



Small business owners. Small business values.

Monday, January 16, 2017

Mr. Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Re: "Exploring Special Purpose National Bank Charters for Fintech Companies"

Dear Comptroller Curry:

The Main Street Alliance, and our state and chapter affiliates, write to strongly oppose the enactment of a special purpose charter for fintech companies. The Main Street Alliance is a national network of small business owners who engage on local, state, and national policy issues of concern to small businesses, their employees, and their community. Access to safe and affordable capital is a key policy priority for our business owners. **We are deeply concerned that the proposed charter would undermine critical state protections and place small businesses at grave financial risk.**

While the growth of the fintech industry presents new opportunities for overlooked businesses to access capital, it also brings considerable risks. To date, irresponsible, and potentially predatory, lending practices have been documented in the online lending market. For instance, average APRs have hovered around 94%, with rates as high as 358%, according to a study by the Opportunity Fund.¹ Fintech lenders have also included hidden or deceptive prepayment charges, opaqueness in repayment policies, and questionable brokerage practices. Not surprising, a 2016 Federal Reserve study reported exceedingly low satisfaction levels among business owners who used online loans (15%), attributable to the high interest rates and unfavorable payment terms of these loans.²

For small business owners, the potential for fintech companies to inflict serious harm is even more pronounced since many critical federal consumer protection laws do not extend to

¹ See Opportunity Fund, "Unaffordable and Unsustainable: The New Business Lending", May 2016, accessed at http://www.opportunityfund.org/assets/docs/Unaffordable%20and%20Unsustainable-The%20New%20Business%20Lending%20on%20Main%20Street_Opportunity%20Fund%20Research%20Report_May%202016.pdf

² Federal Reserve Bank of Boston, "2015 Small Business Credit Survey: Report on Employer Firms," March 2016, https://www.bostonfed.org/-/media/Documents/small-business-credit-survey/2015_Small_Business_Credit_Survey.pdf.

commercial loans.³ Consequently, state laws are the primary, and in many cases, only, line of defense against the lending industry.

Robust and comprehensive federal protections are clearly needed to address the current regulatory gaps. However, rather than serve this function, we believe that the proposed charter--in extending bank preemption to fintech companies--would create a *more* perilous lending environment for small business owners by weakening existing state protections without offering comparable coverage at the national level. We further elaborate below.

OCC charter would preempt state interest rates

First, in extending bank preemption to fintech companies, the OCC would exempt chartered companies from state interest rate laws. As noted above, fintech companies have already demonstrated a willingness to engage in usurious activities. Interest rate caps are the simplest, most effective way to protect small business owners from unaffordable, high-rate loans. However, given the absence of any federal rate cap, the OCC proposal would effectively nullify existing state rate caps, many of which extend to small business owners (e.g., North Dakota's recent usury law extends to commercial and consumer lending).

OCC charter would undermine state and federal oversight

Second, the OCC would undermine state and Federal Trade Commission (FTC) oversight. The OCC charter would hamstring states' ability to oversee lenders and prevent harmful lending practices. In some states, Unfair and Deceptive Practices (UDAP) laws protect small businesses,⁴ and other states, such as Illinois, are considering new laws targeting abuse by fintech lenders.⁵ The OCC's charter proposal enables companies to avoid state licensing regimes and oversight by state regulators and attorneys general. Even where AGs would retain enforcement authority, their ability to investigate abuses would be curtailed.

Furthermore, the issuance of a national bank charter would likely deprive the FTC of jurisdiction over fintech companies.⁶ This is particularly worrisome for small business owners, since the FTC has played an important role in monitoring unfair and deceptive practices against them.^{7,8} We

³ For instance, the Truth in Lending Act does not apply to commercial loans, nor does the Truth in Savings Act, the Electronic Fund Transfer Act, the Fair Debt Collection Practices Act, or the Fair Credit Reporting Act.

⁴ Michael Flynn & Karen Slater, *All We are Saying Is Give Business a Chance: The Application of State UDAP Statutes to Business-to-Business Transactions*, 15 LOY. CONSUMER L. REV. 81 (2003).

⁵ Emily Robbins, Illinois May Be the First State in the Nation to Regulate Predatory Small Business Lenders (Apr. 15, 2016),

<https://citiesspeak.org/2016/04/15/illinois-may-be-the-first-state-in-the-nation-to-regulate-predatory-small-business-lenders/>.

⁶ 15 U.S.C. §§ 45(a)(2), 57a(f)(2)(A) (defining "banks" to include "national banks").

⁷ Press Release, Fed. Trade Comm'n, Court Prohibits Finance Company From Unfair and Deceptive Collection Tactics (Nov. 7, 2008), available at

<https://www.ftc.gov/news-events/press-releases/2013/01/ftc-settlement-obtains-permanent-ban-against-abusive-debt>.

⁸ Press Release, Fed. Trade Comm'n, Marketers Agree to Settle FTC Charges They Deceived Small Businesses Into Buying Credit/Debit Card Processing Services (Oct. 27, 2014), available at

<https://www.ftc.gov/news-events/press-releases/2014/10/marketers-agree-settle-ftc-charges-they-deceived-small-businesses>; Press Release, Fed. Trade Comm'n, Defendants Agree to \$26 Million Judgment to Settle FTC Charges for

fear that giving a company a national bank charter and depriving the FTC of their jurisdiction could weaken protections of small businesses.

OCC charter would weaken fair and inclusive lending practices

Finally, issuing an OCC charter could undermine efforts to provide fair and inclusive lending practices, particularly for business owners of color. The Community Reinvestment Act (CRA) requires national banks to serve their entire communities so that small businesses have access to critical financial services. However, the CRA applies only to depository institutions and would not directly apply to a non-depository national bank, such as a fintech company. We are concerned that the proposed charter would not be subject to examination or ratings under the CRA or the law’s requirements to provide responsible, not predatory, credit to small business owners. Instead, the proposal would promote the expansion of questionable lending practices targeting the very small business owners who most need access to safe, affordable credit.

In conclusion, the Main Street Alliance strongly urges the OCC to refrain from issuing a special charter to fintech companies. We believe that the OCC’s proposal would endanger small business owners by extending national bank preemption to fintech companies without offering comparable national protections.

Thank you for the opportunity to comment on this important issue. We very much appreciate your attention to our concerns.

Sincerely,

Main Street Alliance

Main Street Alliance of California, San Diego

Main Street Alliance of Colorado

Main Street Alliance of Florida

Main Street Alliance of Iowa

Main Street Alliance of Minnesota

Main Street Alliance of New Jersey

Main Street Alliance of New York

Deceiving Merchants in Debt/Credit Card Processing Scheme, (May 15, 2008), *available at* <https://www.ftc.gov/news-events/press-releases/2008/05/defendants-agree-26-million-judgment-settle-ftc-charges-deceiving>; Press Release, Fed. Trade Comm’n, Federal Trade Commission Garners \$23.5 Million in Settlement of Certified Merchant Services Case (Jan. 15, 2004), *available at* <https://www.ftc.gov/news-events/press-releases/2004/01/federal-trade-commission-garners-235-million-settlement-certified>.

Main Street Alliance of Ohio

Main Street Alliance of Oregon

Main Street Alliance of Vermont

Main Street Alliance of Washington

Maine Small Business Coalition