III. *Big Tech and Financial Services: The Keep Big Tech Out of Finance Bill*

A. Introduction

While most people's minds immediately go to large banks or institutional investors when thinking about the financial services industry, these established institutions are no longer the only players in this space.[1] Recently, smaller technology companies that focus their businesses on servicing the financial sector (FinTech Companies) have developed complementary and cooperative relationships with the incumbent players in the financial sector.[2] Similar to these FinTech Companies, large and well-developed technology companies (Big Tech Companies) have also begun partnering with banks and institutional investors.[3] As of 2018, 26% of financial institutions had partnered with a Big Tech Company, and that number continues to grow with an additional 27% of the financial institutions surveyed stating they are planning to develop a partnership with a Big Tech Company within the year.[4] In addition to partnering with financial institutions, Big Tech Companies have also entered the financial sector independently.[5]

Big Tech Companies are currently participating in various segments of the financial services industry.[6] In the payment segment, Google, Amazon, Facebook, Apple, and Microsoft all have services

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[1] FIN. STABILITY BD., FINTECH AND MARKET STRUCTURE IN FINANCIAL SERVICES: MARKET DEVELOPMENTS AND POTENTIAL FINANCIAL STABILITY IMPLICATIONS 1 (2019) (explaining FinTech firms are already in the market).

[2] *Id.* ("The relationship between incumbents and FinTech firms is mainly complementary and cooperative.").

[3] Anton Ruddenklau, *Tech Giants in Financial Services*, KPMG (Jan. 2018), https://assets.kpmg/content/dam/kpmg/xx/pdf/2018/02/tech-giants-in-financial-services.pdf [https://perma.cc/H43A-NCPD] ("Tech giants are coming to financial services delivery from a number of different starting points.").

[4] *Id.* ("According to a recent KPMG report, 26 percent of financial institutions are already partnering with one or more technology giants, and an additional 27 percent report planning to forge such partnerships within the next twelve months.").

[5] *See generally* FIN. STABILITY BD., *supra* note 1, at 12–13 (discussing what Big Tech Companies are currently offering in the financial services space).

[6] *Id.* at 14 (comparing what Big Tech Companies offer in the various segment of the industry).

that layer over existing credit card networks.[7] In the lending and short-term credit space, Google has collaborated with Lending Club—a peer-to-peer lending FinTech Company—and Amazon provides temporary financing directly to merchants through Amazon Lending.[8] Additionally, Big Tech Companies, such as Microsoft, Google, and Apple have entered into financial cloud computing, and Amazon has partnered with large financial institutions to store their data on Amazon's cloud-based platform.[9] Lastly, technology focused companies have introduced currency-like products.[10] Most notably, Bitcoin has entered into the financial sphere as a mainstream cryptocurrency.[11] Facebook also appears to be keen on eventually entering the blockchain and cryptocurrency space with its recent announcement of Libra Blockchain.[12] Libra will likely enter the marketplace with an extensive collection of companies backing it, including MasterCard, PayPal, and Visa.[13]

While there may be a number of benefits to having these Big Tech Companies entering and competing in the financial sector, a few chief concerns seem to have legislators worried.[14] Among these main

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[7] *Id.* (giving examples of Big Tech Companies in the payment segment).

[8] *Id.* (giving examples of Big Tech Companies in the lending segment).

[9] Ruddenklau, *supra* note 3 (discussing Big Tech Companies offering cloud computing); Kanishka Singh, *U.S. Banking Regulators Examined Amazon's Cloud in April: WSJ*, REUTERS (Aug. 1, 2019, 7:07 PM), https://www.reuters.com/article/us-capital-one-fin-cyber-amazon-com/u-s-banking-regulators-examined-amazons-cloud-in-april-wsj-idUSKCN1UR5VY [https://perma.cc/W84N-LXVW] (reporting on the Capital One hack).

[10] Saule T. Omarova, *New Tech v. New Deal: Fintech as a Systemic Phenomenon*, 36 YALE J. REG. 735, 743–44 (2019) (explaining the background of cryptocurrency).

[11] *Id.* at 743–44 (discussing Bitcoin's history).

[12] Philip Rosenstein, *Draft House Bill Would Keep Big Tech out of Cryptocurrency*, LAW360 (July 15, 2019, 9:49 PM), https://www-law360-com.ezproxy.bu.edu/fintech/articles/1178401/draft-house-bill-would-keep-big-tech-out-of-cryptocurrency ("Facebook in mid-June **announced the Libra cryptocurrency** and the related Calibra digital wallet, which users would use to store, send and receive Libra.").

[13] *Id.* ("Libra has an impressive collection of early backers that will serve as members of the Libra Association, including Mastercard, PayPal, Visa, eBay, Lyft, Uber, Spotify, Coinbase, Vodafone, Andreessen Horowitz, Thrive Capital and Union Square Ventures.").

[14] Pete Schroeder & Ismail Shakil, *U.S. Proposes Barring Big Tech Companies from Offering Financial Services, Digital Currencies*, REUTERS (July 14, 2019, 6:03 PM), https://www.reuters.com/article/us-usa-cryptocurrency-

concerns are privacy and consumer protection, which are primarily based on recent history, such as the Capital One information hack.[15] These concerns led to the House Financial Services Committee introducing the "Keep Big Tech Out of Finance" Bill (Keep Big Tech Out Bill or Bill) on July 15, 2019.[16] The Bill aims to prevent Big Tech companies from acting as or affiliating with financial institutions or creating digital currencies.[17]

This article analyzes the proposed Bill, its goals, and the impact it will have on Big Tech Companies. Part B of this article provides an analysis of the proposed Bill, discussing what Big Tech Companies fall under the Bill's purview. Part C examines the chief concerns that seem to be driving the proposed Bill. Part D discusses the potential negative effects of prohibiting Big Tech Companies from acting in the financial services sector. Part E addresses other possible solutions and how those solutions may be more effective than the proposed Bill.

B. Current Proposal: The Keep Big Tech Out of Finance Bill

The Financial Services Committee of the House of Representatives (House Financial Services Committee) introduced the Keep Big Tech Out Bill on July 15, 2019, with the purpose of "prohibit[ing] large platform utilities from being a financial institution or being affiliated with a person that is a financial institution, and for other purposes."[18] Additionally, the Keep Big Tech Out Bill would prohibit companies that fall under the purview of this Bill from establishing, maintaining, or operating a digital asset that is used for exchange or

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bill/u-s-proposes-barring-big-tech-companies-from-offering-financial-services-digital-currencies-idUSKCN1U90NL [https://perma.cc/UBH6-WVFP] (highlighting concerns from President Trump and Federal Reserve Chairman Jerome Powell).

[15] Singh, *supra* note 9 (discussing the events that caused the Capital One hack).

[16] Schroeder & Shakil, *supra* note 14 ("A proposal to prevent big technology companies from functioning as financial institutions or issuing digital currencies has been circulated for discussion by the Democratic majority that leads the House Financial Services Committee.").

[17] *Id.* (examining the current proposal of the Bill).

[18] Keep Big Tech Out of Finance Act, H.R., 116th Cong. (2019).

value, thus prohibiting cryptocurrency.[19] The companies that fall under the purview of this Bill, such that the companies are either acting as a financial institution, affiliated with a financial institution, or operating a digital asset, would be given a one-year period to disaffiliate or cease their operations as a financial institution.[20] If a company fails to comply with the Keep Big Tech Out Bill, either because they did not "unwind" during the one-year grace period or the company begins to operate in a manner that violates the Bill, then the company would be subject to a daily fine up to $1,000,000.[21]

The following key definitions will likely play a major role in determining which companies are affected by this Bill and how the Bill will operate. Under the Keep Big Tech Out Bill, a company is an "affiliate" if it is a "company that controls, is controlled by, or is under common control with another company."[22] Therefore, companies that offer existing payment products, like Apple with Apple Pay, Google with Google Pay, and Facebook with Messenger Pay, would be affiliated with a financial institution as their services layer over existing credit card networks.[23] The Bill also defines what a "financial institution" is by providing a long list of different types of institutions, including traditional brokers, credit unions, foreign banks, depository institutions, investment companies, as well as "alternative trading systems" and a catch-all of "any company engaged in activities that are financial in nature or incidental to a financial activity."[24] An "alternative trading system" is defined as an organization or system that maintains or provides a marketplace which brings together buyers and sellers of securities or for other aspects "commonly performed by a stock exchange."[25] This definition seems to ensure that any cryptocurrency products that are sold like securities will fall under this Bill, which will likely impact Facebook's endeavor with Libra.[26] Also, the

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[19] *Id.* ("A large platform utility may not establish, maintain, or operate a digital asset that is intended to be widely used as medium of exchange. . . .").
[20] *Id.* ("[S]hall not apply to such large platform utility until the end of the 1-year period beginning on the date of enactment of this Act. . . .").
[21] *Id.* ("[S]hall be subject to a fine of not more than $1,000,000 per each day of such violation. . . .").
[22] Bank Holding Company Act of 1956, Pub. L. No. 84-511, § 2(b), 70 Stat. 133, 133 (1956) (codified as amended at 12 U.S.C. § 184(b) (1982).
[23] FIN. STABILITY BD., *supra* note 1, at 14 (explaining what Big Tech Companies offer in the various segment of the industry).
[24] Keep Big Tech Out of Finance Act, H.R., 116th Cong. (2019).
[25] *Id.*
[26] Rosenstein, *supra* note 12 (explaining Facebook's involvement with Libra).

catch-all provision, particularly the portion stating "or incidental to a financial activity," appears to target tech company services that are even just purely complementary in nature, such as Amazon providing cloud services.[27] Potentially the most important definition is the definition of a "large platform technology," which is defined as a technology company "with an annual global revenue of $25,000,000,000 or more and that is predominately engaged in the business of offering to the public an online marketplace, an exchange, or a platform for connecting third parties."[28] The global annual revenue requirement draws a major line amongst the technology players, as smaller FinTech companies, such as Coinbase (a bitcoin exchange), Robinhood (a broker), and SoFi (a loan operator) would not be regulated under this Bill.[29] However, Amazon, Apple, Facebook, Microsoft, and Google all have global annual revenues over $25,000,000,000, and therefore would be subject to the Bill's regulations.[30] This distinction seems to be driven by the fact that FinTech Companies currently, and will likely continue to, collaborate and work with large financial institutions, while Big Tech Companies may go out on their own.[31] Additionally, legislators appear less worried about FinTech Companies causing major issues in the financial sector because these organizations do not have a large, loyal customer base or strong brand reputation, like Big Tech Companies do.[32]

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[27] Keep Big Tech Out of Finance Act, H.R., 116th Cong. (2019); Singh, *supra* note 9 (discussing Amazon's involvement with Capital One with regards to provide cloud services).

[28] Keep Big Tech Out of Finance Act, H.R., 116th Cong. (2019).

[29] Jeff Kauflin, *The 11 Biggest FinTech Companies in America 2019*, FORBES (Feb. 4, 2019, at 9:45 AM), https://www.forbes.com/sites/jeffkauflin/2019/02/04/the-10-biggest-fintech-companies-in-america-2019/#74067d3b32b9 [https://perma.cc/VW9R-7L2V] (summarizing the eleven largest FinTech Companies in the United States in 2019).

[30] *Fortune Global 500*, FORTUNE (2019), https://fortune.com/global500/2019 [https://perma.cc/CT5W-TPHM] (listing 500 largest companies in 2019 by annual revenue).

[31] Miguel de la Mano & Jorge Padilla, *Big Tech Banking* 3 (Dec. 4, 2018), https://ssrn.com/abstract=3294723 ("[T]he impact of FinTech firms has mainly materialised through collaboration and cooperation agreements with established retail banks.").

[32] *Id.* (stating that unlike FinTech companies, Big Tech companies have large installed customer bases, established reputations and unfettered access to capital markets).

C. Main Concerns Driving the Keep Big Tech Out Bill

There are a number of concerns that drove the House Financial Services Committee to introduce the Keep Big Tech Out Bill."[33] The chief concerns that seem to be driving the proposed regulations are consumer protection, financial stability, and the potential for monopolization of the industry.[34]

The first major concern is consumer protection.[35] This concern is mainly driven by the numerous consumer privacy breaches that have occurred over the last few years.[36] This past summer, the Federal Trade Commission (FTC) announced a settlement with Facebook that imposed a $5,000,000 penalty as a result of Facebook's inappropriate use of consumer data.[37] In addition to the penalty, the settlement imposed a number of regulations on Facebook's operations and created new compliance measures that the company must follow.[38] The FTC imposed these regulations after Facebook shared users' personal information with third-party apps, without users' knowledge or affording them the opportunity to opt-out.[39] Additionally, the recent Capital One breach was caused by a former Amazon employee who

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[33] Schroeder & Shakil, *supra* note 14 (discussing concerns over privacy and other issues).

[34] *Id.* ("Federal Reserve Chairman Jerome Powell told lawmakers that Facebook's plan to build a digital currency called Libra could not move forward unless it addressed concerns over privacy, money laundering, consumer protection and financial stability.").

[35] *Id.* (highlighting Federal Reserve Chairman Jerome Powell's concern of consumer protection).

[36] Singh, *supra* note 9 ("Capital One said earlier this week that 106 million people who had applied for credit cards in the United States and Canada had their personal data exposed.").

[37] Press Release, Fed. Trade Comm'n, FTC Imposes $5 Billion Penalty and Sweeping New Privacy Restrictions on Facebook (July 24, 2019), https://www.ftc.gov/news-events/press-releases/2019/07/ftc-imposes-5-billion-penalty-sweeping-new-privacy-restrictions [https://perma.cc/YE8Q-FGFV] ("Facebook repeatedly used deceptive disclosures and settings to undermine users' privacy preferences in violation of its 2012 FTC order.").

[38] *Id.* ("The settlement order announced today also imposes unprecedented new restrictions on Facebook's business operations and creates multiple channels of compliance.").

[39] *Id.* (discussing Facebook's practice of sharing users' personal information with third-party apps).

accessed Amazon's cloud service, Amazon Web Services, and released the private data Capital One was storing on the cloud.[40] In addition to consumer privacy protection, there are concerns of Big Tech Companies using the data and platforms they control to manipulate the market.[41] Specifically, some are concerned that Big Tech Companies may become entrenched in the operations of large existing financial institutions, such as banks using Amazon Web Services, which may allow the Big Tech Companies to use this data to favor their own products or engage in price discrimination.[42] For example, Big Tech Companies can potentially use the immense data that they have collected throughout their platform to identify the highest rate that the consumer would be willing to pay for a loan or the highest premium a consumer would pay for insurance.[43]

Another concern legislators have is the potential negative impact on financial stability.[44] While Big Tech Companies have an almost unimaginable amount of data on their customers, this data has a shorter history than customer data with large financial institutions, and the data is not as directly related to financial services, and thus, may be

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[40] Singh, *supra* note 9 ("The breach, which occurred between March 12 and July 17, stemmed from Capital One's decision to store data in Amazon's cloud unit, called Amazon Web Services (AWS), where a former employee named Paige Thompson managed to access its data.").

[41] Alexandra Scaggs, *Big Tech Companies are Big Banks so a Global Regulator Wants New Rules,* BARRONS (June 25, 2019, 10:28 AM), https://www.barrons.com/articles/finance-banking-big-tech-new-rules-global-regulator-facebook-libra-amazon-alphabet-51561411986 [https://perma.cc/6QLL-ZRPQ] (discussing potential issues that may arise from Big Tech Companies controlling the platforms that financial services companies use).

[42] BIS ANNUAL ECON. REPORT 2019, BIG TECH IN FINANCE: OPPORTUNITIES AND RISKS 67 (2019) ("Once their dominant position in data is established, big techs can engage in price discrimination and extract rents."); Scaggs, *supra* note 41 ("The companies control the infrastructure that their would-be competitors rely on, and could subtly use their market power to favor their own products, according to the report.").

[43] BIS ANNUAL ECON. REPORT 2019, *supra* note 42, at 67 (discussing the potential issues that may arise from Big Tech Companies using consumer data).

[44] Schroeder & Shakil, *supra* note 14 ("Federal Reserve Chairman Jerome Powell told lawmakers that Facebook's plan to build a digital currency called Libra could not move forward unless it addressed concerns over privacy, money laundering, consumer protection and financial stability.").

less reliable.[45] Additionally, skeptics of Big Tech Companies entering the financial space point to the fact that because Big Tech Companies have little to no footprint in the financial sector, they are not regulated by the same regulations as established financial institutions.[46] Also, these skeptics argue that Big Tech Companies lack expertise in, and knowledge of, the systemic risk analytics necessary to run a financial institution.[47] However, because Big Tech Companies have both large existing customer bases and access to capital, they can quickly become major players in the financial sector.[48] This potential rise to prominence, coupled with the concerns highlighted above, drives the fear of negative impacts on financial stability.[49] Further, the potential for heightened competition may put more pressure than expected on incumbent financial institutions' margins, pushing them to take risks to increase their margins, at the expense of the market's financial stability.[50]

While some believe that Big Tech Companies entering the financial space will increase competition and therefore benefit consumers, others fear that this benefit may be temporary, with the entry of the Big Tech Companies instead leading to consumer harm due to potential monopolization.[51] There are a number of reasons why some believe that Big Tech Companies may be able to acquire a monopoly in the financial industry.[52] First, Big Tech Companies, unlike smaller start-ups or FinTech Companies, already have the scale

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[45] Ron Shevlin, *Amazon's Impending Invasion of Banking*, FORBES (July 8, 2019, 5:00 AM), https://www.forbes.com/sites/ronshevlin/2019/07/08/amazon-invasion/#59d9128c7921 [https://perma.cc/9KK4-EEFC] ("On the negative side, Big Tech has a mixture of verifiable and potentially less reliable data and a shorter history of customer data at that.").

[46] *Id.* ("The disadvantages are limited or no footprint in key financial services; funding limitations; and lack of regulatory. . . .").

[47] *Id.* (asserting lack of risk management experience and expertise as a potential issue).

[48] de la Mano & Padilla, *supra* note 31, at 4 ("However, within a few years Big Tech companies may succeed in monopolizing. . . .").

[49] Schroeder & Shakil, *supra* note 14 (explaining fear of negative impact on financial stability).

[50] FIN. STABILITY BD., *supra* note 1, at 1 ("[H]eightened competition could also put pressure on financial institutions' profitability.").

[51] de la Mano & Padilla, *supra* note 31, at 5 ("However, within a few years Big Tech companies may succeed in monopolizing. . . .").

[52] *Id.* at 7 (discussing the advantages that Big Tech Companies have that may allow them to gain an advantage in the financial services sector).

and access to existing or new capital to quickly invest in the necessary tools and structures needed to succeed.[53] Access to both low-cost capital and existing capital would allow Big Tech Companies to quickly achieve scale in whatever area they need to succeed in the financial sector.[54] Additionally, Big Tech Companies possess proprietary customer data and information that can provide them with unique insights into consumer preferences and habits, allowing these companies to provide products and services that incumbent financial institutions cannot deliver.[55] For example, Big Tech Companies can provide more personalized services and customer interfaces due to the data they have from search history or social media preferences and connections.[56] Lastly, as the Millennial generation ages, this cohort is more familiar with Big Tech Companies and is more willing to shift their financial services alliances to Big Tech Companies.[57]

Overall, it seems clear that there are a number of valid concerns, including consumer protection, financial stability, and the potential for monopolization of the industry, which are driving legislators to act against Big Tech Companies entering the financial sector.[58]

D. The Downside to Prohibiting Big Tech from Entering the Financial Space

Although there are a number of concerns with Big Tech Companies entering the financial services space, there are also downsides

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[53] *Id.* ("Furthermore, they have the scale and capital required to profitably invest in the development of new tools.").

[54] FIN. STABILITY BD., *supra* note 1, at 2 ("Combined with strong financial positions and access to low-cost capital").

[55] FIN. STABILITY BD., *supra* note 1, at 1–2 ("In many cases, these companies could also use proprietary customer data generated through other services such as social media to help tailor their offerings to individual customers' preferences."); de la Mano & Padilla, *supra* note 31, at 4 ("In addition, and importantly, they can leverage superior information about consumer preferences, habits and conduct.").

[56] BIS ANNUAL ECON. REPORT 2019, *supra* note 42, at 62 (discussing the advantages Big Tech Companies have from their consumer data).

[57] FIN. STABILITY BD., *supra* note 1, at 10 ("These younger cohorts may be more likely to adopt FinTech.").

[58] Schroeder & Shakil, *supra* note 14 (stating concerns over privacy, money laundering, consumer protection and financial stability).

to rigidly prohibiting Big Tech Companies from entering the sector.[59] The main benefits that may result from Big Tech Companies entering the financial services industry are improvements for consumers, cryptocurrency leading to greater financial access—particularly to the unbanked and underbanked—and increased competition.[60]

First, regulations against Big Tech Companies from participating in the financial services sector may eliminate a number of potential improvements for consumers.[61] Big Tech Companies have an advantage over incumbent financial institutions in that the Big Tech Companies continually invest in new technological developments and have more knowledge of how to understand consumer data in order to deliver better offerings.[62] These ongoing investments in researching and developing new technologies likely would allow Big Tech Companies to process financial data from consumers more efficiently than incumbent financial institutions, and thus make improvements for consumers.[63]

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[59] Aaron Cutler & Kevin Wyoscki, *Insights: Cryptocurrency Has Washington's Attention, but Beware Overregulation*, BLOOMBERG LAW (July 24, 2019, at 4:00 AM), https://www.bloomberglaw.com/document/XCEI7I2S000000?bc=W1siU2VhcmNoIFJlc3VsdHMiLCIvc2VhcmNoL3Jlc3VsdHMvMjk0NmE5YjA3MDk2MjMxMTc2MDQzMTQ1YjVkNTcyYWIiXV0--b348b23c64f70855be04955b0ddc137a27853751&guid=f6e3535b-a1b3-438a-92f4-1de713c72279&search32=nXkcaSydpyrn0WNTLzitPw%3D%3DgriAfWWvxWWJ6zuuMgySxJo6z_soHsqDyRkSWy18GlnXsaJbLpKFHQ_Kf32G8B5yQpZO6qvBvXlhPUlrdd915geEIxvsIQfQZc-RpfWwAyalfurhPAg9Y_LaY2obmAvqeg24LeRtynz6At1Ag7tpaw%3D%3D [https://perma.cc/6UEA-CN5Z] (stressing the importance of not overregulating).

[60] de la Mano & Padilla, *supra* note 31, at 3-4 (stating that Big Tech Companies are more likely to have a substantial impact on increasing competition than new players with traditional business models); Cutler & Wyoscki, *supra* note 59 (considering the potential of Cryptocurrency when it comes to dealing with the underbanked); Ron Shevlin, *supra* note 45 ("On the plus side, Big Tech has data on a very large number of customers and the technology and business model built to collect and merge data.").

[61] Ruddenklau, *supra* note 3 (illuminating the potential improvements Big Tech Companies can perform for the financial services industry).

[62] *Id.* ("These firms also have advantages over traditional financial players, such as a lack of legacy, ongoing investment in new technologies, and the knowledge of how best to manipulate data to deliver positive commercial outcomes for clients.").

[63] *Id.* (illuminating that data-centric business can increase efficiency due to their ability to understand data).

Additionally, under the proposed Keep Big Tech Out Bill, Big Tech Companies would be prohibited from maintaining a cryptocurrency exchange or offering a cryptocurrency.[64] Thus, the Keep Big Tech Out Bill would prohibit a number of large companies from offering a payment system that may enhance commerce.[65] Specifically, cryptocurrency has the potential to help companies raise capital needed to grow their businesses.[66] Additionally, cryptocurrency may provide "greater access to affordable financial services and products for underbanked people."[67] While Facebook is currently the only company that has announced a plan to enter the cryptocurrency space, the Keep Big Tech Out Bill would also prohibit other Big Tech Companies like Amazon and Google from potentially providing these benefits with a cryptocurrency product in the future.[68]

Further, the Keep Big Tech Out Bill may have the negative effect of limiting competition in the financial sector.[69] In general, increased competition is better for consumers as competition generally leads to more choice for consumers.[70] Big Tech Companies have entered other industries, like transportation and advertising, leading to an increase in competition and benefits to customers, such as increased efficiency.[71] Similarly, increased competition in the financial sector is likely to lead to innovations that will benefit its customers.[72] For example, currently, payments and transfers require a process that goes

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[64] Keep Big Tech Out of Finance Act, H.R., 116th Cong. (2019) (prohibiting Big Tech Companies from offering Cryptocurrency)

[65] Cutler & Wyoscki, *supra* note 59 (discussing the potential societal benefits of Cryptocurrency).

[66] *Id.* ("It also could help companies raise the capital they need to prosper.").

[67] *Id.* ("[Cryptocurrency] could lead to greater access to affordable financial services and products for underbanked people.").

[68] Rosenstein, *supra* note 12 (chronicling Facebook's announcement of their involvement with Libra).

[69] Keep Big Tech Out of Finance Act, H.R., 116th Cong. (2019) (prohibiting Big Tech Companies from entering the financial sector).

[70] Cutler & Wyoscki, *supra* note 59 ("It's generally better for consumers to have more choices, not less.").

[71] de la Mano & Padilla, *supra* note 31, at 20 ("Big Tech platforms have already disrupted many other markets and industries – transport, book retailing, online advertising, travel, etc. – often to the benefit of consumers.").

[72] Juan J. Cortina & Sergio L. Schmukler, *FinTech Revolution: A Threat to Global Banking?* (Apr. 2018), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3255725 (discussing potential improvements in lending and payments that may happen with integrating more tech).

through several intermediaries, but competition may lead to innovation that makes this process faster and simpler, through either innovation by current financial firms or the creation of new technology by Big Tech Companies.[73] Lastly, the increased competition from Big Tech Companies entering the financial sector may lead to a more efficient industry if the increase in competition leads to inefficient players exiting the market.[74]

Overall, the decision to ban Big Tech Companies from the financial sector may have a number of negative effects, such as eliminating potential improvements for consumers, suppressing innovation which may help the unbanked and underbanked, and limiting competition.[75]

E. Conclusion: Other Potential Options

There are numerous concerns that follow from either allowing Big Tech Companies to enter into the financial sector or from banning Big Tech Companies from entering.[76] While the Keep Big Tech Out Bill imposes a strict restriction against Big Tech Companies entering and competing in the financial sector, there are other options available to deal with the concerns associated with Big Tech Companies, two of which I will highlight below.[77]

One solution is to establish a new governmental agency to regulate the activity of Big Tech Companies specifically in the

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[73] Rory Van Loo, *Making Innovation More Competitive: The Case of Fintech*, 65 UCLA L. REV. 232, 275 ("Finally, heightened competition would make U.S. financial firms more innovative and efficient, increasing the chance that they will catch up and ultimately compete with foreign firms."); Cortina & Schmukler, *supra* note 72 ("Innovations in this area make transactions between individuals (and sometimes across economies easier, faster, and cheaper than in the past.").

[74] de la Mano & Padilla, *supra* note 31, at 14 ("They may exclude only relatively inefficient competitors, thus failing to distort effective competition, and/or (b) give rise to efficiencies, thus benefiting consumers on balance.").

[75] *See supra* notes 59–74 and accompanying text (discussing the benefits of Big Tech Companies entering the financial services space).

[76] *See supra* notes 33–74 and accompanying text (discussing the pros and cons of the Keep Big Tech Out Bill banning Big Tech Companies of competing in the financial services space).

[77] Keep Big Tech Out of Finance Act, H.R., 116th Cong. (2019) (prohibiting Big Tech Companies from being affiliated with or acting as financial institutions).

financial sector.[78] The first benefit to creating a regulatory agency that focuses specifically on Big Tech Companies in the financial sector, rather than just using an existing regulatory agency, is that this agency would be able to set guidelines specially tailored to take into account both financial regulations and data privacy regulations that are unique to Big Tech Companies.[79] Additionally, Big Tech Companies have inherent differences in their make-up as a corporation, and a specific regulatory agency would be able to take these differences into account to create more effective regulations than the current financial regulations, which are geared toward traditional financial institutions.[80] Lastly, the creation of an independent regulatory agency would alleviate potential confusion as to what governing body is responsible for enforcing the regulations.[81]

Another solution is modifying the Keep Big Tech Out Bill to prohibit Big Tech Companies from acting independently in the financial services sector, but allowing them to work with incumbent financial institutions, which may benefit consumers with the creation of products that combine technological advances with traditional financial principles.[82] Under this solution, the financial institutions would still operate under the same regulations, such as capital and liquidity requirements, as well as regulations regarding consumer protection.[83] While the financial institutions would have the added cost of ensuring that partnering with Big Tech Companies does not cause a

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[78] Philip Rosenstein, *Facebook's Libra Raising Unique Questions for Lawmakers*, LAW360 (July 22, 2019, 9:39 PM), https://www-law360-com.ezproxy.bu.edu/articles/1180635/facebook-s-libra-raising-unique-questions-for-lawmakers ("A variety of suggestions have been put forward to address the technology. . . possibly the establishment of a whole new agency to regulate the emerging nonbank fintech space.").

[79] BIS ANNUAL ECON. REPORT 2019, *supra* note 42, at 68 (discussing what a regulatory agency may want to take into account in order to be effective).

[80] *Id.* at 69 ("In addition to existing rules being extended to big techs, new rules may be warranted in those cases where big techs have wrought structural changes that take them outside the scope of existing financial regulation.").

[81] Van Loo, *supra* note 73, at 276 ("Finally, a new agency would bring greater transparency to the questions of who is responsible for enforcing financial competition and how many resources are devoted to that task.").

[82] Ruddenklau, *supra* note 3 ("Working together, tech and financial organizations can make strong plays, such as services that combine elements of the traditional supply chain into a single integrated delivery platform.").

[83] BIS ANNUAL ECON. REPORT 2019, *supra* note 42, at 68 (illuminating the current regulations that financial institutions are governed by).

violation of any regulations, the prospect of increased profitability due to Big Tech Companies providing improved customer interface or data analytics would likely drive traditional financial players to partner with Big Tech Companies.[84] Additionally, using the same regulatory agencies and regulations, compared to implementing a new regime, would eliminate the costs of starting a new regulatory agency and would allow the current financial regulators to continue to work together without having to incorporate a new agency.[85]

Overall, although there are a number of options to guard against the concerns that come from Big Tech Companies entering the financial space, it seems that a less rigid solution than the Keep Big Tech Out Bill would be most effective in protecting against the potential issues while still allowing for the possible benefits that may come with Big Tech Companies entering the financial space.[86]

Daniel McCarthy[87]

[84] *Id.* at 61 (discussing the benefits that financial institutions can derive from working with Big Tech Companies).
[85] Van Loo, *supra* note 73, at 277 (examining the potential drawbacks of creating a new, independent agency to regulate Big Tech and FinTech Companies).
[86] *See supra* Sections III, IV (discussing the potential benefits and negative impacts of Big Tech Companies of competing in the financial services space).
[87] Student, Boston University School of Law (J.D. 2021).