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United States House of Representatives
Committee on Financial Services
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October 18, 2019

Memorandum

To: Members, Committee on Financial Services

From: FSC Majority Staff

Subject: October 23, 2019, "An Examination of Facebook and Its Impact on the Financial Services and Housing Sectors"

The Committee on Financial Services will hold a hearing at 10:00 a.m. on Wednesday, October 23, 2019, in Room 2128, Rayburn House Office Building entitled, "An Examination of Facebook and Its Impact on the Financial Services and Housing Sectors." This is a one-panel hearing with the following witness:

- **Mark Zuckerberg**, Chairman and Chief Executive Officer, Facebook

Background

Libra and Calibra

On June 18, 2019, Facebook announced its plans to develop a new cryptocurrency, called Libra, and a digital wallet to store this cryptocurrency, called Calibra. Libra will be built on blockchain, backed by a reserve of assets, and governed by the Libra Association.[1] The Libra Association ("Association"), which, at that time, was comprised of Facebook and 27 other members, is an independent, not-for-profit organization headquartered in Geneva, Switzerland. Its members will verify Libra transactions within the Libra blockchain. Facebook hopes to have recruited over 100 firms into the Association by the target launch date of early 2020.

According to Facebook's white paper on Libra, Association transactions would be "fully backed" by bank deposits and short-term government securities that will be held in the Libra Reserve. New Libra tokens would only be created when certain authorized resellers purchase them from the Association. Libra tokens could only be destroyed when authorized sellers sell them back to the Association in exchange for the underlying assets. The interest from the assets in the Reserve would fund operating expenses and be used to pay dividends to investors in the "Libra Investment Token." Facebook intends to sell Libra Investment Tokens to members of the Association and other investors to fund its startup costs. Calibra, a Facebook subsidiary, will operate a digital wallet for the Association. The wallet will be available in 2020 through Facebook Messenger, Whatsapp, and as a standalone internet application available on smartphones.[2] Facebook plans to expand the use of Calibra to other services like bill pay.

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[1] Libra, "White Paper: Introducing Libra," last accessed Oct. 17, 2019, at https://libra.org/en-US/white-paper/#introducing-libra.
[2] Facebook, "Coming in 2020: Calibra," Facebook Newsroom, last accessed Oct. 17, 2019, at https://newsroom.fb.com/news/2019/06/coming-in-2020-calibra/.

As the first step in the Congressional process, on July 17, 2019, the Committee held a hearing to hear directly from the architect of this project, David Marcus, the Chief Executive Officer of Calibra, as well as, other cryptocurrency experts. As discussed during that hearing and in the accompanying materials, Facebook's plans have serious implications for investors, consumers, data privacy, cybersecurity, systemic risks, monetary policy, and national security.[3] Moreover, as part of the hearing, the Independent Community Bankers of America's ("ICBA") submitted a letter to the Committee, writing, "The proposed creation of Libra, if allowed to proceed, would be a significant and irreversible development that would alter the global financial landscape." ICBA also noted its support for a moratorium on the implementation of Libra and expressed concerns about financial stability, given that Libra could be prone to bank-like runs without any comparable deposit insurance system.[4]

U.S. regulators have also raised concerns with Libra. According to Federal Reserve Board Chairman Jerome Powell, "Libra raises many serious concerns regarding privacy, money laundering, consumer protection, and financial stability."[5] Chairman Powell stated that the project "cannot go forward" without addressing those concerns. President Trump and Treasury Secretary Mnuchin raised similar concerns.[6] Likewise, Federal Reserve Board Governor Lael Brainard has stated that "there are likely to be financial stability risks for a stablecoin network with global reach. If not managed effectively, liquidity, credit, market, or operational risks—alone or in combination—could trigger a loss of confidence and a classic run."[7] Governor Brainard also noted that "[t]he potential for risks and spillovers could be amplified by potential ambiguity surrounding the ability of official authorities to provide oversight and backstop liquidity and to collaborate across borders."

Since the Committee's July hearing, international regulators have expressed analogous concerns surrounding Facebook's plans with Libra and Calibra. In August, regulators from France and Germany both agreed to block Libra from their countries; in a joint statement, the two governments stated that "no private company can claim monetary power, which is inherent to the sovereignty of nations." The G-7 and the Financial Stability Board ("FSB") called for more scrutiny and high regulatory standards for stablecoins, such as Libra, particularly to protect consumers and ensure cryptocurrencies are not used to launder money or fund terrorism.[8]

Lastly, on October 4 2019, Paypal announced its "decision to forgo further participation in the Libra Association at this time and to continue to focus on advancing our existing mission and business

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[3] *See* US House Committee on Financial Services, Hearings, "Examining Facebook's Proposed Cryptocurrency and its Impact on Consumers, Investors, and the American Financial System," Jul. 17, 2019, at https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=404001.

[4] *See* Independent Community Bankers of America, Letter to Congress, Jul. 16, 2019, at https://www.icba.org/docs/default-source/icba/advocacy-documents/letters-to-congress/19-07-16_houselibra.pdf?sfvrsn=ef6e5a17_0.

[5] Pete Schroeder and Trevor Hunnicutt, "4-Fed chief calls for Facebook to halt Libra project until concerns addressed," CNBC, Jul. 10, 2019, at https://www.cnbc.com/2019/07/10/reuters-america-update-4-fed-chief-calls-for-facebook-to-halt-libra-project-until-concerns-addressed.html.

[6] Gregory Barber, "President Trump Is the Latest Critic of Facebook's Libra," WIRED, Jul. 11, 2019, at https://www.wired.com/story/president-trump-latest-critic-facebooks-libra/; Kate Rooney, "Mnuchin: US has 'very serious concerns' that Facebook's Libra could be misused by terrorists," CNBC, Jul. 15, 2019, at https://www.cnbc.com/2019/07/15/treasury-secretary-mnuchin-will-hold-a-news-conference-on-cryptocurrencies-at-2-pm-et.html.

[7] Lael Brainard, "Digital Currencies, Stablecoins, and the Evolving Payments Landscape," Federal Reserve Board, Oct. 16, 2019, https://www.federalreserve.gov/newsevents/speech/brainard20191016a.htm.

[8] *See* Szu Ping Chan, "Facebook's digital currency dealt another blow," BBC News, Oct. 14, 2019, at https://www.bbc.com/news/business-50037223; S*ee also*, Randal K. Quarles, "To G20 Finance Ministers and Central Bank Governors," Financial Stability Board, Oct. 13, 2019, at https://www.fsb.org/wp-content/uploads/P131019.pdf; *See further*, Financial Stability Board, "FSB publishes annual report on implementation and effects of financial regulatory reforms," Oct. 16, 2019, at https://www.fsb.org/2019/10/fsb-publishes-annual-report-on-implementation-and-effects-of-financial-regulatory-reforms/.

priorities as we strive to democratize access to financial services for underserved populations."[9] Other companies soon followed and abandoned the project. As the Association was formally organized on October 14, 2019, it announced a 21-member council with seven of the initial project members dropping out, specifically: PayPal, Visa, Mastercard, Stripe, eBay, Mercado Pago, and Booking.[10]

Fair Housing

The Fair Housing Act of 1968 prohibits discrimination in the sale, rental, financing, advertising, and insurance of housing based on race, color, religion, national origin, sex, disability, and familial status (the presence or anticipated presence of children under 18 in a household).[11] Recent technological advances have caused a major shift of housing services to online platforms, transforming consumer experiences and presenting new challenges for the investigation and handling of fair housing discrimination cases. Facebook is the world's largest online advertiser and has been subject to litigation and federal investigation for violations of the Fair Housing Act.

On March 19, 2019, civil rights groups entered into a settlement with Facebook to resolve allegations that Facebook's advertising platform enabled third party advertisers to discriminate against users by excluding them from viewing certain housing ads.[12] As part of the settlement, Facebook committed to taking several steps to address these allegations. Less than one week after this settlement was finalized, the Department of Housing and Urban Development (HUD) filed an official charge of discrimination against Facebook over similar allegations of violating the Fair Housing Act.[13] HUD identified several Facebook policies and practices that it determined violated the Fair Housing Act. For example, Facebook's advertising platform utilizes a tool that allows advertisers to draw red lines around geographic areas they wanted to exclude from viewing their housing ads. A Facebook spokesman explained that its settlement negotiations with HUD broke down when Facebook denied HUD unfettered access to the company's user base, including user data, to further its investigation.[14] HUD's investigation into Facebook, as well as, the litigation against it have brought to light concerns that technological innovations have created new opportunities for discrimination in U.S. housing markets that may be harder to spot, investigate, and attribute to any particular individual when proprietary algorithms are making decisions that have systemic impacts.

Alternative Data, Privacy & Security

Since announcing Libra and Calibra, Facebook has not provided clarity about how it intends to protect consumers financial data and information, even though Facebook could amass and combine sensitive financial data with preexisting social and behavioral data it collects across its existing subsidiaries, including WhatsApp and Instagram. Facebook has a history of problems safeguarding users'

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[9] Clare Duffy, "PayPal pulls out of association for Facebook's Libra cryptocurrency," CNN Business, Oct. 4, 2019, at https://www.cnn.com/2019/10/04/tech/paypal-libra-facebook-cryptocurrency/index.html.

[10] Lauren Feiner, "Facebook-led Libra project announces its 21-member council after exodus of top payments companies," CNBC, Oct. 14, 2019, at https://www.cnbc.com/2019/10/14/facebook-forms-its-cryptocurrency-council-after-key-backers-drop-out.html.

[11] 42 U.S.C. 3601.

[12] NPR News, "After Lawsuits, Facebook Announces Changes To Alleged Discriminatory Ad Targeting," Mar. 19, 2019, at https://wskg.org/npr_story_post/after-lawsuits-facebook-announces-changes-to-alleged-discriminatory-ad-targeting/.

[13] U.S. Department of Housing and Urban Development, "HUD Charges Facebook With Housing Discrimination Over Company's Targeted Advertising Practices," Mar. 28, 2019, at https://www.hud.gov/press/press_releases_media_advisories/HUD_No_19_035.

[14] John D. McKinnon and Jeff Horwitz, "HUD Action Against Facebook Signals Trouble for Other Platforms," Wall Street Journal, Mar. 28, 2019, at https://www.wsj.com/articles/u-s-charges-facebook-with-violating-fair-housing-laws-11553775078.

data[15] and letting advertisers target users based on collected data.[16] Moreover, Facebook has argued in federal court that its users have no right to privacy and the only way to ensure information stays private is to not use Facebook.[17] However, Mr. Zuckerberg has promised to build “privacy-focused messaging and social networking platform[s].”[18]

Relatedly, Facebook profiles provide valuable data about individuals, including their habits, lifestyles, interests, and social circles. On the surface, the information can appear innocuous to Facebook users but if employers and lenders use Facebook profile information for job offer decisions and credit underwriting without the knowledge of users, the information can become harmful with potential implications under the Fair Credit Reporting Act (“FCRA”), Equal Credit Opportunity Act (“ECOA”), and other laws.[19] According to Facebook, its platform policy[20] prohibits third-parties from using Facebook data to make eligibility determinations under FCRA and Facebook investigates and polices such use by third-parties. However, it is unclear if there is a policy that prohibits individuals from using Facebook profiles to make employment and credit underwriting decisions,[21] especially considering that social network connections have been used in credit making decisions.[22]

Diversity and Inclusion

Facebook’s 2019 diversity report highlights the company’s slow progress with diversity metrics.[23] From 2018 to 2019, Facebook reported less than a one percent increase in the total number of female employees. A majority of its employees are white (44%) and Asian (43%), with less than 13% of its total workforce representative of African Americans, Hispanics and other ethnic groups combined. Facebook’s corporate board of directors and senior leadership are mostly comprised of white men, with the first appointment of an African American female in April 2019.[24] Facebook provides statistics on its supplier diversity, including spending $404.3 million in 2018 with diverse suppliers, an increase of more than $170 million from the previous year.[25] However, the report does not provide details on the total amount of spending with all suppliers nor has the company published specific data on its use of diverse-owned financial services firms, such as investment with diverse asset managers or deposits with minority-owned

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[15] *See* US House Committee on Financial Services Majority Staff, Committee Memorandum, “Examining Facebook’s Proposed Cryptocurrency and Its Impact on Consumers, Investors, and the American Financial System,” Jul. 12, 2019, at https://financialservices.house.gov/uploadedfiles/hhrg-116-ba00-20190717-sd002_-_memo.pdf.

[16] Facebook’s total revenue for the second quarter of 2019 was $16.9 billion, $16.6 billion of that was generate from targeted online advertisements, which equals well over 95%. Facebook, “Facebook Reports Second Quarter 2019 Results,” Jul. 24, 2019, at https://investor.fb.com/investor-news/press-release-details/2019/Facebook-Reports-Second-Quarter-2019-Results/default.aspx. Further, Cambridge Analytica, a political consulting firm had access to more than 50 million Facebook users’ private data which it used to influence voting behavior. Kevin Granville, “Facebook and Cambridge Analytica: What You Need to Know as Fallout Widens,” New York Times, Mar. 19, 2018, at https://www.nytimes.com/2018/03/19/technology/facebook-cambridge-analytica-explained.html.

[17] Hannah Albarazi, “Facebook Says Social Media Users Can't Expect Privacy,” Law 360, May 29, 2019, at https://www.law360.com/articles/1164091/facebook-says-social-media-users-can-t-expect-privacy.

[18] Mark Zuckerberg, “A Privacy-Focused Vision for Social Networking,” Facebook, Mar. 6, 2019, at https://www.facebook.com/notes/mark-zuckerberg/a-privacy-focused-vision-for-social-networking/10156700570096634/.

[19] *See* Testimony of Chi Chi Wu, Staff Attorney, National Consumer Law Center, Jul. 25, 2019, at https://www.nclc.org/images/pdf/credit_reports/testimony-alternative-data-credit-scoring.pdf.

[20] Facebook, “Facebook Platform Policy”, last accessed Oct. 17, 2019, at https://developers.facebook.com/policy/.

[21] FRCA’s scope is considered broad but some scholars believe federal courts are moving too slow to capture big data companies like Facebook. *See* Chi Chi Wu, “Data Gatherers Evading the FCRA May Find Themselves Still in Hot Water,” National Consumer Law Center, Jun. 14, 2019, at https://library.nclc.org/data-gatherers-evading-fcra-may-find-themselves-still-hot-water.

[22] *See* Consumer Financial Protection Bureau, "Request for Information Regarding Use of Alternative Data and Modeling Techniques in the Credit Process," 82 Federal Register 11185, Feb. 21, 2017, at https://www.federalregister.gov/documents/2017/02/21/2017-03361/request-for-information-regarding-use-of-alternative-data-and-modeling-techniques-in-the-credit.

[23] *See* Facebook, 2019 Diversity and Inclusion Report, last accessed Oct. 17, 2019, at https://diversity.fb.com/.

[24] Facebook, “Peggy Alford Nominated to Facebook Board of Directors,” Apr. 12, 2019, at https://newsroom.fb.com/news/2019/04/alford-nominated-to-facebook-board/.

[25] *See* “Facebook Promotes Diversity,” Facebook Suppliers, last accessed Oct. 17, 2019, at https://www.facebook.com/suppliers/diversity.

depository institutions. In July 2010, the Committee passed legislation introduced by Representatives Meeks and Maloney to address the disclosure of board diversity demographics.[26] H.R 1018 and H.R. 3279, which both passed the Committee earlier this year, would require Facebook as a public company to disclose the gender and racial and ethnic composition of its board of directors annually.

Relevant Legislation

- **H.R.____, Keep Big Tech Out of Finance Act (C. Garcia)**. The discussion draft would prohibit large platform utilities, like Facebook, from becoming chartered, licensed or registered as a U.S. financial institution or otherwise becoming affiliated with such financial institutions. The bill would also prohibit large platform utilities from establishing, maintaining, or operating a digital asset that is intended to be widely used as medium of exchange, unit of account, store of value, or any other similar function as defined by the Federal Reserve.

- **H.R.____, Stablecoins are Securities Act (S. Garcia)**. This bill would clarify that a managed stablecoin is a security and therefore must comply with securities laws' disclosure, antifraud, conflict of interest, and other requirements intended to protect investors. The bill defines a "managed stablecoin" as a digital asset that has either (1) a market value that is determined, in whole or significant part, by reference to the value of a pool or basket of assets that are held, designated, or managed by one or more persons; or (2) holders that are entitled to obtain payment which is determined, in whole or in significant part, on the basis of the value of a pool or basket of assets held, designated, or managed by one or more persons.

- **H.R.____, to prohibit the listing of certain securities (San Nicolas).** This bill would limit the ability of issuers of stablecoins to access the U.S. capital markets by prohibiting a company from trading on a U.S. national securities exchange if the company or its officers or directors: receive compensation in the form of a stablecoin; bought or sold a stablecoin; or was otherwise affiliated with a person who bought or sold a stable coin after the date of the of the registration of the security.

- **H.R.___, Designing Accounting Safeguards to Help Broaden Oversight And Regulations on Data (DASHBOARD) Act (Foster)**. This bill would provide transparency on how consumer data is collected, retained, monetized and protected by requiring commercial data operators (defined as consumer online services provider or data broker with over 100 million monthly active users) to disclose types of user data collected, an assessment of the value of that data, and contracts with third parties involving data collection. The bill would also allow users, with some limited exceptions, to delete some or all of their personal data being collected by a commercial data operator. This bill is similar to S. 1951 introduced by Senators Mark Warner (D-VA) and Josh Hawley (R-MO).

- **H.R.___, Diversity in Asset Management Act (Beatty).** This bill would require companies that register and are registered with the Securities and Exchange Commission (SEC) to consider at least one diverse asset manager when contracting out for asset management services and report to the SEC on the extent to which they use diverse asset managers.

[26] Committee Passes Legislation to Reform the Credit Reporting System, Increase Diversity, and Strengthen Housing Protections (July 11, 2019), see press release at https://financialservices.house.gov/news/documentsingle.aspx?DocumentID=404067.