THOMAS J. MILLER
ATTORNEY GENERAL

1305 E. WALNUT ST.
DES MOINES, IA 50319
P: 515-281-5164
www.iowaattorneygeneral.gov

IOWA DEPARTMENT OF JUSTICE
OFFICE OF THE ATTORNEY GENERAL

January 17, 2017

Comptroller Thomas J. Curry
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219
specialpurposecharter@occ.treas.gov

Re: *Exploring Special Purpose Charter National Bank Charters for Fintech Companies* (December 2, 2016) ("the white paper"), Request for Comments

Dear Comptroller Curry:

The Office of the Attorney General of the State of Iowa appreciates the opportunity to comment on the contemplated special purpose national bank charter, as discussed in the OCC's December 2016 white paper. As Iowa's primary enforcer of consumer protection laws and as the Administrator of Iowa's Consumer Credit Code,[1] I believe that our office has a valuable perspective on the potential implications of the proposed special purpose charter.

Financial technology ("fintech") companies offer new ways of reaching unbanked and underbanked consumers and can create new efficiencies that could bring down the costs of consumer services. Fintech companies can cater to changing consumer preferences. They can help overcome traditional barriers to access, helping consumers who face difficulty traveling to physical banks and other financial services providers, or whose working hours make it difficult for them to obtain such services. Improved efficiencies can decrease the cost of consumer services and increase availability of services in the market. However, there are also major risks to consumers.[2]

Our office is concerned that a primary consequence of the proposed charter would be to exempt fintech and other companies from critical state-level consumer protection laws, especially state interest rate caps and fee limits. The federal charter would remove their activities from the traditional regulation by the states. In addition, we are concerned that the scope of the proposed charter is not limited to the developing "fintech" companies that the charter is intended to help, but appears to potentially cover a much broader range of companies, including established industries engaged in high-interest lending practices.

[1] Iowa Code §§ 537.1101 et seq.

[2] THE PEW CHARITABLE TRUST, FRAUD AND ABUSE ONLINE: HARMFUL PRACTICES IN INTERNET PAYDAY LENDING (Oct. 2014).

We advise the Commissioner against creating these special purpose charters. If the OCC does decide to proceed with these charters, we at least urge that any federal law operates as a floor, not a ceiling, and that the charters allow, as much as possible, states to continue their role as primary regulators and not otherwise impede the current work by states to develop a multistate licensing registration system.

I. BENEFITS OF CONSUMER PROTECTION BY THE STATE ATTORNEYS GENERAL

The OCC expressed the view in the white paper that it is desirable to subject the financial sector to "consistency in the application of law and regulation" by centralizing regulatory authority over fintechs and other companies in the OCC under the new special purpose charter.[3] The concern is that dealing with the variation of state laws and licensing procedures is costly and difficult for developing fintech companies. All markets rely on a legal framework, and no legal framework is costless; we believe that there are strong justifications for the costs of the current system. Furthermore, many states are currently working to reduce the cost of multistate licensure by developing a single, multistate licensing application through the online National Multistate Licensing System.

Preserving state authority to regulate consumer financial services and enforce consumer protection laws is a net positive in three key ways: first, it allows states to protect the variable expectations of consumers; second, it devolves enforcement powers to more responsive and accountable state attorneys general; and, third, it allows for experimentation and competition.

A. Consumer protection laws reflect variable expectations of fair play in the marketplace and enable efficient and stable consumer markets

Contrary to some contentions, consumer protection laws are not inefficiencies. Consumer protection laws create efficiencies by allowing consumers to expect a baseline of fair treatment in the marketplace. Substantive consumer protection laws, effectively enforced, decrease transaction costs by allowing consumers to enter the marketplace unburdened by the costs of guarding against deceptively written contracts, usurious lenders, and other exploitative and predatory practices. Consumer expectations and perceptions of marketplace fairness vary across the nation. State legislatures have approved a variety of consumer protection laws to reflect local expectations of fair play. How consumers expect to be treated in New York or Delaware may vary from how they expect to be treated in Iowa.

Consumer protection laws also prevent abusive and predatory lending models in which lenders advertise unaffordable loans to consumers in order to trap them in a cycle of indebtedness and refinancing.[4] These types of companies do not create stable, competitive marketplaces because

---

[3] OFFICE OF THE COMPTROLLER OF THE CURRENCY, EXPLORING SPECIAL PURPOSE CHARTER NATIONAL BANK CHARTERS FOR FINTECH COMPANIES 2 (Dec. 2016).

[4] LAUREN SAUNDERS, MARGOT SAUNDERS, & CAROLYN CARTER, NATIONAL CONSUMER LAW CENTER, MISALIGNED INCENTIVES: WHY HIGH-RATE INSTALLMENT LENDERS WANT BORROWERS WHO WILL DEFAULT (July 2016).

they rely on exploiting consumers' desperation, confusion, or lack of financial literacy.[5] Consumer protection laws protect responsible companies, especially those with narrow profit margins, from being crowded out by exploitative actors with unsustainable business models. These laws create a more stable and equitable marketplace, benefitting consumers, business, and employees. Extending national chartering, and exempting such chartered companies from state consumer protection laws, poses a threat to the economic well-being of our local communities. Iowa law secures a number of sensible protections for consumers. For example, the Iowa Consumer Credit Code, Iowa Code ch. 537, limits the types of fees that can be charged in a consumer credit transaction (including a prohibition on consumer credit contracts that force consumers to pay for the lender's attorney's fees), limits the ability of lenders to take a security interest in the consumer's household goods, regulates balloon payments and places limits on the ability of creditors to opportunistically refinance such loans, protects the right of consumers to prepay their loans, and gives courts the power to void unconscionable consumer loans (including loans made a lender who knew that there was no reasonable probability of repayment). Iowa's Regulated Loan Act, Iowa Code ch. 536, and the regulations issued thereunder, cap interest rates on the regulated loans to 36% or less, inclusive of fees, limits the types of allowable insurance, and grants the borrower a prepayment right. Iowa also restricts paycheck advance lending under ch. 533D, by limiting the number and amount of such loans that can be offered to a consumer and capping financing costs of such loans.

State interest rate and fee caps are among the most important consumer protections, and the proposed license could undermine those protections by creating a race to the bottom. State interest and fee caps protect consumers from unconscionable, usurious rates of interest. However, the ability of nationally chartered banks to 'export' the interest rate of their home jurisdiction, functional lack of federal usury laws, and right to preemption of state consumer protection laws can potentially create a race to the bottom as individual states trade off the benefits of usury laws and other consumer protections in exchange for the benefits of tax revenues from nationally chartered lenders—at the expense of out-of-state consumers and communities. Unable to protect themselves from such externalized costs, states face enormous pressure to engage in the same behavior, potentially resulting in a nationwide erosion of the consumer protections meant to ensure stability and fair play in the marketplace.

We note, furthermore, that these risks are worthwhile with respect to national depository banks because these banks help consumers to deposit savings and build wealth. Limited accommodations have made for nondespository companies, but further expanding national licensing to companies with nondepository business models, as the OCC is contemplating, potentially undermines the balance of the dual banking system and the benefits to consumers.

[5] For example, the Pew Charitable Trusts reports that payday lending firms do not compete in pricing, but instead compete for access to consumers, through advertising, location, etc., resulting in loans costs which "are far higher than is necessary to ensure widely available credit." FROM PAYDAY TO SMALL INSTALLMENT LOANS: RISKS, OPPORTUNITIES, AND POLICY PROPOSALS FOR SUCCESSFUL MARKETS 12 (Aug. 2016).

B. State officials are more effective regulators and enforcers of consumer protection laws

State officials have stronger connections to consumers and communities, and often have more immediate and direct insight than federal regulators into marketplace developments which threaten consumers. Furthermore, as elected officials, or appointees of elected state officials, we are directly accountable to state residents and are more strongly incentivized to enforce consumer protection laws and to find solutions that balance the interests of local consumers and local businesses. For example, leading up to the mortgage crisis, state attorneys general were among the first to sound the alarm, and they sought to apply state laws to curb irresponsible lending practices—but were thwarted by federal preemption.[6] State officials are in the position to identify and respond to problems in the banking industry before problems metastasize into a national crisis.

C. Decentralized state regulation fosters competition and innovation

Although there are inconveniences and costs in dealing with the variety of state laws, another important benefit of this approach is that it protects innovation, experimentation and competition in the national marketplace. Fintech companies are developing all over the country.[7] When these companies encounter legal obstacles, they may struggle to have their voices heard at the national level and to effect nationwide change. Local lawmakers and regulators, however, can be more accessible and responsive. Furthermore, having a variety of regulators decreases the risk that established market actors are able to lobby the single regulator to adopt policies that disfavor new and innovative competitors. Additionally, with multiple regulators in play, there is reduced danger that a single agency could find its regulatory resources outstripped by growth in the industry. And the most straightforward benefit, of course, is that there is not just one referee trying to watch the scrum and enforce the rules of fair play.

II. NATIONAL CHARTER: COSTLY BENEFITS AND REDISTRIBUTION?

As discussed above, the existing system of state-based regulation does have certain costs and inconveniences, but it delivers countervailing benefits. We are concerned that the costs have been overstated,[8] and the proposed charter will benefit financial services companies at the

---

[6] Robert Berner, *They Warned Us About The Mortgage Crisis*, BLOOMBERG BUSINESSWEEK (Oct. 8, 2008), https://www.bloomberg.com/news/articles/2008-10-08/they-warned-us-about-the-mortgage-crisis.

[7] Drew Hendricks, *What Makes Silicon Prairie the Friendliest Tech Hub Ever*, INC.COM (July 3, 2015), http://www.inc.com/drew-hendricks/what-makes-silicon-prairie-the-friendliest-tech-hub-ever.html; John Eligon, *Tech Start-Ups Find a Home on the Prairie*, N.Y. TIMES, Nov. 21, 2012, at A1; Sean Sposito, *In Middle America, Amber Waves of FinTech Startups*, AMERICAN BANKER (Apr. 12, 2012), http://www.americanbanker.com/issues/177_71/silicon-prairie-fin-tech-startups-1048345-1.html.

[8] The specter of "51 state laws" has been used for years to fight against consumer protection, but most recognize today that the financial industry would be better off if it had been subjected to more serious consumer protection laws. For example, in 2005, mortgage lenders pushed for preemption of the "uneven patchwork" of state laws that "drives up costs," and yet the estimated cost of complying with state predatory lending laws in states that had them was only $1 per mortgage.

expense of consumers. There are two key ways that a national charter can benefit the consumer financial industry: by reducing the cost and complexity of state-by-state licensure, and by allowing the industry to receive exemptions from consumer protection laws. As discussed above, consumer protection law is not simply an inefficiency or a cost. It helps to create marketplace efficiencies and to ensure that the benefits of the marketplace are shared between consumers and industry. The benefits of state consumer protection laws are destroyed if preempted by national chartering.

Furthermore, the efficacy of enforcement by state regulators is compromised by national chartering. State regulators have the ability to enforce only a limited set of federal consumer protections against nationally chartered banks. Our state licensing agencies do not retain their visitorial powers over these banks. Without the assistance of our state licensing agencies, it is much more difficult to uncover harmful and illegal practices and to identify emerging trends and new practices that could pose a danger to consumers and the economy.

National licensure is not the only way to decrease the cost and complexity of state by state licensure. For example, just as technology is changing banking, lending, and payment processing, it is changing the way that states deal with licensing. A number of states are working on allowing national nonmortgage lenders to submit a single online application for multistate licensure through the National Multistate Licensing System. This approach would decrease the cost and complexity of applying for lending licenses without centralizing regulatory authority at the national level.

III. CONCLUSION

The innovations of the financial technology industry could potentially yield enormous benefits for American consumers and the U.S. economy. We appreciate the desire of the OCC to think deeply about the regulatory implications and challenges of helping this industry to develop responsibly, to realize those hoped-for benefits. However, we are concerned that the proposed approach, although prompted by the development of the fintech industry, is not limited to addressing the unique challenges and obstacles faced by a developing industry and growing companies. Most importantly, we urge the OCC to remember that the current system of state regulation is not simply a cost or inefficiency. State regulations, especially state consumer protection laws and antiusury laws, create valuable benefits for consumer and local communities, ensure responsive and competitive regulation, and advance stability and equity in our national economy.

Sincerely,

//S//

Thomas J. Miller
Attorney General of Iowa

NATIONAL CONSUMER LAW CENTER, PREEMPTION AND REGULATORY REFORM: RESTORE THE STATES' TRADITIONAL ROLE AS "FIRST RESPONDER" 25 (Sept. 2009).