



Back to the future: Congress should look to past for Fintech going forward

BY BEN TURNER, OPINION CONTRIBUTOR - 02/24/17 07:00 AM EST

My older (but not that much older, he insists) colleague started working on Capitol Hill as a legislative assistant in 1987. When he and the press secretary sent releases, they printed and mailed them back to the district and hand delivered copies to the House press gallery. To enlarge the font when printing out a speech for his boss, he physically changed the printer “letter ball” to one with bigger font. Suffice it to say, technology has changed the way Capitol Hill operates.

Press releases are now emailed, the intermediate technology of fax machines has been relegated to the past, and changing type font involves no manual labor. As technology has transformed Capitol Hill, younger staffers often outpace their bosses in adapting to newer technologies. While that is not always the case—many Members operate their own Twitter accounts and the House Democrats’ sit-in last year was broadcast via Members’ smartphones to Periscope and Facebook Live—Senate Minority Leader Charles Schumer (D-N.Y.) famously still uses a flip phone and Sen. Lindsey Graham (R-S.C.) claims he has never sent an email.

While some members are reluctant to embrace the new technologies, their staffers use email and social media to serve their bosses and their bosses’ constituents. This trend is not limited to email, but also in the burgeoning area of financial technology, or “FinTech.” Congressional staffers and financial consumers pay bills through a bank app on their iPhone and split happy hour tabs via Venmo.

In meetings on the Hill, FinTech stakeholders explain to Members how they can deposit a check by taking a picture of it with their phones, as staffers nod in agreement, having not set foot in a brick and mortar branch in years. When members give speeches on the need to save for retirement, their staffers have already downloaded Acorns, an app that rounds up each credit card swipe and invests spare change in an Exchange Traded Fund.

It is often true that Congress and regulators are two steps behind industry, however, in the area of FinTech, there are historical examples of Congress embracing technology to universally better outcomes. As Aaron Klein pointed out in his Brookings article “The Coming ‘FinTech’ Revolution,” the Electronic Fund Transfer Act of 1978 created and assigned liability rights and responsibilities for lost or stolen debit cards, allaying consumer fears and creating a legal framework that allowed the market to flourish.

Congress also embraced technology to the betterment of the financial system in 2003 with the Check 21 Act. Before Check 21, banks had to produce actual paper checks to clear them, necessitating banks flying checks throughout the country to processing centers. According to Brookings, the 40 billion checks written in 2000 cost over \$1 billion to transport. Sept. 11 grounded planes across the country for a week, exposing the glaring inefficiency of this system. Regulators temporarily suspended check clearing requirements during the 9/11 crisis, and the Federal Reserve sent a legislative proposal that would allow banks to email pictures of checks rather than physically transporting them. Congress passed Check 21 in 2003, leveraging technology to make it easier to comply with check clearing regulations and providing a regulatory framework that allowed for the mobile check deposit apps we all use today.

There is an opportunity for Congress and the regulators to similarly embrace technology as FinTech companies continue compete in today’s financial markets, and expand into new ones. To their credit, Congress and the regulators are beginning to take notice. The OCC is exploring issuing bank charters to FinTech companies, which some argue would provide companies flexibility to expand without worrying about different states’ regulations. A FinTech charter could help disruptive companies overcome the disadvantage they currently face by trying to comply with a patchwork of regulations by providing uniform standards that are easier for these emerging companies to comply with. In doing so, would the OCC give such companies an unfair advantage to others already in that regulated space? In addition, the Federal Reserve published a research paper on Fintech in December, the SEC is pushing to play a “lead regulatory role,” and the CFTC is considering a “regulatory sandbox” that could impact the settlements and recordkeeping for the derivatives industry.

On Capitol Hill, Rep. Patrick McHenry (R-N.C.) has introduced a bill to create a regulatory “sandbox” where FinTech companies can be exempted from certain regulations while they test out new products. The bill requires many federal agencies to create a “Financial Services Innovation Office,” an idea modeled after a U.K. policy that ensures companies in the sandbox can work alongside regulators when testing a new product for a limited launch.

These actions have started an important conversation. Many worry that the OCC proposal imposes capitalization and regulatory requirements that would be too burdensome for FinTech companies. Some believe Rep. McHenry’s sandbox idea could further fragment an already confusing regulatory regime if each financial regulator adds its own innovation office. Whatever the case, these proposals are important first steps in the public policy debate, because the technological innovations and applications in the financial services space are moving fast and growing by the day.

Congress should look to its past bipartisan successes with EFT and Check 21 as a roadmap for the next FinTech revolution. Congress and regulators are at their best when they establish a legal and regulatory framework that balances the need to protect consumers while also encouraging innovation. Maybe Congress can seize this opportunity to work in a bipartisan fashion to help technology improve the way staffers, members and more importantly, their constituents interact with their financial services companies.

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