

Written Testimony of

**Robert Weissman
President, Public Citizen**

before the

The House Financial Services Committee

On

“Examining Facebook’s Proposed Cryptocurrency and its Impact on Consumers, Investors, and
the American Financial System”

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Madam Chairwoman and Members of the Committee,

Thank you for the opportunity to testify today on regulatory policy issues. I am Robert Weissman, president of Public Citizen. Public Citizen is a national public interest organization with more than 500,000 members and supporters. For more than 45 years, we have advocated with some considerable success for consumer protections and more generally for government and corporate accountability.

The Committee is performing a vital service by examining Facebook's proposal to create a private, global currency; and I want to thank you, Madam Chairwoman, for immediately calling for a moratorium on Facebook's plan and now for prophylactic legislation to avoid the very serious risks posed by Facebook's scheme.

With dozens of other consumer, privacy, economic security and other organizations, we echoed your call for a moratorium in a July 2 letter which I have attached to this testimony. That letter included a long list of disturbing questions about Facebook's plans for Libra, its proposed currency, and Calibra, the company's proposed digital wallet by which consumers and businesses could transact using the Libra currency.

My testimony today builds on that letter but reflects only the views of Public Citizen.

We believe that Facebook should not be permitted to proceed with its plans to create a private, global currency.

To be sure, Facebook will have to overcome serious technological and business hurdles to launch Libra and take its new currency to scale. It is entirely possible, some believe likely, that the company will fail in the effort. But it is also possible that Facebook will succeed in taking the currency to scale; and, from a public policy point of view, we must consider what might happen if Facebook succeeds.

We believe the successful launch of a private, global currency tied to Facebook – the dominant firm in social media with more than two billion users -- portends grave risks for the global economy, financial stability, efforts to control illicit money flows, market competition and consumer well-being.

Some of the challenges that Facebook's proposal presents could potentially be addressed with very aggressive regulation, but there is little reason to believe regulators will be equipped to handle these problems once Libra launches. Other challenges seem inherent in the Libra proposal and appear unsolvable.

In my testimony today, I want to highlight the following points:

- The Libra proposal is overwhelmingly likely to extend and deepen Facebook's dominance in social media, improperly extend its social media dominance into the global payments market and potentially into the market for real goods as well, exclude and

punish competitors, and rip off consumers and deny them the benefit of newly innovative products.

- At scale, Libra will become systemically important, but without the controls on financial institutions – such as deposit insurance – designed to protect against systemic risk.
- As a private, borderless currency, Libra will make it very difficult to ensure consumers are afforded appropriate disclosures, civil remedies, protection against usury, fair access to credit, defense against unfair and deceptive practices, and more. There is good reason to worry that the Libra world will be a welcoming home for hucksters and scam artists.
- No matter what Facebook now promises, Libra and Calibra threaten to make Facebook a corporate surveillance leviathan with no precedent outside the realm of science fiction, giving the company dramatically enhanced power over information flows and our economy, while also potentially worsening the already serious problem of algorithmic racial discrimination.
- The Libra proposal poses a fundamental threat to nations' ability to maintain their own monetary policy and to take measures to address currency crises.
- Tax cheats, organized criminal enterprises, money launderers and others will rush to take advantage of Libra, and it is not at all apparent how these abuses can be prevented.

I also want to underscore a crucial point that applies across the range of concerns with Libra and Calibra: Policymakers cannot and must not rely on Facebook's representations about how Libra and Calibra will operate.

Facebook aims to mollify many of the criticisms it anticipated with a series of claims about how its new system will work. For example, to satisfy worries that Facebook and its partners in the Libra Association might create fiat money, Facebook says that for every new Libra purchased, a comparable amount of money in stable currencies will be held in reserve. To dampen concerns about privacy, Facebook says that its Calibra subsidiary will not share data with Facebook (except with consumer consent). But these unilateral, voluntary statements are subject to change at any time. Even if Facebook is being truthful right now about its commitment to these practices, its interest might change in the future – and so too may these voluntary statements.

Of course, when it comes to assessing the durability and trustworthiness of its assertions, Facebook is not just any company. It has demonstrated that its policies and statements are snapshots in time rather than real, abiding commitments and guarantees to consumers and the public, most notably through its repeated modifications of its privacy policy to enable more and more data sharing with third parties.¹

¹ The Electronic Frontier Foundation noted in 2010: "Facebook originally earned its core base of users by offering them simple and powerful controls over their personal information. As Facebook grew larger and became more important, it could have chosen to maintain or improve those controls. Instead, it's slowly but surely helped itself — and its advertising and business partners — to more and more of its users' information, while limiting the users' options to control their own information." Kurt Opsahl, "Facebook's Eroding Privacy Policy: A Timeline," Electronic Frontier Foundation, April 28, 2010, available at: <https://www.eff.org/deeplinks/2010/04/facebook-timeline>. Journalist Matthew Keys surveyed Facebook's evolving privacy policies and identified 11 changes in privacy policy or practices over the decade from 2008-2018. He concluded: "Users who became invested in Facebook as a lifeline may have complained about all of those changes, but almost all of them acquiesced. Facebook always came out on top." Matthew Keys, "A Brief History of Facebook's Ever-Changing Privacy Settings,"

Even with constantly changing privacy policies, Facebook has repeatedly failed to adhere to the voluntary commitments it has made. In 2011, the company entered into a consent decree with the Federal Trade Commission (FTC) to settle charges that the company repeatedly violated its privacy policy. As the FTC summarized its complaint:²

- In December 2009, Facebook changed its website so certain information that users may have designated as private – such as their Friends List – was made public. They didn't warn users that this change was coming, or get their approval in advance.
- Facebook represented that third-party apps that users' installed would have access only to user information that they needed to operate. In fact, the apps could access nearly all of users' personal data – data the apps didn't need.
- Facebook told users they could restrict sharing of data to limited audiences – for example with "Friends Only." In fact, selecting "Friends Only" did not prevent their information from being shared with third-party applications their friends used.
- Facebook had a "Verified Apps" program & claimed it certified the security of participating apps. It didn't.
- Facebook promised users that it would not share their personal information with advertisers. It did.
- Facebook claimed that when users deactivated or deleted their accounts, their photos and videos would be inaccessible. But Facebook allowed access to the content, even after users had deactivated or deleted their accounts.
- Facebook claimed that it complied with the U.S.- EU Safe Harbor Framework that governs data transfer between the U.S. and the European Union. It didn't.³

The FTC settlement imposed a number of specific privacy-protecting duties on Facebook.⁴ The commitments Facebook undertook were famously violated in the Cambridge Analytica scandal, where Facebook allowed Cambridge Analytica to exploit the private data of 50 million Facebook users in its effort to influence voting.⁵ Facebook also has admitted to failing to securely store passwords⁶ and recently has been reported to have paid teenagers to download spyware.⁷

Medium, March 21, 2018, available at: <https://medium.com/@matthewkeys/a-brief-history-of-facebooks-ever-changing-privacy-settings-8167dadd3bd0>.

² Federal Trade Commission, In the Matter of Facebook, Inc., available at:

<https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookcmpt.pdf>

³ Federal Trade Commission, "Facebook Settles FTC Charges That It Deceived Consumers By Failing To Keep Privacy Promises," November 29, 2011, available at: <https://www.ftc.gov/news-events/press-releases/2011/11/facebook-settles-ftc-charges-it-deceived-consumers-failing-keep>.

⁴ Federal Trade Commission, In the Matter of Facebook, Inc., Agreement Containing Consent Order, November 29, 2011, available at: <https://www.ftc.gov/sites/default/files/documents/cases/2011/11/111129facebookagree.pdf>.

⁵ Kevin Granville, "Facebook and Cambridge Analytica: What You Need to Know as Fallout Widens," New York Times, March 19, 2018, available at: <https://www.nytimes.com/2019/02/14/technology/facebook-ftc-settlement.html>.

⁶ Zack Whittaker, "Facebook admits it stored 'hundreds of millions' of account passwords in plaintext," TechCrunch, July 2019, available at: <https://techcrunch.com/2019/03/21/facebook-plaintext-passwords>.

⁷ Josh Constine, "Facebook pays teens to install VPN that spies on them," TechCrunch, July 1, 2019, available at: <https://techcrunch.com/2019/01/29/facebook-project-atlas>.

News reports now indicate that the FTC has entered into a \$5 billion settlement with Facebook, more than 200 times the largest fine ever imposed for privacy violations. Notably, news reports indicate that the settlement involved a series of violations reaching far beyond those connected to Cambridge Analytica.⁸

In short, this is not a corporation that should get the benefit of the doubt. It is definitely not a corporation on whose promises the nation and world should gamble with global financial stability, consumer protection, anti-money-laundering efforts and more.

Competition Concerns: Libra/Calibra May Extend and Deepen Facebook’s Dangerous Market Power

Facebook has sought to assuage concerns about how Libra might leverage and expand its market and economic power by establishing a Libra governance structure that shifts authority over Libra away from Facebook and to the Libra Association, a private governance society in which no member may possess more than a 1 percent voting share. That move does not resolve the competition concerns around Libra, however. The Libra proposal is overwhelmingly likely to extend and deepen Facebook’s dominance in social media, improperly extend its social media dominance into the global payments market and potentially into the market for real goods as well, exclude and punish competitors, and rip off consumers and deny them the benefit of newly innovative products. The Libra Association is poised to function as a de facto oligopoly, with the power to disadvantage those outside of the club, bully countries and exert undue influence over the future of the global economy.

There is reason to question whether the Libra Association structure will be sufficient to prevent Facebook from controlling the Libra. As the originator of the concept, the developer of the technology, presumably the largest original funder and certainly the largest provider of Libra services, Facebook may exert effective control over the Libra Association and Libra.

But Facebook does not need to control Libra for the project to deepen Facebook’s market power. Facebook intends to integrate Calibra, Facebook’s Libra wallet, into Facebook Messenger, WhatsApp and likely other Facebook products.⁹ Immediately, one-third of the world’s population will have access to Libra through Facebook. It is unlikely that any other wallet will ever be able to compete, and uncertain if any will try, rather than seek niche opportunities. In short, Facebook is likely to exert market dominance in the Libra trade immediately and for the foreseeable future.

Facebook has long proved masterful at pulling users into a closed ecosystem and there is every reason to suspect it will do the same with Libra and Calibra. Competing social media platforms are not likely to be able to or even seek to compete with Calibra. They might conceivably

⁸ Emily Glazer, Ryan Tracy and Jeff Horwitz, “FTC Approves Roughly \$5 Billion Facebook Settlement,” Wall Street Journal, July 12, 2019, available at: <https://www.wsj.com/articles/ftc-approves-roughly-5-billion-facebook-settlement-11562960538>. Cecilia Kang, “FTC Approves Facebook Fine of About \$5 Billion,” New York Times, July 12 2019, available at: <https://www.nytimes.com/2019/07/12/technology/facebook-ftc-fine.html>.

⁹ Josh Constine, “Facebook Answers How Libra Taxes and Anti-Fraud Will Work,” TechCrunch, July 12, 2019, available at: <https://techcrunch.com/2019/07/12/facebook-libra-taxes-trump/>.

develop their own private, global currencies, but competition among a tiny number of closed financial/market ecosystems would be more like a dystopian oligopolistic cage fight than anything Adam Smith might celebrate. Genuine competition across a broad range of products would be stifled, and consumers would be left at the mercy of a handful of corporate leviathans.

Facebook says that its Calibra subsidiary will not share information with Facebook. There is no reason to believe that Facebook will respect this promise, or that it won't simply alter the terms of use for Calibra in the future. But the risks are great even if the supposed firewall is maintained. The Calibra product integrated into Facebook will become a way for Facebook to perpetuate its dominance. Facebook itself will likely know when and how users make use of Calibra on its own (i.e., even if Calibra does not share its data with the rest of the company), meaning it can then gain competitive advantage and monetize that information with more targeted ads or even by selling products directly to consumers. One market analyst hypothesizes: "Facebook also could use its own currency to drive more people to make purchases from ads on its social media sites. ... 'This is about fostering more sales within an ad to get more business from advertisers to make ads more interesting on Facebook.'"¹⁰

The United States continues to separate banking and commerce through the Bank Holding Company Act, for good reason. The Calibra/Facebook arrangement may not run afoul of the Bank Holding Company Act's requirements given the new technologies involved, but it surely conflicts with the spirit. The anti-competitive and anti-consumer risks are legion. "Imagine Facebook's subsidiary Calibra knowing your account balance and your spending, and offering to sell a retailer an algorithm that will maximize the price for what you can afford to pay for a product," the Open Markets Institute's Matt Stoller wrote in the New York Times. "Imagine this cartel having this kind of financial visibility into not only many consumers, but into businesses across the economy. Such conflicts of interest are why payments and banking are separated from the rest of the economy in the United States."¹¹

The Bank Holding Company Act restated centuries-old principles about separating banking from commerce, but the proximate cause for this legislation involved the sale by banks of insurance. Imagine if Facebook/Calibra were to engage in alliances with firms that produce goods and services, and then promote them through Calibra and Facebook; that in fact does appear to be part of Facebook's vision for the future of Libra. Or, even more seriously, imagine if Facebook purchases goods or services producers, promotes them through social media and offers discounts and/or financing through Calibra. That is also a very likely scenario. In either of these cases, or countless permutations, the issue of restraint of trade would become acute – but not easily addressed once in place.

The Libra Association itself will have enormous power, with equally enormous possibility for abuse. As Facebook co-founder Chris Hughes notes, "Facebook and its partners will decide which banks, payment processors and distribution agents to work with, making or breaking

¹⁰ Gartner analyst Avivah Litan quoted in Rachel Lerman, "Facebook Launching Its Own Cryptocurrency, Libra, for 2 Billion-Plus Users," Associated Press, June 18, 2019, available at: <https://abc7news.com/business/facebook-launching-its-own-currency-for-2-billion-plus-users/5351232/>.

¹¹ Matt Stoller, "Launching a Global Currency is a Bold, Bad Move for Facebook," New York Times, June 19, 2019, available at: <https://www.nytimes.com/2019/06/19/opinion/facebook-currency-libra.html>.

companies in some markets overnight. This will entrench existing players rather than creating a truly decentralized system.”¹² Facebook says that “Libra partners will create incentives to get people and merchants to use the coin, with anticipated examples ranging from Uber discounts to a Libra bonus paid when users set up a Calibra wallet, although the companies haven’t laid out specifics.”¹³ Refashioned, or perhaps just reconsidered, those exact same practices could change from “incentives” for users to take up Libra to the Libra cartel’s method of advantaging partners at the expense of competitors.

At a large enough scale – again, the ambition of Facebook’s proposal forces us to think at scale - the Libra Association may gain the power to bully or exert undue influence over national governments. There may be meaningful consequences for governments if and when the Association decides to change or recalibrate the basket of currencies upon which the value of the Libra is valued, or when the Association decides to move reserves from one nation to another.

Systemic Risk: Libra Will Create New Threats to Financial System Stability

The potential scale and novelty of the Libra proposal create financial systemic risks, some of which may be familiar, others of which may be hard even to conceptualize.

The main worry is a classic “run on the bank” scenario, i.e., what happens if the Libra Association is unable to deliver on the promise to exchange Libra for a real currency of the user’s choice. For example, if Europeans worried about the value of the euro decided en masse to purchase Libra and then demanded payment in dollars, it is entirely possible the Association would not be able to pay out. If the Libra Association decided in the future to change its one-to-one reserve policy, or decided to invest some portion of the reserves speculatively and suffered losses, it could find itself unable to pay out. Or, because of failures among Libra Association members, breaches or questions about the Libra technology, new regulatory impositions, a failure by a bank holding a significant portion of the reserve, unforeseen rumors or developments, there could be a run on the Libra and demand for payment in real currency beyond the capacity of the reserve. These scenarios are all speculative, but they are entirely plausible. What would not be plausible is to imagine that runs on Libra are impossible – the history of the world financial system teaches that lesson plainly.

If Libra achieves anything like the scale Facebook plainly seeks, Libra and the Libra Association will become too big to fail. That poses familiar problems – acutely evident in the 2008 financial crash. Regulators essentially would be left with two untenable options. First, let the currency collapse, draining savings from potentially hundreds of millions of people, impoverishing untold millions and risking contagion that could throw the global economy into recession or worse. Or, second, bail out the Libra on a scale that could easily match or exceed the Troubled Asset Relief Program, taking from taxpayers to prop up the financial system, bail out the Libra Association and create a moral hazard risking the whole problem being repeated.

¹² Chris Hughes, “Facebook Co-Founder: Libra Coin Would Shift Power into the Wrong Hands,” Financial Times, June 21, 2019, available at: <https://www.ft.com/content/aa97ad20-91a0-11e9-8ff4-699df1c62544>.

¹³ Rachel Lerman, “Facebook Launching Its Own Cryptocurrency, Libra, for 2 Billion-Plus Users,” Associated Press, June 18, 2019, available at: <https://abc7news.com/business/facebook-launching-its-own-currency-for-2-billion-plus-users/5351232/>.

By some descriptions, Libra will operate similar to a money market mutual fund. Customers will use their local currency, such as the U.S. dollar, to purchase units of Libra. Libra will then use these funds to purchase securities. Money market mutual funds proved a victim and a vector in the 2008 financial crisis. Reserve Primary had invested in Lehman bonds. When that firm declared bankruptcy, the fund was unable to redeem on a one-to-one basis (it “broke the buck”).¹⁴ That example highlights the prospect of a comparable disaster with Libra – at vastly greater scale.

Too-big-to-fail, moral hazard, excessive financial interconnectedness and disguised risks are familiar problems in the banking sector, which is why rules are in place to prevent such risks: mandatory not voluntary capital requirements, the separation of banking and commerce, depository insurance, prudential regulation and inspection, and more. Facebook’s alternative is a unilateral, nonbinding and in any case inadequate promise to maintain a one-to-one reserve.

Not incidentally, the lack of depository insurance, escape from banking-style regulatory restraints and externalization of risk would create an unfair competitive advantage for Libra as against traditional financial service providers. That advantage is itself a moral hazard, potentially enabling Libra to expand beyond what it would if risks were not externalized, and, in a dangerously reinforcing cycle, exacerbating the too-big-to-fail problem.

Consumer Protection: Libra Threatens to Shred Consumer Protections and Become a Haven for Hucksters

Facebook is loudly proclaiming that Libra will be a boon to consumers worldwide. Most or all of those claimed benefits are likely to prove illusory, or are available without creation of a privatized, global currency. Its exemplar case is the remittance market, which is inarguably in need of competition and new approaches. But that competition is now underway with a growing number of lower-cost, electronic transfer alternatives to Western Union; competition does not require a new, private, global currency with its attendant risks. Other Facebook examples don’t seem to make any sense; there is no reason, for example, to assume that Libra or the purported magic of blockchain technology will do anything to reduce payday lending abuses.¹⁵

By contrast, the Libra proposal presents a series of real consumer protection challenges that have no easy solutions. There is good reason to worry that the Libra world will be a welcoming home for hucksters and scam artists; and that the Libra Association will fail to afford many of the guarantees and protections that consumers typically expect from financial service providers.

The rise of new financial instruments will pose serious consumer protection challenges. If non-bank institutions continue to provide a growing share of novel and traditional financial services, regulators will have a hard time keeping pace. This is true for new products that offer true consumer advantage, as well as those that do not. By now we know as a matter of certainty that not all financial “innovation” is for the better.

¹⁴ Financial Crisis Inquiry Commission, The Financial Crisis Inquiry Report, January 2011, available at: http://fcic-static.law.stanford.edu/cdn_media/fcic-reports/fcic_final_report_full.pdf.

¹⁵ Libra Association Members, “An Introduction to Libra: White Paper,” available at: https://libra.org/en-US/wp-content/uploads/sites/23/2019/06/LibraWhitePaper_en_US.pdf.

As a private, borderless currency, Libra multiplies the difficulties inherent with new fintech on matters relating to required disclosures, civil remedies, usury rules, access to credit, unfair and deceptive practices, and more:

- Will consumer protection laws even apply to Libra? It appears many will not, absent federal and state legislative action. Significantly, Libra does not fit the Uniform Commercial Code definition of money: “‘Money’ means a medium of exchange currently authorized or adopted by a domestic or foreign government. The term includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more countries.”¹⁶
- Where does a transaction occur between a U.S. consumer or borrower and a foreign seller or lender?
- What limits if any are there on the ability of a foreign seller or lender to specify choice of a foreign entity’s law?
- What limits if any are there on the ability of a foreign seller or lender to specify the use of a foreign arbiter to resolve disputes, including foreign arbiters that do not adhere to U.S. standards of due process or are unreasonably biased toward their nationals or toward corporate interests?
- What will be the practical ability of law enforcement agencies to monitor global transactions that occur in Libra?
- What practical remedies will exist for consumers scammed by overseas operators dealing in Libra?
- Are Calibra and/or Facebook prepared to reimburse consumers for scams, defective products, misappropriated funds and mistakes?
- What practical remedies exist for consumers in poorer countries scammed by foreign operators in the Libra ecosystem?

There is significant reason to worry as well about how the Libra Association will treat and potentially disadvantage consumers. The plan for Libra makes explicit and implicit promises to consumers – such as the claim that its value will remain stable – but there is nothing to stop the Libra Association from changing policy in order to, for example, degrade the value of Libra. The Association could easily decide in the future to impose a microtax on every Libra transaction, potentially generating huge wealth at consumer expense if Libra reaches the scale intended by its founders. The systemic risk of a run on the currency is also a consumer protection issue on a grand scale: With no deposit insurance, consumers will be at risk for tremendous loss if there is a run on the Libra and its value collapses, if there is a major Libra data breach or if the currency loses value for some other reason.

Privacy and Digital Rights: A Corporate Surveillance Leviathan

Facebook offers strong assurances that Calibra will protect consumer privacy: “Calibra will not share account information or financial data with Facebook, Inc. or any third party without

¹⁶ Uniform Commercial Code § 1-201(b)(24).

customer consent. For example, Calibra customers' account information and financial data will not be used to improve ad targeting on the Facebook, Inc. family of products."¹⁷

Exactly no one should be appeased by this promise.

First, to state the most obvious point, why should anyone afford credibility to Facebook's privacy promises, in light of the company's repeated violation of its own privacy policy, even after entering into a consent decree with the Federal Trade Commission recommitting to abide by its own privacy promises?

Second, to reiterate a key theme of this testimony: The pledges that Facebook makes now are voluntary, nonbinding and subject to change or simply being ignored.

Third, Calibra's core privacy commitment is much less robust than it originally appears. Calibra says it will not share data with Facebook or third parties – without customer consent. Calibra's statement appears to suggest that data sharing will occur only if consumers opt in, but the company doesn't actually state that. The company easily could make data-sharing the default. But even if it doesn't make data-sharing the default, it can easily obtain consent; Facebook and Big Tech, of course, are masterful at generating "consent" without consumers realizing consent has been granted or that they have any alternative.

Fourth, even if a firewall is maintained between Calibra and Facebook's social media platforms, Facebook will presumably know about Libra transactions on the platforms or through Facebook apps, even in the absence of data sharing between Calibra and Facebook.

Consumer privacy is an acute concern with the Libra proposal not just because of Facebook's atrocious record. The combination of detailed transactional data involving hundreds of millions of people with Facebook's already expansive data on billions of users' likes, personal preferences and intimate thoughts threatens to create a corporate surveillance leviathan with no precedent outside the realm of science fiction.

The result would not just be more and even creepier targeted advertising. Facebook would dramatically enhance its power to commercialize and monetize our lives; to shape what information, points of view and entertainment we see, learn and are exposed to through the prism of encouraging us to buy more; and to exclude and crush competitors, none of whom could match Facebook's comprehensive data on our daily lives and existence.

At risk would be a worsening of the algorithmic discriminatory practices that are now troublingly prevalent as a result of both the built-in implicit bias of their programmers and the wealth and income disparities that track race.

¹⁷ Calibra, "Calibra: Customer Commitment," available at: https://scontent-iad3-1.xx.fbcdn.net/v/t39.2365-6/65083631_355528488499253_8415273665234468864_n.pdf?_nc_cat=106&_nc_oc=AQIUQ8Ts4xvNdtNMBzAX57O56oyChDTrg2Xe5LGJ_2V9e-uY5OKhXMKUBmTP1GN03F0&_nc_ht=scontent-iad3-1.xx&oh=9e29b04ea08750b9f3cfa88dbe571b24&oe=5DBFB7C3.

Monetary Policy: Libra Risks Enabling Currency Runs and Undermining Countries' Control of Their Money Supply

The Libra proposal poses a fundamental threat to nations' ability to maintain their own monetary policy and to take measures to address currency crises. These issues will be more severe for smaller and poorer countries with smaller economies, less stable currencies and weaker regulatory capacity, but even rich countries such as the United States are at risk.

Facebook says that the Libra Association will act as a currency board rather than central bank – i.e., it will create new Libra only in proportion to which investors and users buy in with real money.¹⁸ The company specifically disclaims that the Libra Association will operate its own monetary policy.¹⁹

Even if the Libra Association abides by this nonbinding commitment, the threats to national currency control are obvious, severe and without evident cure. In a country experiencing high inflation or devaluation, or even facing the prospect of high inflation, the rational move for both individuals and businesses will be to convert their currency to Libra. The race away from national currency becomes dangerously self-perpetuating. And, as the world has seen repeatedly, including but not only with the Southeast Asian financial crash in the late 1990s, currency runs can become contagious and spread across borders, provoking global crises.

Currency runs are already a hazard in the global economy. Libra threatens to make the problem far worse – more likely to occur, more frequent and at bigger scale – to the extent it achieves its objective of “frictionless” conversion into Libra and out into currencies different than the original currency of purchase. National governments may be able to forestall currency runs through imposition of capital controls, a policy device that the International Monetary Fund now recognizes can help defend currencies from catastrophic devaluation. But governmental capacity to impose capital controls will, at minimum, be severely hindered by Libra, given Facebook's objective that conversion be as simple as posting a social media message.²⁰ Imposing capital controls would require completely shutting down Libra within a country, a very difficult undertaking once the system is established and becomes pervasive.

¹⁸ “Whereas central banks can print money at their own discretion, currency boards typically only print local currency when there are sufficient foreign exchange assets to fully back a new minting of notes and coins. Two of the major reasons for implementing such a system are stability — as the underlying assets are selected for their lower volatility — and protection from future abuse (e.g., printing of additional coins in the absence of backing).” Libra, “Libra White Paper: The Reserve,” available at: https://libra.org/en-US/about-currency-reserve/#the_reserve.

¹⁹ “The association does not set monetary policy. It mints and burns coins only in response to demand from authorized resellers. Users do not need to worry about the association introducing inflation into the system or debasing the currency. For new coins to be minted, there must be a commensurate payment of fiat by resellers into the reserve. Through interaction with authorized resellers, the association automatically mints new coins when demand increases and destroys them when the demand contracts. Because the reserve will not be actively managed, any appreciation or depreciation in the value of the Libra will come solely as a result of FX market movements.” Libra, “Libra White Paper: The Reserve,” available at: https://libra.org/en-US/about-currency-reserve/#the_reserve.

²⁰ David Ingram, “Facebook to Launch Digital Currency, Libra, In Effort to Create new Global Payment System,” NBCNews.com, June 18, 2019, available at: <https://www.nbcnews.com/tech/tech-news/facebook-launch-digital-currency-libra-effort-create-new-payment-system-n1018576>.

Explains Stephen Grenville, former deputy governor of the Reserve Bank of Australia:

If the people of Argentina could switch from pesos to a basket of stable currencies with a single touch of their smartphones, wouldn't they then pour into that safe asset at the first hint of trouble in the domestic economy? ... We don't really know what would happen if the general public suddenly had access to a low-cost, unregulated method of exchanging a volatile local currency for a basket of safe currencies. But the risks are obvious. Countries with a long record of devaluations, like Argentina, as well as any middle-size country with a floating exchange rate, would be highly vulnerable to capital flight.²¹

There is another major threat to monetary policy, which is that the Libra Association abandons its initial commitment to maintain a one-to-one match between new national currency paid in and the creation of new Libra. The currency board approach is central to Libra's brand, credibility and plan right now. But that could easily change over time, particularly if and when the new currency reaches scale. At that point, and especially if large amounts of money remain within the Libra ecosystem without being paid back out in national currency, the members of the Libra Association will have a self-interest in creating new fiat currency – and distributing it to themselves. Their collective interest would incentivize them to keep Libra functioning, yes, but if they could allocate billions of Libra to themselves, why wouldn't we expect them to do so? As Kaushik Basu, former World Bank chief economist, notes, Facebook and the Libra Association will “be tempted to issue extra Libra to earn seigniorage in the same way that central banks do on the national currencies they issue.”²² At scale, this could potentially be inflationary on a global scale. Perhaps more troubling is how it would wrest control of monetary policy from central banks and nation states, who would have to set national monetary policy against the backdrop of Libra's global monetary policy. It's hard even to conceptualize the complications this would create, let alone figure out how they might be managed.

Law Enforcement: Libra Appears Likely to Create New Problems with Money Laundering, Tax Evasion and Sanctions Evasion

Libra promises to provide simple consumer entry into the system, frictionless transfers, across or – more accurately – irrespective of national borders. It is not clear what anti-money laundering rules would apply, or how they could be enforced in the kind of system Facebook proposes to create.

Facebook's answer is: We will coordinate with law enforcement authorities and enforce all applicable laws.²³ But that's no answer at all. First, there will be major questions about whether

²¹ Stephen Grenville, “The Coming Libra Panics,” New Europe, July 1, 2019, available at: <https://www.neweurope.eu/article/the-coming-libra-panics/>.

²² Kaushik Basu, “Why Policymakers Should Fear Libra,” Project Syndicate, June 27, 2019, available at: <https://www.project-syndicate.org/commentary/facebook-libra-inflation-control-problem-by-kaushik-basu-2019-06>.

²³ Working with Law Enforcement: As with any currency or financial infrastructure, bad actors will try to exploit the Libra network. While the network is open and accessible to everyone with internet access, the network's main endpoints will need to follow applicable laws and regulations and collaborate with law enforcement. In addition, because transactions on the Libra Blockchain are pseudonymous, it is possible for third parties to do analysis to detect fraud and illegal activity. Libra, “Libra White Paper: Security and Privacy on the Libra Network,” available at: <https://libra.org/en-US/security-privacy/#overview>.

and how know-your-customer and other anti-money laundering (AML) rules apply to the network endpoints, particularly those based outside of the United States. Second, compliance by the endpoints will not necessarily do anything to stop individuals, criminal organizations and businesses from using services transacting in Libra in order to circumvent AML rules. Will all wallet providers be required to adhere such rules? Facebook's position seems to be that Calibra will abide by know-your-customer rules – but other wallets will be on their own and will have to comply in ways that fit their business. Based on Facebook's vision, it's almost impossible to imagine storefronts offering entry into and exit from Libra following know-your-customer rules or anything remotely like them.²⁴ Calibra will accept payments from noncustodial wallets, which means that even if Calibra applies know-your-customer standards, it will be easy to move money into Calibra from non-filtered sources.²⁵ Additionally, will Calibra apply U.S. standards worldwide? If not, given the global nature of Libra, it may be possible even for U.S. persons to use Calibra and circumvent know-your-customer rules. Third, the pseudonymous nature of transactions will impose difficult and perhaps insuperable challenges for regulators to enforce AML rules, if they even apply. Consider this basic statement Facebook makes in its Libra white paper: "The Libra Blockchain is pseudonymous and allows users to hold one or more addresses that are not linked to their real-world identity."²⁶ Fourth, additional difficulties rise from the global and virtual elements of the currency. Libra may be transferred instantaneously across borders or to virtual recipients. Transferring funds across dozens of enterprises spread around the world could be done almost instantaneously and with minimal difficulty. The money trail would be practically impossible to trace, whether it was eventually pulled out into a national currency and kept in Libra. Altogether, the world would be looking at a system of the old Swiss banking secrecy rules or Cayman Island secrecy on steroids, with not just secret banks, but secret transactions across borders into secret banks, or into secret non-bank corporations that may exist only virtually.

Some have suggested that Facebook's answer is a global identity system. That would not necessarily address the tax avoidance and AML concerns. It would certainly raise privacy concerns that transcend anything yet encountered.

It's impossible to imagine that tax cheats, organized criminal enterprises, corporate tax evaders and others would not try to take advantage of this new system. Developing a robust AML protocol was difficult and the system remains imperfect. Cross-border tax evasion remains a massive problem involving both high-wealth individuals and giant corporations alike. Libra threatens to undo whatever progress has been made in cracking down on illegal money flows and

²⁴ Calibra's VP of product Kevin Weil: "Because Libra is an open ecosystem, any money exchange business or entrepreneur can begin supporting cash-in/cash-out without needing any permission from anyone associated with the Libra Association or member of the Libra Association. They can just do it. ... Second, we can augment that by working with local exchanges, convenience stores and other cash-in/cash-out providers to make it easy from within Calibra. You could imagine an experience in the Calibra app or within Messenger or WhatsApp, where if you want to cash in or cash out, you'll pop up a map that highlights physical locations around that allow you to do it. You select one that's nearby, you select an amount, and you get a QR code that you can take to them and complete the transaction." Josh Constine, "Facebook Answers How Libra Taxes and Anti-Fraud Will Work," TechCrunch, July 12, 2019, available at: <https://techcrunch.com/2019/07/12/facebook-libra-taxes-trump/>.

²⁵ Josh Constine, "Facebook Answers How Libra Taxes and Anti-Fraud Will Work," TechCrunch, July 12, 2019, available at: <https://techcrunch.com/2019/07/12/facebook-libra-taxes-trump/>.

²⁶ Libra, "Libra White Paper: The Libra Blockchain," available at: <https://libra.org/en-US/white-paper/#the-libra-blockchain>.

could easily make the problems far worse than they ever were. It is very hard to imagine regulatory cures for these problems, at least not regulatory cures that are compatible with Facebook's vision for Libra.

As the Committee well knows, tax avoidance and use of tax havens is no small matter. The cost to the U.S. Treasury and governments around the world is enormous, severely exacerbating wealth and income inequality. On the one hand, tax avoidance enables giant corporations and the wealthy to avoid paying their fair share of taxes and imposing extra burdens on everyone else. On the other, tax avoidance steals from governments the resources they need to address national, state and local challenges. The U.S. Senate Permanent Subcommittee on Investigations estimated a decade ago that the United States loses more than \$100 billion in revenue due to offshore tax abuses.²⁷ The International Monetary Fund estimates governments worldwide lose more than \$600 billion annually from corporate profit-shifting.²⁸ The IMF estimates \$7 trillion in personal wealth is stored in off-shore tax havens.²⁹ Whatever the exact numbers, they are very large and could easily be made worse by Libra.

Similarly, money laundering is a gigantic and consequential business, underpinning criminal enterprises on a massive scale. "Criminals, especially drug traffickers, may have laundered around \$1.6 trillion, or 2.7 percent of global GDP, in 2009. ... This figure is consistent with the 2 to 5 per cent range previously established by the International Monetary Fund to estimate the scale of money-laundering."³⁰ Libra seems almost designed to encourage money-laundering,³¹ and would almost inevitably make the problem worse, with attendant issues of drug trafficking, sex trafficking and more.

In exactly the same way that Libra is likely to facilitate tax evasion and money laundering, it seems made-to-order for individuals, companies or countries aiming to circumvent economic sanctions. While there's no doubt that sanctions may be wrongly imposed, deployed properly they can be an effective tool to advance human rights and other considerations, as well as a vital alternative to war-making. Policymakers have also come to see the value of targeted sanctions in pressuring blameworthy leaders and sparing innocent civilians. It's hard to see why the U.S. government should tolerate the existence of a money transfer system that will make it much

²⁷ Permanent Subcommittee on Investigations, Dividend Tax Abuse: How Offshore Entities Dodge Taxes on U.S. Stock Dividends, September 11, 2008, available at: [https://www.hsgac.senate.gov/imo/media/doc/REPORT-Dividend-Tax-Abuse-\(Sept-11-2008\).pdf](https://www.hsgac.senate.gov/imo/media/doc/REPORT-Dividend-Tax-Abuse-(Sept-11-2008).pdf).

²⁸ International Monetary Fund, Corporate Taxation in the Global Economy, March 10, 2019, available at: <https://www.imf.org/en/Publications/Policy-Papers/Issues/2019/03/08/Corporate-Taxation-in-the-Global-Economy-46650>.

²⁹ Jannick Damgaard, Thomas Elkjaer and Niels Johannesen, "Piercing the Veil," Finance and Development, International Monetary Fund, June 2018, available at: <https://www.imf.org/external/pubs/ft/fandd/2018/06/inside-the-world-of-global-tax-havens-and-offshore-banking/damgaard.pdf>.

³⁰ UN Office on Drugs and Crime, "Illicit Money: How Much is Out There?" October 25, 2011, available at: <http://www.unodc.org/unodc/en/frontpage/2011/October/illicit-money-how-much-is-out-there.html>.

³¹ Writes Nobel-winning economist Joseph Stiglitz: "There are two obvious answers to the question of the business model: one is that people who engage in nefarious activities are willing to pay a pretty penny to have their nefarious activities – corruption, tax avoidance, drug dealing, or terrorism – go undetected." Joseph Stiglitz, "Why Facebook's Libra Currency Gets the Thumbs Down," The Guardian, July 2, 2019, available at: <https://www.theguardian.com/business/2019/jul/02/why-facebook-libra-currency-gets-the-thumbs-down>.

harder to maintain effective sanctions, particularly sanctions against individuals (whose smaller money transfers could easily be routed through Libra without notice).

Conclusion: Libra is Far Too Dangerous to Be Allowed to Proceed

For better and worse, Facebook has operated since its founding with audacity and adherence to its informal motto to move fast and break things.

As a corporate goliath rather than a small start-up, however, the consequences of “breaking things” are orders of magnitude more serious.

Madam Chairwoman, this committee will be evaluating legislation, the Keep Big Tech Out of Finance Act, mandating that large platform companies such as Facebook be prohibited from maintaining an ownership affiliation with financial service providers. Public Citizen strongly endorses this approach, which draws on the wisdom of the Bank Holding Company Act’s mandated separation of banking and commerce. We hope the discussion in this testimony effectively makes the case for preventing a dominant platform company such as Facebook from entering the financial services market.

We would favor as well a legislated prohibition or at least a lengthy moratorium on privatized, global currencies. Such a prohibition would permit the continued existence of Bitcoin and other cryptocurrencies, which function primarily as investment vehicles rather than a generalized medium of exchange. Such legislation would require careful definition of what constitutes a “currency,” but that’s a manageable challenge. Provision and management of the currency is a defining feature of the sovereign. If the people – not corporations – are to remain the sovereign, the control of the currency belongs under democratic not oligopolistic control.

Thank you for the opportunity to testify today, and we look forward to continuing to work with the committee to address the profound hazards posed by Libra, as well as to advance an affirmative agenda to hold corporations accountable and advance the economic prosperity and financial security of the American people.

APPENDIX: COALITION LETTER CALLING FOR A MORATORIUM ON LIBRA

Chairman Chuck Grassley, Ranking Member Ron Wyden
U.S. Senate Committee on Finance
219 Dirksen Senate Office Building
Washington, DC 20510

Chairwoman Maxine Waters, Ranking Member Patrick McHenry
U.S. House Committee on Financial Services
2129 Rayburn House Office Building
Washington, DC 20515

Chairman Mike Crapo, Ranking Member Sherrod Brown
U.S. Senate Committee on Banking, Housing and Urban Affairs
534 Dirksen Senate Office Building
Washington, DC 20510

Chairman Frank Pallone Jr., Ranking Member Greg Walden
U.S. House Committee on Energy and Commerce
2125 Rayburn House Office Building
Washington, DC 20515

Chairman Richard Neal, Ranking Member Kevin Brady
U.S. House Committee on Ways and Means
1102 Longworth House Office Building
Washington, DC 20515

Cc: U.S. Securities Exchange Commission; U.S. Federal Trade Commission; Office of the United States Trade Representative; U.S. Commodity Futures Trading Commission; Board of Governors of the Federal Reserve System; Financial Stability Oversight Council; Financial Crimes Enforcement Network; Calibra, c/o Facebook, Inc.

July 2, 2019

Dear Legislators, Regulators, and Facebook and Calibra employees:

The Facebook proposal to create a new cryptocurrency as part of its broader Libra project raises profound questions about national sovereignty, corporate power, consumer protection, competition policy, monetary policy, privacy and more. The U.S. regulatory system is not prepared to address these questions. Nor are the regulatory systems of other nations or international institutions.

We call on Congress and regulators to impose a moratorium on Facebook's Libra and related plans until the profound questions raised by the proposal are addressed.

We also urge Facebook to put its implementation of its plans for the new cryptocurrency, Libra, on hold until the Congress and regulators have an opportunity to assess and react to a far more detailed presentation than has yet been made public.

Some of us believe a careful assessment will show that the proposal is too dangerous to be permitted to proceed. Others of us believe it should be permitted if appropriate controls and rules are in place. Others of us are uncertain what we think in light of the long list of unanswered questions about Libra.

All of us believe the risks posed by Facebook’s proposal are too great to allow the plan to proceed with so many unanswered questions.

Leaving aside important technical and technological questions about the new plan, some of which Facebook itself has highlighted, we see a very long list of questions that require answers before Facebook moves forward. We identify a small subset of them here, grouped in the following categories:

- Governance
- National sovereignty
- Law enforcement, including tax policy
- Consumer protection
- Privacy
- Competition and systemic risk

Governance

- What transparency standards will apply to the new association that Facebook proposes should govern Libra?
- In what ways will the public be able to affect decision making related to Libra?
- How will the Libra Association relate to national governments and intergovernmental organizations? Will it consider the impact of its decision on particular national interests? Should it? For example, a decision to adjust the basket of reference currencies could have a major effect on the real value of actual currencies.
- What protections will be in place to prevent collusive behavior among Libra Association members?

National sovereignty

- What impact might Libra have on monetary policy in smaller and developing countries?
- Facebook says that the Libra Association will act as a currency board rather than central bank – i.e., it will create new Libra only in proportion to which investors and users buy in

with real money – but what is to stop the Libra Association from changing that policy in the future? How would that affect national monetary policy?

- The International Monetary Fund among other international authorities and experts now recognizes the value of currency and capital controls, at least in situations of economic instability. Could nations, especially smaller economies, successfully maintain capital controls if Libra develops at scale?
- What are the distributional and monetary control consequences of Libra’s planned pegging of its value to a basket of currencies? As currencies fluctuate, then it seems it will become relatively cheaper for some countries and relatively more expensive for others. Within a country, using the Libra could become relatively more or less expensive compared to using the national currency. How will that impact domestic inequality and what are its implications for national government control of the money supply?

Law enforcement, including tax policy

- Wouldn’t Libra provide an easy mechanism for money laundering?
- Would the Libra Association apply the anti-money laundering rules imposed by many nations? Would its technology even permit “know your customer” type standards? Will all wallet providers be required to adhere to such rules? Should a private association be in the business of applying such standards?
- Wouldn’t Libra similarly facilitate tax evasion and tax fraud? What protections could be put in place to avoid the near certain use of Libra for this purpose? Will all wallet providers be required to adhere to such rules?
- Won’t Libra be a tool to evade economic sanctions? Conversely, is it appropriate for an international private association to be a tool to enforce nationally imposed sanctions on sovereign nations?

Consumer Protection

- How will national consumer protection laws apply to, be enforced against and prevent misconduct by global sellers and lenders, on matters relating to required disclosures, civil remedies, usury rules, access to credit, unfair and deceptive practices and more?
- The plan for Libra makes explicit and implicit promises to consumers – such as the claim that value will remain stable – but what is to stop the Libra Association from changing policy in order to, for example, degrade the value of Libra or to impose a microtax on every Libra transaction?
- Will Facebook and other Libra validator nodes be able to accumulate data in order to price and product discriminate against consumers? Might Libra worsen the problem of algorithmic discrimination?

- How will consumers be protected if their Libra go missing? What are the risks of creating a new currency with no system of deposit insurance?
- Why should the Libra Association be able to earn interest on the real currency underlying Libra, while consumers earn nothing? What are the risks if the Association decides to change the investment strategy and invest the reserves in riskier assets?

Privacy

- What guarantees will there be that Facebook does not use Calibra to obtain access to the transactions across the Libra network? What protections does incorporation of a subsidiary offer? What is to prevent Facebook from unilaterally altering promises about a firewall between Calibra and Facebook?
- Even if a firewall is maintained, Facebook would presumably know about the transactions conducted through Facebook apps. What are the privacy implications? How might Facebook use that information for targeted advertisements? What protections will exist to prevent the data being used for discriminatory purposes?
- Similarly, even if the firewall is maintained and Calibra does not share personal data with other corporations, might it sell services that exploits that personal data in inappropriate ways – e.g., doing targeting on behalf of third-party clients?
- Given Facebook’s record and stated views on privacy, why should anyone believe that claims and commitments about privacy made now will be maintained?

Competition and Systemic Risk

- Will Facebook be able to use Libra and Calibra to pull consumers into a closed Facebook ecosystem that will disadvantage competitors and consumers?
- What protections will prevent the Libra Association from disfavoring competitors, including by excluding them, offering discounts to Libra partners, punishing competitors using alternative private currencies?
- The United States continues to separate banking and commerce, for good reason. Banks may have unfair advantage in the commercial sector. Conversely, they may be overly aggressive in commercial investments, putting bank deposits at risk. Does the Calibra/Facebook arrangement run afoul of Bank Holding Company Act requirements for the separation of banking and commerce? Does it run afoul of the spirit and wisdom of those requirements?
- What systemic risk threats might a scaled-up Libra pose to the U.S. and global economies? What are the particular consequences of such risk without the backup of

depository insurance? Does the externalization of those risks create an unfair competitive advantage for Libra?

- What happens if there is a run on the Libra? What if the Libra Association decides in the future to alter its reserve policy or does not adhere to what it now promises?

These are just a sampling of the serious questions posed by Facebook's proposal. It is not even clear which regulators would or should have jurisdiction over the new enterprise, nor how they should work individually and in coordination to analyze the Facebook proposal.

We have too much recent experience with insufficiently regulated financial markets spinning out of control to let this happen again. The Facebook proposal must be put on hold until these numerous and fundamental questions are resolved.

Sincerely,

American Family Voices
Americans for Financial Reform
Center for Digital Democracy
Center for International Policy
Consumer Action
Consumer Federation of America
Consumer Reports
Courage Campaign
Demand Progress Education Fund and Rootstrickers.org
Demos
Digital Intelligence Lab at Institute for the Future
Economic Policy Institute
Economic Strategy Institute
Electronic Privacy Information Center
Friends of the Earth-US
Global Witness
Institute for Agriculture and Trade Policy
Institute for Local Self-Reliance
Lake Research Partners
Media Alliance
National Association of Consumer Advocates
National Consumer Law Center (on behalf of its low-income clients)
Network for Environmental & Economic Responsibility of United Church of Christ
Oakland Privacy
Open MIC (Open Media and Information Companies Initiative)
Public Citizen
Revolving Door Project
RootsAction.org
Service Employees International Union
SumOfUs

The Open Markets Institute
U.S. PIRG
Woodstock Institute

Cc: U.S. Securities Exchange Commission
100 F Street NE
Washington, DC 20549

U.S. Federal Trade Commission
600 Pennsylvania Avenue NW
Washington, DC 20580

Office of the United States Trade Representative
600 17th Street NW
Washington, DC 20508

U.S. Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street NW
Washington, DC 20581

Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Financial Stability Oversight Council
Financial Crimes Enforcement Network
U.S. Treasury Department
1500 Pennsylvania Avenue NW
Washington, DC 20220

Mark Zuckerberg, CEO, Facebook, Inc.
1 Hacker Way
Menlo Park, CA 94025