

Mr. Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
Washington, DC

VIA EMAIL 15 January 2017
regs.comments@occ.treas.gov

Re: Exploring Special Purpose National Bank Charters for Fintech Companies

Dear Comptroller Curry:

The Center for Digital Democracy¹ and U.S. Public Interest Research Group (U.S. PIRG)² agree with the consumer, civil rights, and community groups and their separately filed group letter in which they expressed strong opposition to the proposed new federal nonbank lending charters. U.S. PIRG also signed and concurs with the detailed comment from National Consumer Law Center *et al.* The OCC must not undermine state rate caps; must not weaken states' ability to oversee lenders and act to prevent harmful lending practices; and the OCC must not undermine efforts to provide fair and inclusive lending practices, particularly for people of color and low- and moderate-income consumers, in the areas where they operate. Further, the OCC must not allow nonbank lenders to engage in practices that violate privacy rights, or engage in unfair data and marketing practices. State laws often operate as the primary line of defense for consumers and small businesses. The OCC's charter proposal inadequately protects consumers from these harmful practices and it should not take state law enforcers off the beat of preventing these practices.

Center for Digital Democracy and U.S. PIRG file this supplemental comment to focus on the digital rights and consumer privacy concerns raised by the use of opaque Big Data algorithms used by Fintech firms. These practices increasingly threaten consumer privacy and the OCC must also take them into account when considering non-bank special purpose charters.

¹ The Center for Digital Democracy is recognized as one of the leading consumer protection and privacy organizations in the United States. Since its founding in 2001 (and prior to that through its predecessor organization, the Center for Media Education), CDD has been at the forefront of research, public education, and advocacy protecting consumers in the digital age.

² U.S. PIRG serves as the federation of state Public Interest Research Groups. PIRGs are non-profit, non-partisan consumer groups that stand up to powerful interests whenever they threaten our health and safety, our financial security, or our right to fully participate in our democratic society.

An ongoing and increasingly challenging issue confronting citizens and consumers is the new threats to their privacy and their ability to control how personal and non-personal data about their online and offline behavior are collected and used by online financial services companies. The use of personal data by Fintech companies is pervasive and touches every aspect of their business operation, including marketing, customer loyalty management, pricing, fraud prevention, and underwriting. Fintech companies use many new on- and offline data sources, either directly collecting data from consumers or relying on third parties for Big Data analytics to classify consumers and to make predictions about them. Assigning individuals to socially constructed classifications and then making inferences about them based on group profiles is likely to have consequences that are not well understood and may further increase social inequities. Consumers' privacy is increasingly undermined and no adequate protections are in place. The OCC must not allow an expansion of these practices via a federal charter that does not provide for adequate privacy safeguards.

The OCC must proactively investigate unfair marketing practices and not grant national licenses without affirmative protections. Fintech companies are using Facebook, Instagram, and other digital behavioral data that combine data and interactive experiences to influence consumers and their social networks. Sophisticated data-processing capabilities allow for more precise micro-targeting, the creation of comprehensive profiles, and the ability to act instantly on the insights gained from consumer behaviors. Targeted and highly personalized marketing offers can be intrusive and foster consumer behaviors that are not in the best interest of the individual. Behavioral science shows that consumers are susceptible to 'nudges' which raises concerns about the risk of financial institutions taking advantage of the behavioral biases and limitations of consumers. Increasing personalization which Big Data makes possible, could also reduce the comparability of products, making it harder for consumers to compare one offer with another which could have an impact on market competition. Similarly, lack of transparency around the processing of data and automated algorithms may lead to increasing information asymmetries between the financial institution and the individual and thus consumers are left with less awareness and a lack of understanding and control over important financial decisions. These practices happen behind the scenes and can only be addressed by a vigilant regulator. The OCC should not allow fintech companies to operate a national license without properly addressing these data practices.

The OCC must also not allow nonbank lenders or partner depository institutions to engage in unfair and discriminatory lending practices. The use of 'alternative data' sources can be the cause of bias or contain errors and may lead to consumer harm or unfairness. While alternative credit scoring can be a boon for the underbanked, there need to be standards and safeguards to ensure that any new data are not biased and that their use may not lead to unintended consequences. While industry has argued that increased automation will help expand access to credit and lower costs overall, credit models that are more "accurate" may lead to a more stratified society, as it

will leave those at the bottom potentially excluded from credit forever. Models that judge individuals against group profiles based on past data inevitably incorporate elements of past inequality and discrimination. Communities of color are thus most vulnerable. Unless additional policies are put in place to address these consequences, inequality is likely to become more entrenched the more we rely on models for risk evaluations. Fintech platforms must comply fully with the requirements of the Fair Credit Reporting Act and Equal Credit Opportunity Act.

In conclusion, the OCC must not grant new federal nonbank lending charters that would give firms free rein to use unfair data and marketing practices. Instead the OCC must proactively mitigate risks from unfair data, marketing, and lending practices that threaten to undermine privacy, consumer rights and economic inclusion.

Sincerely,

Jeff Chester and Katharina Kopp
Center for Digital Democracy

Edmund Mierzwinski
U.S. PIRG

Recommended further reading:
BIG DATA MEANS BIG OPPORTUNITIES AND BIG CHALLENGES: Promoting Financial Inclusion and Consumer Protection in the “Big Data” Financial Era

U.S. PIRG Education Fund and Center for Digital Democracy, 27 March 2014

Available at <http://www.uspirg.org/reports/usf/big-data-means-big-opportunities-and-big-challenges>