are your thoughts about how we can fix this payment system and what are your thoughts about the failure -- the implications of our failure to fix this payment system on American consumers, the economy, and particularly underserved communities. So, with that, Brian, what do you think?

MR. BROOKS: Well, Aaron, listen, as always when you and I get together, I couldn't put it better or more emphatically than you just did. So I'll try in my own way here, but let me just tell you, when I worked at Coinbase, we used to have a line that we said all the time, Coinbase being a big block chain platform. We used to say that the fastest way to get money to Australia is to put it in a suitcase and get on an airplane. There is no other way to get it faster out of the United States then just to physically take it out of the country, and that's a crazy way to run the railroad. So let me just begin by saying that we've been thinking a lot about payments at the OCC for some time now, and the biggest reason we're really focused on payments has less to do with individual consumers and more to do with the stability of the system. Right?

So here in this country most payments activity is still done inside the banking system and most of that is inside the national banking system which we regulate but in the last ten years, we've seen increasingly much payments activity bleed out of the banking system as part of what I call the great unbundling of banking. The component parts of banking turn out to do a little bit better. The customer experience is a little bit better. The profitability is a little bit better if you do it on a specialty basis than if you do it on a bundle basis, and that's why we now have Stripe and Square and PayPal capturing so much market share that used to be done by Bank of America and JP Morgan. So the system, I think, demands that there be a single place where supervision can occur and the only place that can be is the national bank chart.

Having said that, there are all kinds of more radical innovations that we have to unlock, I think, if America is going to remain a competitive market economy and those have to do with all the things you're talking about. So I'll just take two of them if I could. One has to do with the speed to payment. So we already have a real time payment system in the U.K., in China, which you've written about and a number of other places and somehow in the United States the best we can promise is that maybe we'll have a faster payment system in 2024.

Now, when the government promises 2024, that usually means 2030 or possibly never but best case scenario we will only be ten years behind the U.K. That's unacceptable. We know that there are ways of making this go faster and whether you believe that way is the deployment of private sector built block chains or whether you believe it's following the U.K. model and having a more open system where banks and non-banks connect to the payment rails on an equal basis whatever that is we know there is a way of doing it better and as you say it does directly affect consumers and particularly paycheck-to-paycheck consumers, right? Who are most affected on the front end slow funds availability rules and on the back end slow payment transmission, right? Which results in them both receiving the dollars they've earned more slowly then they probably need to and paying late fees and being 31 days in default more often than they should be.

All of those things can be solved if we have a platform that unlocks innovation more quickly than this command to control environment we work in. So amen to everything you said.

MR. KLEIN: So I agree with you. In fact, the only area where I disagree with you that is we actually do have a real time payment network built and operated by the clearinghouse and one we could have chosen to use. Right? And some of your institutions are choosing to use it more and more every day. Some are not.

And, you know, whether or not the fed can get there before my rising fifth grader graduates high school to be determined, but this cost of delay I've calculated is over $100 billion for low-income consumers including bank overdraft fees, payday loans and check cashers. There a small group of banks making a fortune on overdraft fees. In fact, I have forthcoming research that will show that it's more than 50 percent of profit is for seven banks in America which makes me wonder are these banks are they check cashers with the charter but let me ask you on the question of a charter, Brian, what is your proposed solution from the Comptroller's perspective? You don't have control of the expedited funds availability act like the federal reserve does that could snap their fingers and make the money available faster.

I query whether or not you think making money available faster would make a huge impact for people, particularly on these stimulus checks, but what are you thinking of doing in your seat with your authority given this unbundling of banking services in terms of changing policy? What's on your agenda?

MR. BROOKS: Yeah, well, this is something I think about every day and the basic concept is this. So if you start with the unbundling point we just talked about payments is a core banking function. I mean if you think about it for those of you listeners who are relatively new to this space, banking historically consists of an amalgam of three or four different activities, the principal ones being historically deposit taking, lending, and payments.

So most payments activity happens inside the banking system and, as I said a moment ago, that has only started to shift radically in the last five years or so when these specialty companies that are doing only payment processing have captured enormous market share away from the banks. So we have the following view and it's really based on two pillars. One of them is that it's a good thing for substantial financial intermediation activity to be supervised then unsupervised. We think that’s kind of obvious but maybe not that obvious and so, you know, the OCC is the only agency that provides comprehensive nationwide supervision of institutions. There is no other organization that does that in the banking system and, given that payments is one of the core banking functions, we don't want it to leave the supervisory field of vision.

We want to be able to continue to ensure the safety and soundness of the system without letting the core activities bleed into the shadow banking system where it has now gone. I think we all learned the lesson 2006 and '07 of why shadow banking -- it's still banking but it's not supervised, at least not supervised int eh same way. So I start with that and then the second point of all of this is payments. Probably more than any other financial activity is inherently borderless.

Think about it this way. Lending you could argue, you know, is something that can be done on a state by state basis if you wanted to. There are plenty of local credit unions, small banks and others that gather their deposits inside of one state, only lend to customers in one state. You could argue that the idea of state-based regulation of lenders is somewhat sensible, but when it comes to payments, payments really are inherently borderless. I mean very few of us are making our mortgage payments or our credit card payments to a bank that resides in our city and often the servicer is in yet a different state from the lender and from us. These things do not respect borders and thus the system we have today requires any given payment company to obtain 51 money transmission licenses to do their business.

I don't think anybody, not even a state regulator, if they were sitting ex ante would purposely design the system that way. Now, I do understand that all of us are looking to protect our territory and our authority and our jurisdiction so I get that we all have our roles to play in the ecosystem, but nobody would purposely say yes, it's important that Visa be licensed separately in both Nebraska and New Hampshire. Right? Or that Stripe have to talk to the Florida Department of Banking and the California Department of Business Oversight in order to transmit payments from one place to another. Nobody would believe that if they were looking at it ex ante and so we're trying to solve both of those problems.

Create a national platform, right? And keep core banking services inside of the supervisory field of vision. That's really what it's about.

MR. KLEIN: So on that then is it fair to argue that failure to modernize our banking, our payments platform within the banking system, pushes up pressure to move payments outside of banking? Right? There's a reason I use PayPal to move money around with my friends. Right? It's faster. There's a reason these other companies have come in to intermediate but there is also -- it's sounds like that's a real consequence of the failure to modernize the system. Congress has never created a national money transmission license.

Congress created the Comptroller of the Currencies Office, not because they believed in the value of national banking. Right? It was to the contrary. They rejected national banking a couple of times but state-based banking didn't work very well during the Civil War when some of the states tried to leave and so you had to have a national bank. Right? Lincoln is the one who creates the Comptroller's Office. Absent a national crisis, why do you think Congress hasn't put up a national money transmission license and why is your solution better in the absence of Congressional action?

MR. BROOKS: Well, let me say two things about that, Aaron. So first of all I'll give you a provocative sound bite here which is I actually think that Congress did create a national money transmission license. It's called the National Bank Charter. The reason I say that is the vast majority of money transmission happens inside of companies that we all recognize as banks.

So my point about unbundling is all these money transmitters are is they're doing an activity that used to be done exclusively inside of banking except their doing it on a state platform and the only thing states have to offer them is a money transmission license, but the activity is not different. Whether you think of it as pre-paid cards or travelers checks or, you know, electronic money transmission, all of those things can be done in one of two places: either a state money transmitter or a national bank. Right?

So I would argue that we already have a national license called the bank charter. So I kind of begin with that. The second thing I'd tell you is on the history lesson it's kind of interesting. So you may know I recently hired a new chief economist here who is a very famous financial historian from Colombia and he spent some time in the last couple of weeks reminding me of the real history of this place. Right? So this place that I'm working in right now wasn't created by the National Bank Act of 1864.

It was created by the National Currency Act of 1863 and the original vision of the Comptroller's Office, and the reason my job is called comptroller of the currency, not like comptroller of banking, is because initially the idea was to create a single system of competitive payments. Right? That was the whole idea is we would have national bank system of competitive institutions where the Congress at the time was rejecting both the original bank of the United States model but also the system of state banking that had preceded the National Currency Act.

So here the idea was everybody is going to issue something called dollars but they would do it on a competitive basis based on their ability to buy treasuries and hold them. So I come back to the idea of the core function of the OCC originally was actually payments.

MR. KLEIN: Fascinating. That's really really interesting. Since I love provocative sound bites at Brookings Institution events, let's go with this unbundling concept. We had a question and the audience can tweet us questions at fix payments or email at events.brookings.edu but we had a question come in before the event from the great Jonah Crane who asked your views on the separation of banking and commerce because my view of the read of the law, right? We have this big separation of banking and commerce.

It's a fundamental pillar in the U.S., but when you really dive down to it, banking is about the taking of deposits and the making of loans. The provision of payment services which you correctly point out has been part of the banking system for a very long time was because banks had a comparative advantage doing it, not because it was legally precluded in this box of banking, not this box of commerce. In fact, you can do a bunch of payments operation and not be a bank and you can be a bank and do payments and not be a commercial entity. So this unbundling really tests this. On the theoretical or philosophical level, do you agree with the separation of banking and commerce?

MR. BROOKS: Well, I'm going to go back to your premise so I'll answer to your question but let me go back to your premise which is banking consists of the taking of deposits and the making of loans. You know, in the '50s people used to believe that. So and I've never thought of you as a '50s kind of guy. We just look at your haircut. Come on, Aaron. I mean this is the 2020s.

I think what banking is really about and what I'm trying to kind of get us to reimagine is it's about financial intermediation writ large. So when did we first learn this? We first really learned this in the '70s and '80s when the global capital markets really became a significant substitute for bank lending as it previously existed and if you remember the famous 1982 Jerry Corrigan article about what makes bank special, he sort of tries to take down the notion that what makes them special is that they take deposits and make loans. His point then was actually there are now lots of substitutes for deposits and lots of substitutes for loans. You know? So a person who is looking for a safe place to keep their money can invest in government bonds or in corporate bonds and a person who --

MR. KLEIN: Like money market mutual funds since we guarantee them in every crisis?

MR. BROOKS: Exactly. Exactly. So well put. And on the lending side, it turns out that, you know, any corporate borrower who wants to access lending can come to the bank for a loan or they can just issue debentures and bonds on the market and those are just different ways of accessing capital. So I think at the end of the day if the only thing that defines banking is taking deposits and making loans, banks eventually are going to go away as we know them so that gets to my point.

We need to re-think it in terms of what the actual statutes talk about which is banks have a whole lot of powers, not just deposits and lending and not necessarily all of those together. So I start with that proposition. Then I turn to the proposition of in the '70 and '80s there were all of these cases testing what banks' powers were. So these were the cases that held that banks when they first started to computerize and do bank transactions, you know, over computer networks it was held that banks could sell their excess data processing capacity as a for-profit business even to people who weren't their banking customers and that was thought to be a permissible business of banking activity.

Then there was a question of well, could banks provide travel agency services for their customers or could they run rental car agencies and in case after case the D.C. Circuit and Supreme Court said yes. Banks can do all of those things because they're all related to their business of financial intermediation. So what I think is the question of banking and commerce is very much like these old debates of banking versus investment banking or banking versus securities. Those previously almost religiously held distinctions.

They all fell away in the light of economic demand. In the end of the day, people are choosing to receive their financial services however they're choosing to receive them and the bank charter has to be sufficiently flexible to be relevant to the generation that's trying to receive those financial services and so coming to this commerce idea at the end of the day it's not really clear that business which generates income, invests income, you know, takes risks and engages in various intermediation activities, is all that different from certain aspects of banking.

So like I'm not telling you that I think Walmart should get a charter or shouldn't get a charter but I think a lot of those old walls have started to come down because of economic reality. In the end of the day, it's customer demand that determines how we receive services. It's not these magic walls that got enacted in some historical moment.

MR. KLEIN: Well, I can tell you from my research one of the biggest overdraft giants in America is a bank whose basic business model is branching inside of Walmart. Let me ask you a different question kind of building on this which is you mentioned the legal foundation and I was tying the taking of banking deposits and loans as a legal construct, your predecessor came out with a fintech charter and was sued and that case is working its way through the courts. You come from a legal background. How confident are you in the legality of this proposal?

MR. BROOKS: I'm highly confident. You know, look, the great thing about being a litigator by training is when someone says I'm going to sue you, it doesn't really scare you all that much. I mean I've litigated cases for a living and sometimes it took me going all the way to the Supreme Court before I finally won but that's why we have three tiers of courts in America and it's why we have 93 different judicial districts. The view of one district judge is never the last on any important subject and, you know, the way cases get to the Supreme Court is you have bunch of different district judges coming to different outcomes.

What I think about the case is I think that, you know, that was a case involving particular issues in front of a particular judge argued a particular way but my read of the law is that for more than 25 years, OCC regulations have said that a bank is anything that takes deposits, makes loans, or engages in payments or, right? It's been in our reg for ever since I graduated from law school and I know that the OCC historically has been given deference by the U.S. Supreme Court in its definition of what proper bank activities are. So it would be truly radical to hold that the OCC's interpretation of what a bank is didn't prevail.

I don't actually believe there has ever been a case in the U.S. Supreme Court where the OCC did not win on that point and there are more than a dozen cases where it did win. So I'm highly confident in the outcome. Doesn't mean there won't be twists and turns. You know. We'll win some and lose some probably along the way to the Supreme Court but, as I like to tell my friends, I've lost more votes in the Supreme Court then most people have ever asked for so we'll see.

MR. KLEIN: That sounds good. As these twists and turns, you just got a letter today from all the bank and credit union major trades and it was on this very topic and as I read the letter it kind of asks for two things. One, that you guys have an open and transparent process. So I'm going to ask you whether you will commit to an open and transparent process. And the second question has to do with whether or not under this new payments charter you're thinking about it would trigger bank holding company action.

And on this one I think is a little more -- the nuances here are a little more interesting because, number one, any payment charter that you grant still needs a master account from the Federal Reserve to be able to access the Fed's payment system. As Peter Compte-Brown, one of the leading payment scholars in America has written, the Fed does not have any legal authority to make decisions on the basis of granting charters. It's simply they shall grant. Yet in recent case after case in Colorado, with Four Corners Credit Union, in New York with the Narrow Bank, the Fed has refused charter applications that seemed to meet all their statutory criteria. Peter argued they are inventing a discretionary authority.

In addition, much of the criticism that I and others have launched tot eh Fed's failure to modernize their payment system is this weird role of regulating he payment system and operating their own ACH system and their inability to promulgate regulations required by law that their own outdated system couldn't. One could imagine if a VHS was in charge of data standardization for streaming, we may not have gotten there. So let me ask you to respond this trades letters questions on these two points, transparency and openness and process and, two, whether or not this charger will trigger bank holding company act authority for the Fed.

MR. BROOKS: Yes. Well, so Aaron these are great questions. Obviously, we just got this latter today and we'll respond in the fullness of time. It's a long letter with a lot of analysis written by a lot of smart people so it deserves a full response which we'll provide.

On those particular topics though I'll just tell you my topline answer which is that there will be no less transparency of process here than there is with respect to the bank charter I signed this morning. I mean this is what we do here is we grant bank charters. We review applications pursuant to a set of rules and when the banks meet the rules, we grant the charter. So I don't think there is any kind of a lack of transparency here.

I think what may be confusing to people on the transparency front is the way the concept of anon-depository fintech charter first got launched under Comptroller Curry's tenure was a little bit different from how I think of it. There was this concept at the time of, you know, what people referred to as the special purpose charter like it was really a new charter. I don't personally believe, with all due respect, that that's the right way to think about it. If we take our own regulation seriously which say a national bank is anything that does one of those three things I mentioned, this is not a special purpose charter at all. It's a bank.

It's just a bank. So in the same sense that, you know, sometimes we grant charters to banks that are focused on technology lending and sometimes we're focused on credit card banks and sometimes we're focused on banks that have a heavy on the real estate, we don't have like a real estate bank and we don't have like a derivatives bank. I mean we just have banks. That's what we have. I mean we really have two kinds of things. We have banks and trust banks.

That accounts for 95 percent of what we've got going along here if you include thrifts within the concept of a bank. So the way I'm envisioning this is if you're a company that does a qualifying activity as your primary activity, then you get to be a bank. Period. Not a special purpose bank. A bank with all of the things that come with that. That includes, by the way, capital rules. It includes BSA compliance.

It includes, you know, all of the other things. It includes a sort of community reinvestment like requirements for financial inclusion. So I think where perhaps we get off track with the trade groups that wrote us today is they're still thinking about the five years ago concept of a fintech charter. We're not really talking about a new charter. We're talking about the idea that you're eligible for a bank charter if you do payments, even if you don't do deposits and, you know, that runs into the New York case we recognize but we think that case is wrong, to be honest. That's why we're appealing it. So think about it like that as a full on bank charter for somebody whose focus is payments.

If you think about it like this, Aaron, imagine that we had a bank today that was engaged in deposit taking and lending and payments and imagine that bank decided to get out of the payments business so now it's only doing two of the three factors. Would we think that somehow that bank had to give up its charter? I don't think so. I think it's a bank and it gets to chose over time what its business plan is and so I think it's as simple as that. On the Bank Holding Company Act part I think there's an actual answer to that.

The Bank Holding Company Act says you're not a bank holding company if you don't own an insured depository institution and if a company came in like let's say if PayPal applied for a charter on the theory that they do payments, as a matter of law they will not trigger the Bank Holding Company Act because they don't take insured deposits. Now, Congress could choose to change that if they wanted to, but I would question why they would want to. More command and control regulation I don't think is necessarily consistent with at least, you know, this administration's world view of letting markets rather than, you know, regulators decide how consumers receive their service, but I think, again, I think the misunderstanding that these trade groups are operating under is the idea that somehow this is going to be a lighter touch charter with fewer obligations and it's going to make the playing field level I think it's just the opposite.

I think what they're watching right now is some of their best businesses are migrating to of the system where they'd have much lighter obligations. I want to bring those things back into the system and so if you believe in level playing field, I'm your best friend.

MR. KLEIN: So thank you. We're going towards the end of the conversation. So you mentioned this administration and I'd be remiss if I didn't mention the President said, at least according to Secretary Mnuchin, that he wants the next round of COVID stimulus checks to get to people as quickly as possible.

Yesterday, Vice President Biden called on real time payments as part of his platform to address inequality. The last set of payments the Treasury Department gave the instruction the money was coming and how much to each bank on Good Friday. This was in the first round of direct deposits, the fastest people got money and it didn't show up available into people's accounts until Wednesday. You know if you were in charge or the president or Secretary of the Treasury was going to ask you, you know, should we make these funds immediately available to people? The Expedited Funds Availability Act it's not in your jurisdiction.

It's not in your control but it says that you can sit on treasury funds for a little while both checks from the Treasury Department which millions of people -- tens of millions of people got months later as well as governing some of the time availability on direct deposits Congress can change that law. It would seem to satisfy the president's objective. Do you think it would be a good thing for America and for the banking system for people to get their next round of stimulus faster?

MR. BROOKS: Yeah, no question, Aaron. No question. I mean if I have a voice on this and my voice here is just the same as yours or anybody else's but as a citizen absolutely. As a regulator, the question is how do you do that? And the answer is, you know, we don't have a Fed, you know, Fed now does not yet exist except on paper.

There is, as you say, the ACH upgrade that would allow something faster. That would be a good thing. There are also existing private sector block chain technologies on smart contracts where one could simply program the stuff and hit the automate button and it would instantly appear to everybody who is connected on that network. Technology is the answer here. We have been slower than any other major country to embrace technology. We, unfortunately, are the victim of our own success 100 years ago. A hundred years ago, we had the most advanced financial system in the world and we still have the most advanced financial system circa 1910. That's our problem is we're building on top of old rails and old systems. We need to just start over and that's what I'm trying to embrace here.

MR. KLEIN: Well, we appreciate your new thinking. You know that some banks did make the money available on Friday, on Good Friday. They all could have. They all should have. Congress can require that in this new law. I'm glad to hear that you add your voice to the echo chamber of people that think that that would be a good idea and I really want to thank you for your time and thoughts on this. I want to close by asking you, you know, if you look back at the end of your tenure as comptroller of the currency and you are able to accomplish your goal in payments, what does that look like?

MR. BROOKS: I think if I had a five-year term as comptroller, I think it looks like two things. One is that there is a national platform for payments companies out there that don't have to deal with patchwork state laws and all of that. Okay? That's the first thing. That brings everything into the supervisory framework and the second thing we didn't talk that much about is I'm a believer in decentralization.

I think at the end of the day I think that stable coins and other kind of block chain based tokenization of dollars are the most resilient model, you know, for long-term faster payments, better than a central bank monopoly on the payment system and, you know, nodes on networks tend to be much more failsafe and resilient than centralized administration. So those two things I think would be a big success.

MR. KLEIN: Well, we would be happy and thrilled to bring you back to talk about central bank digital currency, digital dollar, all these terms that are frequently chatted about in the think tank world and I think require deep keen minds with actual practical experience of which, Brian, you're top of the list. And I want to thank you very much for sharing a little bit of your afternoon and your wisdom with us.

MR. BROOKS: A real pleasure, Aaron. Thanks for doing this.

MR. KLEIN: A pleasure. Great. Well, thank you everyone and join me in thanking Brian and with that if we can turn the technological switches on to bring our panelists up on state virtually while I introduce them that would be excellent. Let's see if we've got -- if we're doing this and then I can start. Also if the panelists can unmute themselves and we'll bring their video up through. I begin to see my friend, Dr. Christopher Brummer, professor at Georgetown University and the leading force behind fintech week which is really not just the Washington D.C., but fundamentally the global week par excellence the one seed of all fintech gatherings in the Nation's Capital and other places.

Dr. Brummer, welcome. I see Margaret Liu. Margaret is the Senior Vice President and the General Counsel of the Conference of State Bank Supervisors. These are the folks that regulate lots of the payment system and all of the state banks, state credit unions, state chartered other institutions. Throughout the country, they play a critical role in this regulatory system and we're thrilled to have you and your voice there. I see Mike Calhoun. Mike is the President for the Center for Responsible Lending, one of the leading consumer advocate organizations and an affiliate of Self-Help Credit Union.

Mike, one of the many benefits of CRL is they take positions based not just on ideological theory but on their practical experience of their affiliated credit union helping millions of low income and moderate individuals achieve a fair and better outcome in financial services and hence in life. And last, but not least, I want to introduce Greg Baer from the Bank Policy Institute, the president, CEO, founding driving force, former president of the clearinghouse.

I would note that BPI provides generous support to Brookings which helps make the work we do possible and I'd also reiterate Brookings commitment to independence and underscore the views today expressed are solely those of the various speakers, myself included. So can I virtually say hello to everybody and ask everybody to say hello to the universe?

DR. BRUMMER: Hello universe.

MS. LIU: Hello.

MR. KLEIN: All right. Well, let's start by reacting. What was the biggest thing Brian said where you thought he got it right? What do you take issue with? Chris, why don't we start with you and we'll go around in the order I introduced folks.

DR. BRUMMER: So, you know, I thought it was, you know, a really fascinating conversation because what you're really seeing, Brian, taking a step back and trying to situate some of the conversation that we have now within the sort of overall question about what is banking. You know?

And what is a bank? And, you know, from a historical standpoint, you know, the idea of what is a bank it is remarkably complex and consistent at the same time and, you know, he identified a couple of the keys aspects of banking. You know. I would add that one that he has recently acknowledged, particularly in the context of crypto-assets would be sort of the role of a bank as safeguarding assets as well, not just the deposit taking and the like. And we can have a conversation about that now or later on stable coins or whatever but he's trying to sort of figure out, okay. How could I put this in this larger conversation of banking which is a departure of sorts from the normal conversation that we're having and then from that taking it and linking the concept of banking to the concept of intermediation. Right? Because I think that's where he's going to get the most push back and the most sort of friction about well, how broad is the concept of intermediation and, you know, does sort of the definition of the bank end up biting off more than it can chew? And we can get into that but I really want to also listen to my other panelists and from there we can have a dialogue.

MS. LIU: Aaron, should I jump in now? Okay. Great. And thank you very much for convening this and I'm really honored to be on this panel with so many talented and thoughtful people. So, you know, I think that one of the starting places for us in terms of what is a bank is really what Congress has said a bank should be and, Aaron, I know you brought this up in your conversation, as opposed to what the OCC says a bank should be.

Professor Brummer really rightly noted the complexities of what it means to be a bank in terms of the volumes and volumes of case law and legal thought and, you know, for, you know, over 100 to 150, 200 years almost and so I think it's a little bit simplistic to just say, you know, well, we issued a regulation that says a bank can eb in lending, payments or taking deposits because it's not really as simple as that and that's really the basis of our lawsuit and the lawsuit the DFS has pursued. You know.

If you look back at the history, payments and lending were definitely always part of what it meant to be a bank, but so was deposit taking and I think that there's a really strong argument and case law and legal scholarship to back up the idea that to lend or to take payments requires taking deposits. I won't bore you or our audience with dramatic readings from any of the legal briefs that are being prepared or just issued but I think suffice it to say there is -- from our standpoint, it's quite clear that you have to take deposits to be a bank. You know, the acting comptroller also brought up some case law around additional bank powers. What you might think of as sort of the outer limits. But I think it's important to not confuse that with what we're really talking about here with regard to the fintech charter which are the inner limits I guess is a term if you think about it just to contrast. You know.

These aren't about expanded powers that banks might or might not be able to pursue but this is about the foundation of what it means to be a bank and really about who gets to decide what it means to be a bank.

MR. CALHOUN: I'll go. Margaret, I was going to make a similar point about it's one thing to say banks should be able to engage and can engage in data processing. It's another thing to say that a data processor is a bank. You know, you have to have certain core attributes in order to be a bank.

And, you know, picking up -- I won't talk about the law as much but I mean I think there are particular reasons not to unbundle and I do think it's a wonderful way to think about and I give Brian credit for phrasing it as such. Unbundle payments from other banking activities, you know, regardless of what the law may be. I mean if you are a payment system operator, you're going to have a lot of idle cash lying around and the history of that is that you tend to invest it in high yielding and liquid assets and you are prone to runs in trouble and I think that's why it's a very good thing to have bundled payment operation with things like access to the discount window, insured deposits, you know, Fed supervision.

All kinds of things like that. So it's not by accident. It's a good idea to put those things together, not to take them apart. I think the biggest surprise from the remarks was, you know, perhaps his lack of awareness that we actually have a real time payment system in this country which, you know, as a former clearinghouse president I'm well aware of. It's not hypothetical. It's operating right now. I think now over 50 percent of DDAs in the United States are eligible for real time payment I think it's --

MR. KLEIN: Direct debit accounts? Is that --

MR. CALHOUN: Right. Deposit accounts. So regular old checking accounts as you think about it. By the end of the year, it should be 80 percent. Originally, the original adopters were the large banks that spent billions to build the system but now through the core processors like Jack Henry they're bringing on small banks. I think Jack Henry is adding 20 to 25 a month at this point. There was a delay in the small banks coming on board because, as you note, the Fed sort of say well, wait.

We're going to build one, too. I think at this point people are not willing to wait and they're joining up and that's a good thing. And, you know, to use Brian's phrase, this is not built on 1910 rails or any old rails. These are entirely new rails. The same rails that Singapore and Australia and the British system are built on with rich data capability as well as the payments and, you know, the benefits and, you know, Aaron, you've talked about this, are extraordinary because, you know, you basically take fraud risk to zero because these are credit push, not debit pull systems. So someone has to actually authorize the payment and so it can be final and irrevocable and immediate.

So that's going to end up being a massive benefit, not just corporate America but consumer America so I think there's a lot more hope there and expectation and to the extent that you believe that's working then I think there's a whole lot less need to sort of reinvent the National Bank Act.

MR. KLEIN: Mike, what did you think of Brian's remarks?

MR. CALHOUN: Let me add a couple of comments to those that have been made. The first is we support faster payments through a variety of ways. So consumers benefit from that. There would be two things I would note. I would first following on other speakers it does seem like this is an attempt to pretty heavily shoehorn payment processors into the existing bank charter structure and we heard a couple of things where Congress did talk in terms of banks as insured depositories.

The Bank Holding Company Act but also from a consumer standpoint, he -- Brian --

made some reference to this. The CRA only -- Community Reinvestment Act -- only applies to insured depositories. Now, it's what the OCC is talking about doing is putting a light version as he talked about over that to try and replace that gap, but it doesn't have assessment areas which are based upon deposit taking. It doesn't have community input requirements. It is very much a very light version of CRA and then perhaps the most recently Congress I think reflects it's view that when it talked about banks it was meaning insured depositories and that's in Dodd-Frank and the CFPB.

If you look at the areas of coverage of the CFPB authority vis-à-vis other regulators, it is carved out in terms of are they insured depositories. So for example it starts out with CFPB for larger participants has exclusive consumer protection authority over them except in the case of insured depositories where for those above 10 billion it has primary and below 10 billion it has joint with the Prudential regulator having primary. And so that both reflects I think a statutory history an also raises just a very pragmatic enforcement problem.

If these are over 10 billion, does the OCC have any consumer authority? I would argue under the CFPB language, probably not. That doesn't seem like necessarily a great arrangement. And then the final point is there is some I think assumption of fintech and modernization means better consumer result. And I would submit that sort of fintech 1.0 was debit card companies. Pre-paid debit card companies coming in and offering an alternative, circumventing bank direct deposit demand and deposit accounts but what we saw very quickly was not that they eliminated the abuses that we're all talking about trying to get to with faster payments.

Instead, immediately they recognized that the profit centers were overdraft fees and high cost credit and added both of those features as major revenue sources to what was a pre-paid debit card for safe, you know, faster transmission of money. And we worry very much particularly with the pre-emption that comes that you need to have a robust consumer protection regime in place.

We've seen the wild west and it doesn't come out well and I think that will be the case. You know payment processors are going to realized that get commoditized very quickly and dose not generate the return that shareholders want, that the money once again will be in these ancillary services that will start out very poorly regulated.

MR. KLEIN: So, Mike, I couldn't agree with you more on almost everything, particularly on overdrafts. I alluded to Wood Forest National Bank. I never want to give the names of banks in front of the Comptroller, but Wood Forest National Bank is number three on the list of banks that get most of their money on overdraft just ahead of Armed Forces Bank which gets 87 percent of its profit from overdraft.

Wood Forest is the one in the Walmart's Armed Forces preys on servicemen and women and it's -- Margaret I would wonder from a state banking perspective whether an entity that gets 50 to 80 to 112 percent of their profits from overdraft is that really a bank charter or a check cashing charter? And if it were a check casher, it would have to charge less but, Mike, I would say that all insured depository institutions were subject to the CRA. Credit unions are exempt as an insured depository institution so alas there are some -- I've written that that's a mistake, particularly as you see credit unions whose service mantra is everybody is welcome but once upon a time there was something called field of membership that was enforced.

I want to go to a comment Greg raised and a question that I asked the Comptroller that I want to ask each of you which is there is a way to get people their money immediately, either using the real time payment system or requiring under the Expedited Funds Availability Act the money be made available immediately. Two questions.

If you were in charge of the stimulus payments, how would you get the money out to folks and if you could write the law would you move the expedited funds availability act up so that people would have access to their money immediately.

Greg, why don't we start with you and we'll work backwards in the other order and end with Chris.

MR. BAER: Sure. I mean I don't know if it's possible in these time frames but I mean treasury could have adopted and could not adopt real time payments. Instead, they have a no bid contract with the Fed to do ACH but they could work with the clearinghouse and be making real time payments at least for those, you know, citizens who actually have an account at a bank that qualifies.

I mean obviously the next, as you sort of go down the line, the next option is ACH which they did. You know, I think they have a potential in the future to deal more with the industry. There is something called early warning system which has a great database that would allow them to more closely link folks with accounts and thereby reduce the number of rejects which ends up in a paper check.

So I think next time around, they probably will work with them which could substantially increase the number of ACH payments versus paper check payments and then of course, you know, your last recourse is paper check which is not great. You know in terms of availability, I mean, you know, I think you gave a little bit of the history. I mean treasury issued their payment instructions on Friday but the money did not go to the banks until Wednesday and then the money went from the banks to the recipients on Wednesday so it was the same day. You know so I don't see why that can't happen.

I mean in fact the banking industry asked for it to happen on Monday in order to avoid conversations like this. For whatever technical reasons, they weren't able to do that. You know but I assume next time that will go a little more smoothly. I would say, though, I mean in terms of, you know, funds availability more generally I mean there is a reason that payments are delayed and it's fraud which is massive. With regard even to the stimulus checks, you know, there were concerns about remote deposit capture and how you could double deposit checks which I think happened and, you know, just plain fraud, counterfeit so, you know, I think banks do need to take a moment, particularly with non, you know, Treasury Department checks, to make sure that in fact you are who you say you are and should be issued a payment.

DR. BRUMMER: And, Aaron, just to clarify your question as for I think all of us, are you specifically thinking about sort of PPP functionalities or are you thinking about the stimulus?

MR. KLEIN: I'm thinking about the direct payments to individuals.

DR. BRUMMER: Okay.

MR. KLEIN: Not the gifts to small business. Quote unquote small businesses.

DR. BRUMMER: Okay.

MR. KLEIN: I'm talking about the 12 to $3,400. If a family of four got a $3,400 check in the city of Miami, they could wait many days for that check to be available or go to a check casher at a cost of $102. Those are their two choices. In Maryland, I think the check casher fee is closer to 2 percent. Michael, what do you think?

MR. CALHOUN: Clearly, the faster we do as a depository institution, have appreciation on the need for fraud review, particularly third party checks. I think the bigger issue -- I mean I think it would be great if people get them three days earlier although this is not the check that --people were counting on this, but it's not like their regular paycheck hopefully although the first ones were because of the unemployment and the delay in people getting unemployment benefits and we may have a taste of that again with the delay in unemployment benefits.

I think the people who were hurt the most were, you know, there were folks getting checks just recently. The paper -- sending out the paper checks from the Treasury, you know, they were sending out the last of those out in mid-July and to me if you -- that would be the first place to focus resources where if people are delayed literally for months, not a few days.

MR. KLEIN: Margaret, what do you think?

MS. LIU: I think certainly with, you know, we're in an extraordinary unprecedented time now and getting people the stimulus payments sooner is I think important and certainly would be constructive. I think the broader question that you raise, Aaron, is the tougher one. You know.

And I don't have a lot of add beyond what Greg said but I do think that it also does, you know, the idea of the paper checks going out in May invites the broader question that I can't remember -- maybe Mike mentioned -- and maybe taking this back to the fintech topic, you know, fintech's promise in terms of inclusion I think is still a work in progress. Something that we're not really going to solve today but I think that this is an area.

Actually, as I was preparing for this, I was looking for, you know, scholarship and research on this and I think there is -- there is not a lot yet that really proves what fintech has done, you know, has not done. Certainly, you know, the opportunity is there.

DR. BRUMMER: That is absolutely true. It's something that I tell all of my colleagues all the time in fact that -- and my students -- that this is one of those stim areas of the law. you know obviously a lot of the financial technology is new and so people are still trying to, you know, we'll call it real time scholarship could be a little bit difficult because you're trying to accumulate and assess as much data as you can get your hands on but, you know, I would say that, you know, I think it's clear that you want to get the money to people as quickly as you can.

A lot of the challenges that we saw earlier wasn't just, however, the problem of the speed. When you think about some of the most vulnerable people in society, it's also about having a digital identity and a bank account in the first place and so it's not just if you have an account how do you move the money to that account. It's what then if people don't have an account, you know, what are the kinds of tools that you can use to still get money to people who may need them. And, again, they're more likely to be the most vulnerable in society and I think that that's a critical question that still needs to be worked out and I think it's one where, again, fintech solutions could be really interesting.

The other thing is, you know, and also relating to fintech, has to do with the, you know, treasury wasn't the only problem when it came to moving money and even outside the PPP space at the state level how do you move money and get resources to people who are relying on different forms of public assistance and, you know, that's one of those undercovered stories and it is more challenging because you have to go on a state by state and sometimes city to city basis but it's a critical part of trying to think through the movement of money for purposes or for scenarios like we saw and that we're seeing during the pandemic which is how to you get money, again, not just to people but to the people who need it most and most quickly.

And I think that, you know, real time payments is obviously a critical aspect but it's not the entire solution.

MR. KLEIN: That's exactly exactly right. Time is real money. I'm always reminded we talk a lot about the 6.5 percent of Americans who are unbanked and deservedly so. We don't talk nearly as much about the 8 percent of Americans who spend $300 a year or more on overdraft, which, you know, is part of the reason why it's so expensive to be poor. More American families are paying $300 a year or more for overdraft that don't have a bank account.

MR. CALHOUN: Aaron --

MS. LIU: Hey, Aaron?

MR. KLEIN: Let me ask --

MS. LIU: Can I --

MR. CALHOUN: I guess I'd add there I agree with you. A bank that is getting 80 percent of tis income from overdrafts that's a problem. Getting 80 percent of its income from anything but certainly overdraft -- well, I'll let somebody else go.

MS. LIU: So, Aaron, could I go back to one of the other comments that the Acting Comptroller made? And, you know, I know you have a lot of topics you want us to cover but one of the other things that I think, you know, can't go without some, you know, correcting of the record is the suggestion that, you know, all responsible and real regulation ends at the borders of the National Bank Charter. You know.

And obviously, you know, working with and on behalf of state regulators I see the world that the states regulate. You know kind of the here and now in terms of, you know, kind of vey practical focused on the ground, local accountability. A consumer focus there. And so, you know, to suggest that, you know, it's either, you know, regulation by the OCC or there is no regulation I think really misses the point that we have. We have a regulatory ecosystem in this country and the states are a piece of that by design. You know.

And I think that his ex-ante comment aside, you know, there is a reason why there are limits to what Congress can do and, you know, everything else is delegated to the states. This is not to say that there isn't work to make state supervision more networked, more consistent. This is a long game that the states have been involved in for a long time in terms of looking for technology tools, model laws to make our work more integrated, more coordinated, and more networked to meet, you know, innovation and to respond to, you know, the pace of innovation.

MR. KLEIN: So Margaret, but -- go ahead, Greg. Go ahead.

MR. BAER: Chris should go.

DR. BRUMMER: No. I think, you know, right now, aside for the moment about, you know, the specific legal questions I think that as a matter, you know, -- and Margaret was bringing up a wonderful and very interesting point that I think sometimes gets a little bit overlooked which is it's not -- I think the case for federal regulation particularly for fintech and for electronic services there is a strong case, Right? Because a lot of these businesses rely on their ability to scale. Right? And so, you know, the more scale you get, then you know maybe you can drive down costs and under proper supervision pass them on to your customers. I got that.

But there is also like a really interesting case that people forget about like particularly in this age, you know, what is it? What is the competitive advantage then of states? And I think it would be great to have that a little bit more in the conversation because states generally may not have the scale. Right? But they do tend to have the scope, particularly when you think about something like New York. Right? Where you have both banking and insurance and other kinds of powers kind of wrapped up in one particular entity. You can actually experiment in broader ways that's currently possible at the federal level. Right? So, you know, at the federal level you have as we see with many of the things that the OCC is doing, you know, there has to be buy in the fed. There has to be buy in by the FDIC.

There has to be a kind of -- there is for lots of different reasons different kind of sort of silo model when it comes to regulation that sometimes isn't really the case over at the states and it makes for, you know, interesting policy making and experimentation beyond just sort of this hackney term of, you know, the 50 states model of experimentation. They can just kind of do things when they choose to. They can do things in ways that are, at times, more interesting then at the federal level. Part of the policy conversation, not the legal conversation but part of the policy conversation that I would invite, you know, the Brookings of the world and the other institutions to sort of think about and the PPIs is sort of where does that competitive advantage lie. Right?

Between the states and the federal level particularly when you start to get new kinds of models and different kinds of financial technologies.

MR. BAER: I think you made an interesting point which I mean Congress could pass a federal money transmitter license just the way they could do a federal insurance charger. They have chosen not to but until they do I mean I don't think the answer is basically to try to shoehorn that into the national bank system as the business of banking which is really -- and I think you mentioned this point as well -- a lot of this is, you know, the elephant in the chat room is this is about backing up Congress. Right?

I mean I think they can actually control the example of PayPal and we're all like oh, yeah. Sure. You know. But I mean there is no limiting principal. I mean if it's not an insured depository institution and therefore not a bank holding company subsidiary, it could be -- you know there is another chat going on today on the hill but any of those companies that everybody is watching instead of us through taped delay but any of those companies could have a money transmitter license, and you know how do we feel about that and just do the payment system through a national bank charter without taking insured deposits and running their regular businesses and doing whatever they want with that cash so I think that's the larger question which I think you were quite sharp to get to.

MR. KLEIN: Greg, you're entirely right. I was doing something once and somebody offered to pay me in an amazon gift card and you know what? Like, you know, especially -- this was pre-COVID but post-COVID. I buy a lot of stuff there and you can imagine that payment ecosystem.

Does that raise real questions and on a consumer protection standpoint, I want to bring in Mike because PayPal is suing the CFPB to get out of the requirement that my PayPal wallet be treated like my other digital funds and to create a schism so that sending money on PayPal does not have a level playing field in consumer protection depending on whether it's from my bank insured debit account or my PayPal account the Acting Comptroller said he was for a level playing field in one area. I wonder if that would translate over to here and the other aspect on consumer protection and payments -- and this relates to something you said, Margaret -- you know there are a lot of shady payment operators operating in multiple states and if your state AG isn't aggressive in doing that, you know, good luck.

Look at Northern Lease Financing, a convicted fraudster for multiple companies, who just made a settlement in New York state but was down here in my hometown of Silver Spring, Maryland ripping off small businesses and how the small businesses went to the state AG they did one of these little things. Oh, well, this is a business agreement. Oh, but it has a personal guarantee. Mike, they were using your favorite tactic of default judgments against small business owners directly in court.

I mean ruining people's lives. You should look on the Northern Leasing Sucks Facebook chat about what this company did to people. Good small business entrepreneurs through these loopholes in payment services regulation and it's great that New York did something, Margaret, but I mean Maryland I thought we had a great AG and good Lord did he do nothing when Maryland businesses were getting ripped off. So Mike how do you make sense of this from a consumer advocate and consumer protection standpoint?

MR.CALHOUN: I think our consistent position is you need a strong flood of federal protections and if you have that, it works and quite frankly you don't for most institutions you need pre-emption. I think one that surprises people is truth in lending which everyone takes as a prescriptive program is not pre-emptive.

I mean states I think one actually at one point did have extra disclosures. They have to be consistent with the baseline but you say that that worked and then I think we had a second demonstration for that with eh Dodd-Frank Bill and the mortgage protections that prior to the passage of the mortgage protections in Dodd-Frank there were -- and we had been deeply involved with them. I think at one point there were more than 30 state laws on different mortgage protections, particularly on high cost loans.

That stopped with the passage of a strong floor of protections in Dodd-Frank which, gain are explicitly not pre-emptive. States have plenty of things to do. If there is a regulatory scheme that works pretty well, they tend to move on to other things and also people do want access to credit and you don't win a lot of votes locally unnecessarily restricting people's access to credit. So I think we've seen repeatedly that that model works quite well.

MR. KLEIN: Well, --

MS. LIU: So --

MR. KLEIN: Go ahead.

MS. LIU: No. Go ahead, Aaron.

MR. KLEIN: I was just going to say we're running almost straight towards the end of our time and I was going to ask one more question and then kind of move on which is that, per Mike's comment about good accounts, there has been a lot of progress that banks have made. The FDIC has a model account, a safe account which has been replicated by some smaller entities like Bank On, Citibank and their Citi access accounts have been remarkably successful in terms of a large percentage of new accounts as well as more reasonable access to small dollar credit in better more sustainable terms.

I know U.S. Bank has a simple loan program that they've rolled out. So, you know, I kind of wanted to ask folks part of payments and part of the ramifications of having this bad payment system are these high costs and part o the solution is bringing people into a banking system with better payment services that service their needs. So I wanted to ask folks, you know, what do they think about some of the solutions that are out there already existing and where do we need more new ideas or new -- is it a problem with infrastructure?

Is it a problem of product? Is it a problem of delivery or is it a problem of predators having too high an existing market share and moving folks or is it something else? Greg, what do you think?

MR. BAER: I mean getting back to what you were saying earlier, I mean I think one of the great lessons of the experience the Treasury had in trying to send money to people I think a lot of us are just shocked at how many people don't have bank accounts. You know I understand the criticism of overdrafts but the people that don't have bank accounts I mean they're not paying overdrafts.

They're paying check cashing fees which, you know, put overdrafts to shame. I mean so I think it's a massive challenge and I think it's an important challenge to try to get as many people into the regulated insured depository institution banking system as we possibly can. I think it's great that there are more simple loan products out there. I also think it's good that there is competition here. I mean, you know, we work with a lot of banks and, you know, sometimes they don't even want to share what they're up to because they want to win. Right? I mean that’s good.

And I think the fact that you see variation in overdraft protections and overdraft practices indicates that there is actually a market where consumers now think -- maybe they didn't used to be but I think now are sufficiently informed that they're making rational choices about whether to opt in or out of various things and how to choose their accounts so, you know, I think anything, you know, the FDIC I think was a helpful exercise.

You know on the small dollar lending product we just had the CFPB and I think we worked with a lot of consumer advocates just to prove a small dollar lending template that we had sought sort of a safe harbor for, you know, we're hoping banks will take that up.

Obviously, we can't make them but it was not terribly dissimilar from some of the products that a few of our banks were already offering so whether it's on the deposit side getting folks in or whether once in we get them to respond to our lending products so they don't have to go back outside the banking system to get credit. I mean I think that's a moral imperative.

MR. CALHOUN: So I would say that we have a challenge though that these are not competitive markets and there is overwhelming evidence to show that dysfunction. If you look at overdraft fees, for example, the level of overdraft fees has steadily -- the cost per fee is totally untethered to what the consumer pays to the cost to the bank and it has increased as technology has driven down the cost where no one is manually comparing the checks and the accounts.

It's a fully automated system plug and play on a commission basis from a lot of the financial service providers and unfortunately the history was much the same with small dollar lending although some of the new programs showed much more promise. We had direct deposit advance where the average APR was over 250 percent. This was a bank product. And the average borrower was getting 19 of these once in a blue moon loans per year because they were being flipped over and over again and, once again, the cost structure for the bank was a fraction, maybe a tenth of what it was of the storefront payday lender, but that was their competitor and a lot of that has to do with the inherent stickiness and unmovability of the basic account particularly for lower wealth households.

I mean I would ask how many people in this conversation have moved their bank accounts, closed them at one bank and moved your primary bank account to another institution. It is a horrendous process and it request a substantial amount of float to pull it off and so most people when they pick a bank account are not shopping based on what the fee for a small loan will be, what the fee for an overdraft will be and so it is a captive market. I mean one private equity firm in another context described it as like having a waffle house except the customers are chained to the booth and I think that applies for low income bank accounts that customers are chained to those accounts and there is no competition and their immense revenue is, as Aaron that pointed out and our studies -- we released one recently updating accounts -- you know, we've turned the market almost on it's head where lower wealth account holders are subsidizing the accounts of our higher wealth account holders and I even had one prominent bank general counsel argue at the time that if we don't have overdraft we can't offer our higher balance accounts free checking. We need the subsidy of all that overdraft money coming in. That should not be how our system runs today.

DR. BRUMMER: Just to jump in there because, you know, it's interesting. I thought our conversation was going to -- I thought that given having the Acting Comptroller here that much of our conversation would really sort of focus on all the different sort of areas of fintech that he is also thinking about and it is -- it is vast.

What I think we've seen in the pandemic was, you know, the challenges of onboarding new customers. Right? For all the advances in customer facing technology, we've seen with some of our legacy banks, right? Not the fastest implementation and incorporation of the kinds of tools one would have normally expected or hoped to see and that in and of itself, you know, for the PPP purposes it creates challenges for onboarding new small businesses but when it comes to the question of individuals and their exit opportunities from financial institutions that are not serving them well. Right?

It helps to trap them in like a little bit of a lobster trap. Right? Or a waffle -- I'll have to remember the Waffle House analogy. And I think that -- and this is, you know, to the credit of fintech firms, particularly those kinds of firms that are sort of native to digital technology, they have sort of existentially built many of those KYC, AML customer facing onboarding automation tools into their business strategy. Right?

And that is something that I think ultimately helps to give, you know, in it's truest sense customers more choice in the sense of being able to exit these kinds of sort of predatory relationships that they sometimes have with their financial institutions. So if you're going to ask me, you know, what can be done to better service and better serve everyone including those who are less fortunate and also the most vulnerable, you know, we really have to have a conversation about digital identities.

We have to have conversations about onboarding tools. We have to have conversations about digital infrastructure and data for the purposes of KYCAML and then we get into also conversations because of just, you know, when you're building out your infrastructure how does that then apply to lending when you can use alternative data to sort of lower and reduce potentially the loans people can access.

You know I think that the overdraft fee issue is an enormous one. It's one that will also play itself out with conversations on usury law and other kinds of things we haven't had the opportunity to get into but, you know, that conversation and as to the net cost of my banking relationship, right? That is a conversation that happens in -- that has to be taken not only on sort of an individual basis but you really have to look at what are the suite of services and what are the suite of costs and benefits that are being applied because I think that's where from a policy standpoint we're going to start to move the conversation not really get into a policy that moves people into a better banking experience.

MR. KLEIN: Chris, I think it's really important because AML issues drive up the costs of banking. Of the 6.5 or the 8 million households without bank accounts you have 1.4 million I believe is the estimate who are on this do not bank list. And so by reducing the costs of AML compliance, you really address -- I mean you know you have 20 to 30 percent of the unbanked are on a do not bank list.

Putting a bank in a post office unless you're going to exempt them from AML, doesn't even begin to address this problem. What does address this problem is the legislation working it way through Congress on beneficial ownership. I see both Greg and Mike being happy about that which ought to tell you the broad base of support this thing has. Who would have though the National Defense Authorization Act a beneficial way to better serve the unbanked but it sounds like, gentlemen, from both of your reactions you think this is a win for consumers.

I'd also want to point out, Chris, a lot of what you're saying about digital identity and the rest of this stuff doesn't that fundamentally argue towards economies of scale in terms of better understanding this? I mean it's someone telling, you know, I want to get away from the overdraft comments but like those are all these really little banks that just have this niche market on one little thing. In the broader economies of scale world where you can get cheaper situations where you have investment in building in alternative payments I mean I feel like I'm stuck at this waffle house with the ACH system.

I mean how do I as a consumer get out? I want off of ACH. There are a lot better alternatives int eh world but I feel like I'm trapped. Why does the government have to send me this money and why do I have to wait so long for it? What are the ways to change this paradigm?

DR. BRUMMER: Well, I mean besides the fact that, you know, for the record I don't care what people say. The hash browns of waffle house can be sometimes flaky.

MR. CALHOUN: I have a bad one too.

MR. KLEIN: Besides the, you know, I will take for the moment and bracket the conversation on waffle house in particular to say that I think there is an economy of scale argument but I think that there is also an automation element to it as well. To the extent to which you can create some kind of secure program based off of a digital identity, right? And that in some ways can actually help to reduce human error but where you also have human beings overlooking the system and making sure that everything is operating well. You know.

What that does is beyond the economies of scale for the purposes of the banking institution, you also have -- which hopefully will be passed on to the client, right? Or to the customer. You also have then have the automation which creates certain kinds of cost savings potentially for the customer but I think that again a lot of -- this is something that I think, you know, Brian Brooks should like. I mean, you know, at the end of the day you need to have a liquid customer market so that when they get into these predatory relationships, they can exit and I think that part of the value proposition isn't just driving down the costs on the front end but you're driving down the costs on the back end and by driving down those costs on the bank end, you're helping to facilitate a much more competitive market and it's re-thinking again that whole suite of services and really thinking through the net economies and the net costs and benefits in that customer relationship, customer banking sort of customer bank interface where, you know, we're not going to necessarily be chained to waffle house unless we are eating their hash browns.

MR. BAER: A couple of things --

MS. LIU: Well, --

MR. BAER: First, I would just say I mean I love the point about switching it out. I would say sort of ironically or maybe counterintuitively I think banks would benefit if it was easier to switch bank accounts because I think when people -- one reason people don't like their bank is they feel captive of their bank and if they had a free opportunity to go to another bank they would dislike their bank less.

So I think that has the potential actually to be a win-win. On your AML point, I just want to point out how insidious and subtle some of this is. When I talk to bank AML folks, I mean if you think about what's the behavior of a money launderer, a lot of it is lots of cash deposits. Generally small in size. So what's the behavior of an LMI person? It's lots of cash deposits, small in size. And so what happens is and the examiners and the compliance folks don't admit de minimus exceptions. Right? So what happens is you make a bunch of small cash deposits, the bank will call you up and say what is the source of those funds?

And maybe the source of those funds is undeclared tip income or piece work or whatever you did and so people don't like it when their bank calls and asks them what the source of their finds are and then by the way they tell all their friends that if you bank at a bank they're going to call you and ask you where your money is coming from and, again, a lot of this could be solved by saying you know what? Somebody who is depositing $200 a week is not -- at least not a successful drug dealer.

So maybe that will take care of itself but, you know, the way AML sort of permeates a lot of these issues around financial inclusion I think is way understated. And just one last thing and maybe it's a partial answer to Mike and Chris when you think about the deposit account from the perspective of the bank and why I think some of them could still rely on overdrafts fees although I think Mike's study shows that, you know, the last five years it's been 5 percent of non-interest income for banks so it has actually been fairly steady but if you think about the bank relationship you can't charge for a checking account.

Everybody demands free checking and the few banks that have tried to do that, their customers have hated them. They've been mocked and they've had to rescind it in hours. Right? You know you're not currently running a lot in interest margin. You used to make money on interchange until the German price fixing amendment in Dodd-Frank, you know, significantly reduced that.

So, you know, part of the question is, you know, how can you make this a viable thing other than fees? So I think that's sort of a common challenge around that.

MR. KLEIN: Margaret, I know you wanted to jump in. I want to --

MS. LIU: So I had one observation. I think a lot of this conversation today has been about, you know, large institutions and even the conversation, Professor Brummer's point about, you know, economies of scale and I think one of the things that it's important to think about is, you know, sort of intended or unintended policy and kind of market structure consequences of that. You know.

Because I think that everyone has spoken about the important, you know, including the acting comptroller, you know, decentralization. A diversity in the economy and I think that some of the things that we're talking about, particularly in the technology space, you've got to be concerned about whether, you know, institutions and, you know, organizations of varying size and business model are going to be able to avail themselves, you know, of these tools because you don't want to end up in a situation where you have just a handful of, you know, monoliths and, you know, I think even the large entities don't like that.

I think the diversity is important, particularly, you know, for a country as large as ours and when you think about the different type of communities and Brian has mentioned this before in terms of, you know, all the different consumer and customer preferences you know. We need a diverse economy. We need a lot of different types of institutions. You know. Meeting different needs.

And I think, you know, to kind of bring this back to where we were, you know, a lot of what the OCC is talking about is for large established entities and so when you think about, you know, community banks in the banking space or when you think about startups in the non-bank fintech space, you know, the payments charter is, you know, which, you know, counterfactually given that we think it's illegal, you know, the payments charter is not for a startup or for a mid-size company. You know.

That is what -- those are the types of companies that the states are licensing and overseeing for consumer protection, BSA, AML every day now. And maybe if I could just take another moment and throw out a few data points too. So, you know, in 2019 you had almost 100 companies acquire their first money transmission license ever via NMLS which is a technology platform that the states use for non-bank licensing.

Sixty-seven of those entities were licensed in one state but you also had 15 that were licensed in ten or more including three that are licensed in 30 or more and so what you see is -- this is just one little snapshot of the diversity that the states are working with, you know, supporting and regulating every day. You know. Today, now.

MR. KLEIN: Great. With that, I think, Margaret, you're going to --

DR. BRUMMER: That’s correct. I think that's really useful information. To your economies of scale point, you're not only trying to create economies of scale but you also have to create customizable solutions. I know Greg sees that every single day and when he's talking to his members and I think that those observations that Ms. Liu has made were very useful.

MR. KLEIN: So you can see we could go on for quite a while. When you start talking about payments, you really start talking about everything because everything in this world requires payment and, you know, the end of the month is coming up. Friday is July 31st. I know that date well. It's my daughter's tenth birthday and if she gets any birthday presents they're not going to be available on August 1st and for the millions of Americans who get a check on Friday, July 31st and they have something coming and due up they're in a tough situation.

There is no good reason that we as a country found ourselves decades behind the rest of the world. There has been some new innovation. Hopefully, we will take more of that and we'll continue these conversations on payments. I want to join and thank the rest of the panelists for spending some of their time, hard-earned time, and wisdom with us here at Brookings and wish everybody a happy and healthy and safe future. Thank you all very much.

DR. BRUMMER: Thanks, Aaron.

MS. LIU: Thank you, Aaron.

MR. BAER: Thank you, Aaron.

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