



November 7, 2019

The Honorable Jerome H. Powell  
Chairman  
Board of Governors of the Federal Reserve System  
20th Street and Constitution Avenue, NW  
Washington, DC 20551

**RE: Docket No. OP – 1670;**  
FedNow's unfair government competition with the private sector for real-time payments (RTP)

Dear Mr. Chairman:

The Business Coalition for Fair Competition (BCFC) is a national coalition of businesses, associations, taxpayer organizations and think tanks that are committed to reducing all forms of unfair government created, sponsored and provided competition with the private sector. BCFC believes the free enterprise system is the most productive and efficient provider of commercial goods and services and strongly supports the Federal government utilizing the private sector for such products and services to the maximum extent possible.

On August 5, 2019, the Board of Governors of the Federal Reserve System announced that "the Federal Reserve Banks will develop a new round-the-clock real-time payment and settlement service, called the FedNow Service, to support faster payments in the United States. ...The Board anticipates the FedNow Service will be available in 2023 or 2024."

The accompanying Federal Register Notice requesting public comment found areas where the private sector providers of competing services would be negatively impacted. Such opposition to a government-run service include the following perspectives detailed here:

- "...approximately 30 commenters, mostly comprising large banks and private-sector operators, expressed views indicating that the private sector can provide RTGS services for faster payments built for banks of all sizes in the United States with reasonable scope and equity." - Page 25;
- "...other commenters expressed the view that the private sector is best positioned to foster innovation in faster payments, arguing that the private sector can quickly respond to market demand, in contrast to public-sector entities that need to follow a formal process to propose and implement certain types of operational changes. These commenters pointed to the clearing capabilities of the private-sector RTGS service for faster payments and its ability to support a variety of payment types, such as business-to-business or consumer-to-business payments, arguing that the service is a platform for innovation." - Page 31; and
- "The commenters that did not support the Federal Reserve developing a liquidity management tool indicated that liquidity management could be accomplished through software developed by the private sector that would alert a bank about balance levels in their account at the Reserve Banks." - Page 66.

In addition, we would highlight key points made by the Government Accountability Office (GAO) made in its 2016 Report, "Payment Services." These key points include:

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- "Since 2005, the Federal Reserve lowered prices for checks and smaller electronic payments while increasing prices for wire transfers. During this time, private-sector competitors' market share expanded overall. But the Federal Reserve's only competitor in small electronic payments and wire transfers told GAO that increased regulatory costs and competitive pressure from the Federal Reserve creates difficulties for the long-term viability of private-sector operators." - [Summary Page](#);
- "Because the Board must set fees based on the total of these costs, failure to account for all of its actual costs could result in the Federal Reserve underpricing its services and competing unfairly with private-sector providers." - Page 16; and
- "After a new product introduction created controversy in 2013, the Federal Reserve added additional controls to better ensure that any subsequent changes would not result in unfair competition with the private sector. For their 2013 fee schedule, the Reserve Banks introduced a new checkclearing product known as "Choice Receiver," which offered preferential prices to customers for using a Reserve Bank as the presentment bank. The Choice Receiver product was initially approved by the Board but later challenged by private-sector competitors as unfair. After reviewing more complete information about the product, Board staff said that they concluded that its approval had been inappropriate because the product office had not provided sufficient information to allow the Board to evaluate whether the product relied on the Federal Reserve's legal advantages. Once all the relevant information had been considered, the Board rescinded the product later that year because it was deemed to have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve due to legal differences." - Page 86.

We believe the private sector should play the only role in extending real-time payments (RTP) to every American.

We believe that competition should be only among the private sector providers, and is indeed critical for creating investment in the related infrastructure. The government should be the umpire, not the opposing team.

Government should not compete with the private sector, but rather utilize it to the maximum extent practical. As Former New York Governor Mario Cuomo once said, "It is not government's obligation to provide services, but to see they're provided."

Every Congressionally-chartered White House Conference on Small Business (1980, 1986, and 1995) has made unfair government competition with small business a top issue. The issue of government competing with the private sector has been a serious concern for small business for decades.

Today, the Federal government owns and operates hundreds of activities that are commercial in nature. They are functions that are not inherent or unique to government, but rather they can be found in the Yellow Pages from small businesses on Main Street in virtually every town in America.

According to inventories compiled under the Federal Activities Inventory Reform (FAIR) Act, beginning under the Clinton Administration in 1999, there are still more than 1,120,000 Federal employees engaged in activities which are commercial in nature that duplicate and in some cases compete with private enterprise, including small business. Federal employees are engaged in activities ranging from architecture to zoology and include scores of other activities including apparel, audits, buses, construction, debt and bill collections, campgrounds and concessions, engineering, equipment repair and maintenance depots, film studios and theater management, FOIA software, food service and security, furniture, graphics, hearing aid and medical supply distribution, information technology and data centers, insurance, laboratories, landscaping, laundry and dry cleaning, office products, pest management and wildlife control, manufacturing, mapping, meeting planning, marketing research, motorcoaches, printing and chart production, public storage, recycling and waste management, road signage, roofing, security technologies and products, simulation technology and services, surveying, tax preparation, transportation, travel planning, and utilities, and doing other tasks that have little to do with governing. The government is the nation's largest banker, insurer, homeowner, landlord, utility provider, and bus, transit, and passenger train operator.

Moreover, the Federal government all too often subsidizes state and local government competition with private enterprise through grants, loans and other assistance.

We believe your August 5, 2019 announcement was a missed opportunity to properly identify the roles and responsibilities of both the private sector and government in providing commercially available services.

**We encourage your leadership to:**

- Recommend an end to Federal agency duplication of and competition with the private sector for the performance of commercial activities, including but not limited to real-time payment services; and
- Recommend a Federal Reserve policy that it will not start or carry on any commercial activity to provide a service or product for its own use if such product or service can be offered from private enterprise through ordinary business channels; and
- Recommend an end to all forms of subsidies and preferences for government run or sponsored activities that perform commercial activities and thus unfairly compete with private sector, taxpaying companies – and especially those commercial activities performed by State and Municipal government, non-profit organizations, universities, and prison industries – all of which enjoy tax-exempt status, among other unfair benefits creating an unlevel playing field, competition-wise, with the private sector.

However, in the event that the Federal Reserve does move forward with the proposed FedNow Service, then we recommend that the following considerations be addressed to level the competitive playing field between the government-run option and those commercially available options in the private sector:

- The FedNow Service should employ flat pricing, and not volume-based discounts or pricing. Volume-based discounts and pricing will have unintended consequences to various stakeholders in the RTP market;
- There should be a focus on interoperability between the FedNow Service and private sector options to eliminate inefficiency and duplication of standards and specifications. Where competing options exist and cannot easily be made to fully interoperable, then anything less than full participation in at least one option will mean fewer benefits that could be realized by a single universal option. Given that the expected FedNow Service will be ready sometime in 2023 or 2024, then there will be time, through this extended delay to reach nationwide reach, to facilitate interoperability with the private sector options which are currently operational; and
- There should be no direct financial technology (FinTech) access to the FedNow Service as this will jeopardize the health and stability of the U.S. financial system.

In order to empower the private sector, the Business Coalition for Fair Competition (BCFC) respectfully urges the Federal Reserve to implement policies wherein the government utilizes the private sector, including small business, to the maximum extent possible; fights unfair competition with and duplication of the private sector by government at all levels, including for real-time payments (RTP); and recommends policies and legislation to assure that the U.S. Government supports, rather than impedes, growth in the private sector.

Sincerely,



John M. Palatiello, President  
Business Coalition for Fair Competition (BCFC)