

January 15, 2017

The Honorable Thomas J. Curry  
Comptroller  
Office of the Comptroller of the Currency  
400 7<sup>th</sup> Street SW  
Washington, DC 20219  
[Regs.comments@occ.treas.gov](mailto:Regs.comments@occ.treas.gov); [Specialpurposecharter@occ.treas.gov](mailto:Specialpurposecharter@occ.treas.gov)

*RE: Exploring Special Purpose National Bank Charters for Fintech Companies*

Dear Comptroller Curry:

As part of its activities in developing policies to reduce poverty and ensure a stable middle-class, the Center for American Progress advocates for public policies that improve the financial well-being of low- and moderate-income households and that promote a financial system that works for everyone. We are writing to express major concerns regarding the proposed special purpose national bank charter for fintech companies, particularly with regard to the proposal's interaction with state consumer protections including interest rate caps.

Notably, a chartered nonbank entity's intersection with state laws and regulations could be highly problematic. The states and the federal government play complementary roles in supporting financial stability and consumer protection, and there are circumstances in which strong federal action is warranted on each of these grounds. At the same time, the preemption language in the OCC's proposal would reopen the door to predatory lending practices under the auspices of the National Bank Act. States have often served as the first line of defense for consumers, and state regulators and Attorneys General have often intervened in cases where federal officials were unwilling or unable to act.

A preemptive charter threatens the ability of states to effectively police practices that they view as troubling. In particular, the proposed charter would preempt state interest rate caps, an essential component of consumer protection particularly given the absence of a comparable federal cap that broadly covers all borrowers. Fifteen states and the District of Columbia—collectively home to 90 million residents—currently use interest rate caps of 36 percent or less to address the harms posed by high-cost, short-term loans such as payday and auto title loans.<sup>1</sup> In

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<sup>1</sup> Joe Valenti, "Encouraging Responsible Credit for Financially Vulnerable Consumers" (Washington: Center for American Progress, 2014), available at <https://www.americanprogress.org/issues/economy/reports/2014/07/10/93459/encouraging-responsible-credit-for-financially-vulnerable-consumers/>. Since this report was released, South Dakota became the fifteenth state to impose such a cap through a 2016 referendum.

one of these states, South Dakota, an overwhelming majority of voters last November supported a 36 percent annual interest rate cap on the ballot, joining other states including Ohio, Arizona, and Montana where voters similarly demanded an end to predatory practices over the past decade.<sup>2</sup> States have already faced challenges from online lenders and various loopholes—such as the use of a mortgage lending charter in Ohio to offer payday loans—to their existing statutes and regulations.<sup>3</sup> Further weakening states’ ability to enforce their own rate caps, as the proposed charter’s preemption regime would do, runs contrary to the mutually beneficial goals of financial inclusion and consumer protection. The OCC previously recognized the value of regulating risky, high-cost lending in its guidance on deposit advance products<sup>4</sup> and must reaffirm the need for such regulation in any new charter.

Meanwhile, the specific financial inclusion objectives of such a charter remain unclear. The challenge of financial inclusion begins with the nearly 16 million adults in the United States who lack even a bank account.<sup>5</sup> A nondepository charter does not expand the capacity of these individuals to have opportunities for insured checking and savings accounts. Additionally, whether directed primarily at the unbanked or at the nation’s approximately 51 million underbanked adults, technologies to expand access to credit for underserved populations should conform to existing state consumer protections. And some promising alternative approaches, such as personal financial management tools delivered through apps, may not constitute financial products in and of themselves. They could likely exist in the absence of a charter as consumer-facing tools integrated with regulated accounts and institutions, or could develop into the offerings of a chartered institution over time.

We recognize the importance of emerging technologies to foster inclusion: our research has shown that in nine states and the District of Columbia, more adults have cell phones than bank accounts.<sup>6</sup> At the same time, it is risky to pursue inclusion and innovation without strong consumer protections in place at both the state and federal levels. As the Consumer Financial Protection Bureau noted in an enforcement action against a small-dollar lending startup last year,

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<sup>2</sup> Liz Farmer, “Facing 652% Interest Rates, South Dakota Voters Regulate Payday Lending,” *Governing*, November 9, 2016, available at <http://www.governing.com/topics/elections/gov-south-dakota-payday-lending-ballot-measures.html>.

<sup>3</sup> Joe Valenti, “Encouraging Responsible Credit for Financially Vulnerable Consumers” (Washington: Center for American Progress, 2014).

<sup>4</sup> Office of the Comptroller of the Currency, “Guidance on Supervisory Concerns and Expectations Regarding Deposit Advance Products,” November 26, 2013, available at <https://www.occ.gov/news-issuances/federal-register/78fr70624.pdf>.

<sup>5</sup> Federal Deposit Insurance Corporation, “2015 FDIC National Survey of Unbanked and Underbanked Households,” October 20, 2016, available at <https://www.fdic.gov/householdsurvey/2015/2015report.pdf>.

<sup>6</sup> Joe Valenti, “5 Trends to Watch in Consumer Finance” (Washington: Center for American Progress, 2016), available at <https://www.americanprogress.org/issues/economy/news/2016/02/23/131541/5-trends-to-watch-in-consumer-finance/>.

even firms claiming to be socially responsible under a rubric of inclusion must be held accountable when they are deceiving consumers or violating the law.<sup>7</sup>

At its core, the potential for a nonbank charter poses the risk of a return to the competitive “charter shopping” environment of the years leading up to the financial crisis, with firms seeking to identify regulators on the most favorable and least onerous terms.<sup>8</sup> To date, the proposal has failed to demonstrate that a nonbank charter will appropriately deal with this challenge. Alternative approaches, such as the use of no-action letters for promising pilots or the development of reciprocal licensing agreements for states with comparable consumer protection laws, could potentially better balance the goals of innovative finance and consumer protection without increasing risk to underserved populations and circumventing existing state protections. And any approach to expand federal charters for financial services in the name of inclusion must include provisions, rooted in the principles of the Community Reinvestment Act, that hold such chartered entities accountable to the communities they intend to serve.

Thank you for providing us the opportunity to comment on this proposal. If you have any questions or would like any additional information, please contact Joe Valenti, Director of Consumer Finance, at [jvalenti@americanprogress.org](mailto:jvalenti@americanprogress.org).

Sincerely,

Joe Valenti  
Director of Consumer Finance  
Center for American Progress

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<sup>7</sup> Consumer Financial Protection Bureau, “CFPB Orders LendUp to Pay \$3.63 Million for Failing to Deliver Promised Benefits,” Press release, September 27, 2016, available at <http://www.consumerfinance.gov/about-us/newsroom/lendup-enforcement-action/>.

<sup>8</sup> For example, Binyamin Appelbaum, “By Switching Their Charters, Banks Skirt Supervision,” *The Washington Post*, January 22, 2009, available at <http://www.washingtonpost.com/wp-dyn/content/article/2009/01/21/AR2009012104267.html>.