April 14, 2017

Office of the Comptroller of the Currency
The Honorable Thomas J. Curry
Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Via specialpurposecharter@occ.treas.gov

Re: Evaluating Charter Applications From Financial Technology Companies

Dear Comptroller Curry:

The undersigned consumer, civil rights, small business, and community groups write to share our comments on the Office of the Comptroller of the Currency's ("OCC") draft licensing manual supplement for evaluating charter applications from financial technology ("fintech") companies.[1] Despite significant concerns raised by a number of interested parties—including hundreds of advocacy groups, state regulators, and a bipartisan group of Members of Congress—the OCC is moving forward with its fintech charter proposal.[2] We continue to assert that the OCC does not have the legal authority to charter non-depositories, that a national bank charter for non-depository fintech institutions will facilitate consumer harm through preemption of strong state laws, and that federal supervision from the OCC is not a substitute for critical safeguards that exist at the state level. However, we are also concerned that as the OCC unilaterally advances with its proposal, it has completely failed to address critical consumer and small business protection requirements. This lack of safeguards will present real and serious risks to consumers and small businesses. The chartering process, as it exists in the draft, seems more designed to pick winners and losers and grant special privileges to established players in the industry than to facilitate innovation.

Consumer Protections

The OCC's draft chartering proposal provides an extensive risk management framework and business plan requirements, but completely inadequate consumer protection standards. We appreciate the OCC's statement that it "will not allow products with predatory features nor will it allow unfair or deceptive acts or practices." However, without specific requirements to be imposed on new licensees, there is no specific and enforceable requirements requirement in the chartering process document that indicates that consumers will actually be protected from predatory lending. Instead, the process proposes a subjective, discretionary evaluation of predatory products that includes references to expectations for traditional banks. As fintechs present issues of first impression related to consumer protection, we believe it is essential for the OCC to strengthen its chartering guidelines by adding additional specific fair lending and consumer protection requirements.

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[1] Office of the Comptroller of the Currency, "Evaluating Charter Applications From Financial Technology Companies," https://www.occ.treas.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-fintech-licensing-manual-supplement.pdf

[2] Office of the Comptroller of the Currency, "Public Comments on Exploring Special Purpose National Bank Charters for Fintech Companies," https://www.occ.gov/topics/responsible-innovation/fintech-charter-comments.html

Nothing in the proposal provides confidence that the chartering process will prevent repeats of past lapses in oversight against predatory lending. Examples of these serious oversight failures include dangerous and abusive mortgage loans leading up to the foreclosure crisis, bank payday loans which continued at one bank for decades, as well as continued overdraft and credit card abuses, and inability to oversee bank servicers' foreclosure process to ensure compliance with both legal requirements and the banks' promises due to a lack of specific and enforceable standards.[3] If the OCC insists on going forward, despite its lack of authority to do so, it must at a minimum outline specific consumer protection measures that charter applicants must abide by, including interest rate caps, strict limitations on allowed default rates, fair underwriting standards, and clear lending disclosures for consumers and small businesses.

A. Rate Caps and Preemption

State interest rate and fee caps are arguably the most crucial part of consumer protection laws. Not only would the OCC's charter proposal allow licensed fintechs to preempt state interest rate and fee caps, but it will also facilitate preemption of a wide swath of state consumer protection laws. Furthermore, the existing state laws that protect small businesses will be preempted if fintech lenders are allowed to obtain national bank charters.[4] Due to the unavoidable consequences of federal preemption, we implore the OCC to require fintech lenders to charge no more than the lesser of an all-inclusive annual rate cap of 36% or the applicable state usury limits for the loan size. This second rule is important not only for smaller loans, but for state laws that apply a lower interest rate limit to larger loans. For example, in North Carolina, consumer loans between $10,000 and $15,000 are capped at 18% interest;[5] NY sets its criminal usury limit at 25% interest, regardless of whether the loan is for consumer or business purposes;[6] and Arkansas enforces an across the board constitutional usury limit of 17% per annum.

As discussed in our previous letter to the OCC, over 90 million people live in the 15 states plus the District of Columbia which enforce rate caps to prevent abusive high cost loans.[7] Collectively, these states save over $5 billion every year in high fees and interest that would otherwise be paid toward unaffordable loans.[8] Many of these states have never allowed high-cost loans in their state, aggressively enforcing their usury limits. Others used to authorize exemptions to their rate caps, but removed these

[3] *See* CRL, the Leadership Conference on Civil and Human Rights, and NAACP comment to the Office of the Comptroller of the Currency, *Re: Exploring Special Purpose National Bank Charters for Fintech Companies*, filed January 13, 2017 at p 5-6 for more extensive comments regarding this concern, https://www.occ.gov/topics/responsible-innovation/comments/comment-crl.pdf
[4] See Emily Robbins, "Illinois May Be the First State in the Nation to Regulate Predatory Small Business Lenders," CitiesSpeak, Apr. 15, 2016, https://citiesspeak.org/2016/04/15/illinois-may-be-the-first-state-inthe-nation-to-regulate-predatory-small-business-lenders/.
[5] N.C. Gen. Stat. § 53-176(a)(2).
[6] NY Penal Law § 190.42
[7] Center for Responsible Lending, U.S. Payday Interest Rates Calculated on a Typical Loan, (May 2016), available at http://www.responsiblelending.org/sites/default/files/nodes/files/researchpublication/crl_payday_rate_cap_map_2016.pdf
[8] Delvin Davis & Susan Lupton, "States without Payday and Car-title Lending Save Over $5 Billion in Fees Annually," Center for Responsible Lending (Updated Jan. 2017), http://www.responsiblelending.org/sites/default/files/nodes/files/researchpublication/crl_payday_fee_savings_jun2016.pdf

authorizations because the higher-cost loans resulted in damage to consumers and their communities.[9] In order to preserve these important consumer protections, we strongly urge the OCC to directly cap interest rates, and require charter applicants to comply with existing state usury laws.

Importantly, states with these rate caps and other protections have been repeatedly successful at preventing lenders from evading them. This includes effective enforcement against arrangements such as payday lenders' partnering with out-of-state banks in order to export higher interest, and variations on this scheme of third-party or brokering partnerships designed with the intent of evading state rate limits. Proceeding with the proposed charter not only undermines this existing work by state and federal law enforcement, but also does nothing to alleviate predatory lenders' propensity to engage in subterfuge.

We reiterate the comments made in the National Consumer Law Center's ("NCLC") January 2017 filing which state that "[i]t is theoretically possible that an OCC expectation that rates and fees be related to costs and risk, combined with a requirement for low default rates, could lead special purpose national banks to keep their rates reasonable. But this is at best a vague standard, making it difficult to enforce because it requires the OCC to engage in complex and intensive lender-by-lender evaluations of pricing decisions and cost justifications."[10] Although the OCC states that it will not charter businesses with "predatory" financial products in the "Chartering Standards" section of its draft guidance, this is an ambiguous and discretionary standard. A more effective and enforceable approach is simply capping interest rates. Numerous federal regulators and Congress have recognized a 36% all-inclusive APR as the bright line threshold between affordable and unaffordable loans for very small loans.[11] As stated above, the OCC should enforce a rate cap in of the lesser of an all-36% cap, or the applicable state law.

In order to mitigate the damage from preemption of strong state laws, the OCC must also explicitly ban fintech charter applicants from providing products with balloon payments, negative amortization, excessively long terms, loan flipping, prepayment penalties, and lending without regard to repayment ability. The OCC previously issued an advisory letter outlining lending practices that suggest abuse, and the aforementioned lending practices were all listed as potential indicators of unscrupulous behaviors.[12] If the OCC truly wishes to avoid chartering entities with products that "pose undue risk to consumer protection," it should place part of the onus on the businesses seeking a charter and require them to certify that they will not engage in these problematic practices.

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[9] Robin Howarth, Delvin Davis, & Sarah Wolff, Center for Responsible Lending, "Shark-Free Waters: States are Better Off without Payday Lending," (Aug. 2016), http://www.responsiblelending.org/sites/default/files/nodes/files/researchpublication/crl_shark_free_waters_aug2016.pdf

[10] Comments of National Low Income Law Center, et. al., to the OCC, "Exploring Special Purpose National Bank Charters for Fintech Companies," January 17, 2017, http://www.nclc.org/images/pdf/banking_and_payment_systems/fintech/comments-fintech-jan2017.pdf

[11] Kate Berry, American Banker, "Why the CFPB's Sweet Spot for Installment Loan APR Is 36%," June 8, 2016, https://www.americanbanker.com/news/why-the-cfpbs-sweet-spot-for-installment-loan-apr-is-36, FDIC 2007 FIL https://www.fdic.gov/news/news/financial/2007/fil07050a.html, Military Lending Act 10 U.S. Code § 987, Delvin Davis and Susan Lupton, Center for Responsible Lending, "States without Payday and Car-title Lending Save Over $5 Billion in Fees Annually," http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_fee_savings_jun2016.pdf.

[12] OCC Advisory Letter 2000-7, Abusive Lending Practices, at 1,July 25, 2000,https://www.occ.gov/static/news-issuances/memos-advisory-letters/2000/advisory-letter-2000-7.pdf

B. Underwriting

Responsible lending requires that loans be affordable to a borrower in light of their income and expenses, and that the loan can be repaid without reborrowing or defaulting on other expenses. Nothing in the proposal protects against the harms of unaffordable loans, or even lender business models which financially benefit from high rates of repeat lending or defaults. As such, the OCC must ensure that the borrower can afford the loan. Meaningful interest rate caps are the most effective way of ensuring that the interests of lenders and borrowers are aligned, so that lenders have an incentive to make only loans that borrowers can afford to repay.[13] But even with rate caps, an explicit requirement that lenders focus on borrowers' ability to repay is also essential. The OCC must ensure that the loans are truly affordable to the borrowers, not just that the lenders are assured of being repaid. Ability to repay is not the same thing as the lender's ability to collect.[14]

The OCC has issued many guidance letters over the years that emphasize banks' obligation to consider borrowers' ability to repay. Some of the letters have criticized lending based on the liquidation value of the borrower's home or other collateral.[15] Others have focused on frequent refinancing or renewal of payday loans as an indication of inability to repay.[16]

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[13] *See* National Consumer Law Center, *Misaligned Incentives: Why High-rate Installment Lenders Want Borrowers Who Will Default* (July 2016) ("NCLC, Misaligned Incentives), *available at* http://www.nclc.org/images/pdf/high_cost_small_loans/payday_loans/report-misaligned-incentives.pdf.

[14] *See also* Fintech Charter Comments of Responsible Business Lending Coalition at 6 ("Lenders should not make loans that the borrower cannot truly afford, even if the lender can find a way to be repaid.").

[15] *See, e.g.,* OCC Bulletin 2013-40, Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products, 78 Fed. Reg. 70624, 70629 n. 25 (Nov. 26, 2013) ("[L]oans to borrowers who do not demonstrate the capacity to repay the loan, as structured, from sources other than the collateral pledged, in this case the customer's direct deposit, are generally considered unsafe and unsound. Such lending practices should be criticized in the Report of Examination as imprudent."); OCC Advisory Letter 2003-2, Guidelines for National Banks to Guard Against Predatory and Abusive Lending Practices (Feb. 21, 2003) ("[A] fundamental characteristic of predatory lending is the aggressive marketing of credit to prospective borrowers who simply cannot afford the credit on the terms being offered. Typically, such credit is underwritten predominantly on the basis of the liquidation value of the collateral, without regard to the borrower's ability to service and repay the loan according to its terms absent resorting to that collateral. This abusive practice leads to 'equity stripping.' When a loan has been made based on the foreclosure value of the collateral, rather than on a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, based on the borrower's current and expected income, current obligations, employment status, and other relevant financial resources, the lender is effectively counting on its ability to seize the borrower's equity in the collateral to satisfy the obligation and to recover the typically high fees associated with such credit."); OCC Advisory Letter 2000-11, Title Loan Programs (Nov. 27, 2000) ("Prudent lending standards require a bank to determine the borrower's financial capacity, the value of the collateral, and the condition and location of the collateral. Some title loans are made based on the value of the collateral and not on the borrower's ability to repay the loan at its stated maturity. Such loans are inconsistent with safe and sound lending principles."); OCC Advisory Letter 2000-7, Abusive Lending Practices (July 25, 2000) (describing as an indication of abusive lending: "Collateral or Equity 'Stripping' - loans made in reliance on the liquidation value of the borrower's home or other collateral, rather than the borrower's independent ability to repay, with the possible or even intended result of foreclosure or the need to refinance under duress.").

[16] OCC Advisory Letter 2000-10, Payday Lending (Nov. 27, 2000) ("[A] bank must adopt explicit standards that control the use of renewals, and the standards must be based on the borrower's willingness and ability to repay the loan. …A bank should not renew a payday loan except upon a written request by the borrower that certifies an inability to repay the loan, states a specific reason that occurred subsequent to the date of origination or last renewal, and states why the borrower will be able to repay the loan at the new maturity date.").

These guidances are helpful, and they illustrate a consistent OCC expectation of sound underwriting. But unaffordable lending can take many forms, and it is not always tied to collateral based-lending or rollovers of short-term loans. Preauthorized electronic payments, security interests in personal property (even if worthless as collateral), or aggressive debt collection practices can also allow lenders to recover payments even if the borrower cannot afford to repay the loan while meeting other expenses.[17] Fintech companies that receive the bulk of their revenues from the origination process rather than from performance of the loan may also have weaker incentives to properly ensure long-term affordability,[18] just as pre-2008 mortgage lenders did.

In order to make clear that concerns about insufficient underwriting for ability to repay are not limited to the particular contexts or practices discussed in past guidances, the OCC should explicitly impose a general ability to repay requirement on any special purpose national bank:

> *The bank must make a determination that the borrower has the capacity to make the scheduled payments under the terms of the loan, without reborrowing, based on the borrower's current and expected income, current obligations, employment status, and other relevant financial resources.*

Notably, the Responsible Business Lending Coalition is urging to OCC to adopt a similar standard, recognizing that ability-to-pay standards are important to small business borrowers and responsible lenders as well as to consumers.[19]

In the first instance, an ability-to-repay standard requires front-end underwriting standards and application criteria.

It is also critical to evaluate compliance with the ability-to-repay requirement by imposing back-end standards to measure the effectiveness of lenders' underwriting practices. A determination of ability to repay is not reasonable if it is based on criteria that have led to high default or reborrowing rates in the past.

<u>The OCC should expect national banks to aim for a default rate that does not exceed 5%. Defaults of more than 10% should be considered unacceptable, triggering a requirement that the lender tighten its underwriting standards.</u> The OCC should also evaluate other indicators that borrowers are unable to afford their loans (such as late payments, delinquencies, bounced payments, and high rates of refinancing). Monitoring how loans perform in practice ensures that front-end underwriting standards are meaningful and are accomplishing their goal.

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[17] Comments of the Center for Responsible Lending, National Consumer Law Center, Consumer Federation of America, The Leadership Conference on Civil and Human Rights, NAACP, and National Council of La Raza, to the Consumer Financial Protection Bureau, "Request For Information On Payday Loans, Vehicle Title Loans, Installment Loans And Open-End Lines Of Credit, Docket Number CFPB-2016-0026, RIN 3170-Aa40." At 6-20, November 7, 2016, https://www.nclc.org/images/pdf/rulemaking/cmmnt-cfpb-RFI-11072016.pdf

[18] *See, e.g.,* Moody's Investor Services, Press Release, Moody's: Unique risks in marketplace versus traditional lending (May 5, 2015), https://www.moodys.com/research/Moodys-Unique-risks-in-marketplaceversus-traditional-lending--PR_324544.

[19] *See* Fintech Charter Comments of Responsible Business Lending Coalition at 6 (urging the OCC to require lenders to "Offer financing only with high confidence that the borrower can repay its entire debt burden without defaulting or re-borrowing.").

A goal of defaults under 5% and an expected maximum of 10% defaults is consistent with the standards in many lending markets. The national credit card charge-off rate is currently (third quarter of 2016) 3.07%.[20] At its peak during the Great Recession, the credit card charge-off rate was 10.8%,[21] a rate that was considered far too high and the result of unusually severe economic conditions.

A survey provided to the CFPB found that the charge-off rates for community bank loans that would be covered by the proposed payday loan rule are between 0.54% and 1.02%.[22] The loans in the survey have a total cost of credit above 36%, are under $1,000, and are repaid automatically. Another trade association survey of small dollar loans by banks of all sizes found that a third had no charge-offs at all. The remainder had charge-offs of only about 3%.[23]

The National Credit Union Administration (NCUA) estimates that the charge-off rate for loans under NCUA's Payday Loan Alternative program is 7.5%.[24] Notably, these loans are often made to subprime borrowers without detailed underwriting.

A survey by North Carolina Office of the Commissioner of Banks of lenders operating under the state's Consumer Finance Act found charge-off rates of 5.2% to 8.6%,[25] with some lenders having negligible or no charge-offs.[26] The average FICO score of consumer finance company borrowers was 578.[27] For all lenders, the average interest rate charged was 24%.[28]

A report on loans made under California's small dollar loan pilot program showed that only 3.9% of loans made in 2014 were 60 or more days delinquent.[29] Nearly two-thirds of the loans were made in lower- or moderate-income neighborhoods, with most of the remainder in middle-income neighborhoods.

[20] Board of Governors of the Federal Reserve System, Charge-Off and Delinquency Rates on Loans and Leases at Commercial Banks, *available at* http://www.federalreserve.gov/releases/chargeoff/chgallsa.htm.
[21] *See id.* (second quarter of 2010).
[22] CFPB Payday NPR, 81 Fed. Reg. at 48045 n.756 (citing ICBA Letter Oct. 6, 2015)), *available at* http://consumerfed.org/wp-content/uploads/2016/10/10-7-16-Payday-Rule_Comment.pdf.
[23] CFPB Payday NPR, 81 Fed. Reg. at 48045 n.756 (citing ABA Letter Dec. 1, 2015).
[24] CFPB Payday NPR, 81 Fed. Reg. at 47892 ("Over 700 Federal credit unions, nearly 20 percent of Federal credit unions nationally, made approximately $123.3 million in Payday Alternative Loans during 2015. In 2014, the average loan amount was $678. Three-quarters of the participating Federal credit unions reported consumer payment history to consumer reporting agencies. The annualized net charge-off rate, as a percent of average loan balances outstanding, in 2014 for these loans was 7.5 percent."), *available at* https://s3.amazonaws.com/files.consumerfinance.gov/f/documents/Rulemaking_Payday_Vehicle_Title_Certain_High-Cost_Installment_Loans.pdf.
[25] North Carolina Office of the Commissioner of Banks, The Consumer Finance Act: Report and Recommendations to the 2011 General Assembly at 40 (Feb. 2011), *available at* http://ccc.sites.unc.edu/files/2013/02/NCCOB.CFA_.Report.pdf.
[26] *Id.* at 48.
[27] *Id.* at 19 (summarizing 2009 report by Equifax covering the prior seven years).
[28] *Id.* at 34.
[29] Calif. Dept. of Business Oversight, Report of Activity Under Small Dollar Loan Pilot Programs at 4 (June 2015), *available at* http://www.dbo.ca.gov/Licensees/Finance_Lenders/pdf/Pilot%20Program%20Report%202015%20Final.pdf.

Thus, defaults are generally in the single-digits outside of predatory lending markets. Charge-off rates are in that range even for lenders that serve consumers with subprime credit scores. High-cost lenders, on the other hand, typically have much higher default rates of 20% or even higher.[30] An OCC rule that default rates generally be kept under 5%, with rates above 10% triggering action, will promote expectations that the vast majority of borrowers should be able to repay their loans.

To the extent possible, default rates should be measured as a cumulative cohort, per-consumer default rate, taking into account any reborrowing. That is, for a given group of borrowers, what share of them ultimately default, either on the original loan or after refinancing? That is the best measure of what proportion of consumers ultimately are unable to repay their loans. If cumulative cohort default rates are too difficult to track uniformly, then the OCC should use an annualized charge-off rate (dollars charged off as a percent of dollars outstanding).[31]

Focusing on a per-consumer and not per-loan default rate is essential, because reborrowing and refinancing can dramatically mask default rates. Per-loan default rates are artificially low in some loan markets, such as payday loans and high-cost installment loans, where refinancing rates are significant.[32]

In addition, the OCC's chartering requirements must include an evaluation of lenders' use of alternative data. Some lenders use non-traditional sources of information to evaluate consumers that otherwise lack a sufficient credit history.[33] The Consumer Financial Protection Bureau ("CFPB") has recently explored the impact of alternative data on credit access for consumers, including risks posed by alternative data that is "inconsistent, incomplete, incorrect, overgeneralized, or biased."[34] Several fintechs use proprietary, algorithm-based lending that assesses alternative data factors like undergraduate college attendance, social media activity, and even the ability to use punctuation and capitalization, to determine creditworthiness for individual consumers and small businesses.[35] Although

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[30] *See* NCLC, Misaligned Incentives at 31-35.

[31] As long as the denominator is loans outstanding at a given time (rather than total dollars of credit extended throughout the year), charge-off rates generally avoid double counting of consumers who reborrow. However, the percentage of dollars charged off is generally lower than the percentage of consumers who default, because most defaulters make some payments before defaulting. For example, if a lender made five $100 loans and one borrower defaulted after paying $50, the charge-off rate would be 10% ($50/$500 dollars charged off) but the per-consumer default rate would be 20% (1/5 consumers). Because the charge-off rate may not reflect the full percentage of consumers who default, the OCC should also keep an eye on the cumulative cohort per-consumer default rate to the extent possible.

[32] *See* Comments of Center for Responsible Lending, et. al, to the Consumer Financial Protection Bureau, "Proposed Rule on Payday, Vehicle Title, and Certain High-Cost Installment Loans
12 CFR Part 104, Docket No. CFPB-2016-0025, RIN 3170-AA40," at 118-21, 126-27, October 7, 2016, http://responsiblelending.org/sites/default/files/nodes/files/research-publication/crl_payday_comment_oct2016.pdf; *See also,* NCLC, Misaligned Incentives at 27-28.

[33] Buckley Sandler, "CFPB to Explore "Alternative Data" as Means to Measure the "Credit Invisible," available at https://buckleysandler.com/blog/2017-02-17/cfpb-explore-%E2%80%9Calternative-data%E2%80%9D-means-measure-%E2%80%9Ccredit-invisible%E2%80%9D

[34] CFPB, "CFPB Explores Impact of Alternative Data on Credit Access for Consumers Who Are Credit Invisible," Feb. 16, 2017, available at https://www.consumerfinance.gov/about-us/newsroom/cfpb-explores-impact-alternative-data-credit-access-consumers-who-are-credit-invisible/

[35] Upstart, an online lending marketplace, uses variables like academic performance and school attendance in its underwriting. ZestFinance, and online installment lender, uses consumer spelling ability, to determine creditworthiness. https://www.crunchbase.com/organization/upstart#/entity; *See also*, Penny Carson, American

these data points are presented as "unique" and "innovative," their usage presents fair lending and disparate impact issues. Federal regulations and statutes clearly state that evidence of disparate impact is proof of lending discrimination.[36] For these reasons, any business seeking a special purpose non-depository charter from the OCC must be able to prove that its underwriting techniques and data gathering do not result in discriminatory lending decisions.

C. Lending Disclosures

Even though fintech companies may be pioneering new lending and banking techniques, they are still bound by the regulations that cover their loan products and practices. For example, the federal Truth In Lending Act ("TILA") requires lenders to disclose the cost of a loan, and the disclosure rules lenders must follow differ depending on whether the creditor is offering open-end credit, such as credit cards or home-equity lines, or closed-end credit, such as car loans or mortgages.[37] To further these fair lending objectives—as well as those found in laws such as the Fair Credit Reporting Act and the Fair Debt Collections Practices Act— the OCC should require any fintech company seeking a special-purpose charter to provide clear loan disclosures and terms to all customers, including small business customers.

Access to Credit and Market Distortion

The OCC states that under its governing statutes and regulations, "in evaluating an application to establish a national bank, including a [special purpose national bank], the OCC is guided by [the principle of] encouraging a national bank to provide fair access to financial services by helping to meet the credit needs of its entire community." Instead of moving forward and creating a regulatory space where fintech companies could have their ideas and practices vetted under regulatory control and oversight before they are rolled out to a larger number of customers, the OCC has pressed forward with allowing these non-depositories to have bank charters, potentially jeopardizing consumers in the process. We believe that this approach does not truly foster innovation that benefits underserved consumers, and the OCC has floundered in this attempt to support financial inclusion.

Furthermore, the importance of the charter to innovation is questionable, as the OCC's charter proposal naturally favors established companies over new businesses. The fintech charter licensing process will be very similar to the licensing process for traditional banks, including capital, liquidity, business plan, financial inclusion, and recovery strategy requirements, and mandating experienced management.[38] To that end, the OCC takes lengths to explain that obtaining a charter will undoubtedly be an arduous undertaking, and likely impossible for all but the most established and profitable fintech companies. This

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Banker, "Can AI Be Programmed to Make Fair Lending Decisions?", Sept. 27, 2016, https://www.americanbanker.com/news/can-ai-be-programmed-to-make-fair-lending-decisions

[36] See, e.g., 12 C.F.R. Part 1002 Supp. I Sec. 1002.6(a)-2 (Regulation B reference to legislative history reflecting effects test); Interagency Task Force on Fair Lending, *Policy Statement on Discrimination in Lending,* 59 Fed. Reg. 18,266 (Apr. 15, 1994) (online at www.occ.treas.gov/news-issuances/federal-register/94fr9214.pdf) (further reflecting Regulation B and legislative history supporting use of disparate impact and reflecting agreement of all bank regulators on that approach).

[37] 15 U.S. Code § 1601

[38] Office of the Comptroller of the Currency, "Exploring Special Purpose National Bank Charters for Fintech Companies," https://www.occ.treas.gov/topics/responsible-innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf

reality greatly undermines the OCC's professed goal that it is establishing special purpose charters to foster innovation, and instead makes it appear that the OCC would be picking winners and losers.

Conclusion

As the OCC is intent on moving forward with its charter proposal without the coordination of other federal banking regulators or congressional authorization, it must ensure that consumers and small businesses are adequately protected. We appreciate the OCC's efforts to regulate financial innovation, but OCC must impose specific requirements on non-depositories wishing to receive a federal banking charter, and these requirements should not be imposed on a discretionary or case-by-case-basis. Thank you for the opportunity to comment.

Sincerely,

Center for Responsible Lending
The Leadership Conference for Civil and Human Rights
NAACP
Main Street Alliance
Americans for Financial Reform
National Consumer Law Center (on behalf of its low income clients)

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The **Center for Responsible Lending (CRL)** is a nonprofit, non-partisan research and policy organization dedicated to protecting homeownership and family wealth by working to eliminate abusive financial practices. CRL is an affiliate of Self-Help, one of the nation's largest nonprofit community development financial institutions. Self-Help has provided over $6 billion in financing to 70,000 homebuyers, small businesses, and nonprofits. It serves more than 80,000 mostly low-income families through 30 retail credit union branches in North Carolina, California, and Chicago

The **Leadership Conference on Civil and Human Rights** is the nation's oldest and most diverse coalition of civil and human rights organizations. Founded in 1950 by Arnold Aronson, A. Philip Randolph, and Roy Wilkins, The Leadership Conference seeks to further the goal of equality under law through legislative advocacy and public education. The Leadership Conference consists of more than 200 national organizations representing persons of color, women, children, organized labor, persons with disabilities, the elderly, gays and lesbians, and major religious groups. Founded in 1909, the National Association for the Advancement of Colored People (NAACP) is our nation's oldest, largest and most widely known grassroots civil rights organization. The principal objectives of NAACP are to ensure the political, educational, social and economic equality of all citizens; to achieve equality of rights and eliminate racial prejudice among the citizens of the United States; to remove all barriers of racial discrimination through democratic processes; to seek enactment and enforcement of federal, state and local laws securing civil rights; to inform the public of the adverse effects of racial discrimination and to seek its elimination; to educate persons as to their constitutional rights and to take all lawful action to secure the exercise thereof.

The Main Street Alliance is a national, nonprofit organization dedicated to raising small business owners' voices on issues that impact their businesses, their employees, and the communities they serve. Founded in 2008, MSA has become a national network, representing 30,000 small business owners across the United States, with chapters and affiliates in 13 states. MSA represents a diverse group of small business owners in industries ranging from storefront service, retail and restaurants, to light manufacturing and food processing.

Americans for Financial Reform is a nonpartisan and nonprofit coalition of more than 200 civil rights, consumer, labor, business, investor, faith-based, and civic and community groups. Formed in the wake of the 2008 crisis, we are working to lay the foundation for a strong, stable, and ethical financial system – one that serves the economy and the nation as a whole.

Since 1969, the nonprofit **National Consumer Law Center® (NCLC®)** has used its expertise in consumer law and energy policy to work for consumer justice and economic security for low-income and other disadvantaged people, including older adults, in the United States. NCLC's expertise includes policy analysis and advocacy; consumer law and energy publications; litigation; expert witness services, and training and advice for advocates. NCLC works with nonprofit and legal services organizations, private attorneys, policymakers, and federal and state government and courts across the nation to stop exploitive practices, help financially stressed families build and retain wealth, and advance economic fairness