

January 12, 2017

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

RE: Exploring Special Purpose National Bank Charters for Fintech Companies

Comptroller Curry,

The Small Business Finance Association (SBFA) is a non-profit advocacy organization dedicated to ensuring Main Street small businesses have access to the capital they need to grow and strengthen the economy. SBFA's mission is to educate policymakers and regulators about the technology-driven platforms emerging in the small business lending market and how our member companies bridge the small business capital gap using innovative financing solutions. The SBFA is supported by companies committed to promoting small business owners' access to fair and responsible capital.

We would like to thank the OCC for your leadership and understanding that technology-driven financial institutions need stability from regulators to continue to innovate for the small businesses we serve. The single greatest concern to SBFA's mission is that a regulator will adopt a one-size-fits-all approach that doesn't recognize the significant difference in how consumer and commercial financing is regulated. While we applaud the OCC's mission to ensure that any potential regulatory framework is receptive to responsible innovation, we are hopeful that any special purpose charter will account for the very specific issues that only apply to short-term commercial financing.

Specifically, we believe in a clear and defined separation between consumer and small business lending. Underwriting small businesses is significantly different than underwriting consumers, largely due to the data that can be used to make underwriting decisions. Small business borrowers have a wealth of data they can bring into consideration, data that gives lenders a much better picture of business performance over time. Unlike consumer loans, most alternative small business finance products do not require collateral or personal recourse. In many cases, the lender won't use traditional underwriting data from the business owner personally because it doesn't paint a complete or even rational picture of their business' creditworthiness. SBFA members also do not require personal collateral and in many cases have no recourse against the owners of a business borrower. Most credit decisions are educated by the *business'* performance and loans are an investment in the eventual success of the business. Emerging technology and the development of new platforms are allowing alternative lenders to reach underserved businesses and those that traditional finance will not or cannot serve.

Consumer and commercial finance products should be treated differently because they serve fundamentally different customers. Consumer lending is more regulated than business lending out of concern for the relatively unequal bargaining power of the creditor over a consumer borrower. Consumer lending laws exist to prevent certain types of financial products from being offered to unsophisticated consumers who may be unable to fully evaluate the costs and benefits of a particular product. Following the passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act, the Consumer Financial Protection Bureau (“CFPB”) was vested with primary regulatory authority over consumer finance products. As such, the CFPB’s regulatory oversight currently extends to marketplace lenders that offer consumer finance products.

Commercial or business lending has historically required fewer statutory protections as both parties to the transaction are engaged in commercial activities. The bargaining power of the parties in this setting is much more balanced than that of an individual consumer and a financial institution. Business borrowers are also more sophisticated than consumers and more likely to evaluate a variety of options before settling on one product over another. Additionally, the vast majority of states have expressly decided to not regulate commercial finance products or rates so as not to restrict capital options for business and to promote a growing economy. This is consistent with decades of federal legislative history dating back to the 1960s when Congress intentionally excluded small business loans from the Truth in Lending Act, as small business owners negotiate financial terms every day. This conclusion has been supported various times by regulators and has received no material question until Treasury’s whitepaper was released.

There is a false narrative being spread that online small business lenders are for the most part “unregulated.” As you are aware, the industry is governed by several state and federal laws and most of our membership have in-house compliance staff. In particular, the industry is governed by the Fair Credit Reporting Act, the Equal Credit Opportunity Act, the Federal Trade Commission Act, and the Telephone Consumer Protection Act, among others, and various state and local laws (some states require a license to make small business loans, some states have usury laws that apply, other states have call recording laws that apply, etc.)

We are encouraged by the OCC’s leadership and recognition that alternative finance innovation is still in the early stages of development. We support the OCC’s intention to provide regulatory stability to an innovative market, but are hopeful that any special purpose charter will fully account for the diversity of products and account for the unique differences between consumer and commercial financing. We look forward to continuing to work with the OCC and other regulators to ensure that alternative small business lenders are acting in a fair and responsible way.

Respectfully,

Stephen Denis

