OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

Lisa Madigan
ATTORNEY GENERAL

January 13, 2017

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

Re: Comment on the OCC's "Exploring Special Purpose National Bank Charters for Fintech Companies"

Dear Comptroller Curry:

The Office of the Illinois Attorney General appreciates this opportunity to comment in response to the Office of the Comptroller of the Currency's (herein "OCC") proposal to grant special purpose national bank charters to fintech companies ("fintechs"), including non-depository financial institutions, that provide banking products and services.[1] Our office takes this opportunity to express opposition to the OCC's proposal. As an initial matter, we question whether the OCC has the statutory authority to create non-depository special purpose charters for fintech companies.[2] We are also concerned that the OCC's proposal would enable chartered

---

[1] Office of the Comptroller of the Currency (OCC), *Exploring Special Purpose National Bank Charters for Fintech Companies* (December 2016).

[2] *See* Letter of the Conference of State Bank Supervisors to OCC, *Receiverships for Uninsured National Banks*, at 1-4 (Nov. 14, 2016), *available at* https://www.csbs.org/regulatory/policy/Documents/2016/CSBS%20Comment%20Letter%20on%20OCC%20Receiverships%20for%20Uninsured%20National%20Banks%20NPRM.pdf (explaining that the National Bank Act does not grant the OCC with the authority to issue full-service bank charters to institutions that do not receive deposits and that, in an attempt to circumvent this restriction, the OCC is relying on its regulations to create non-depository special purpose charters for fintech companies when there is no historical precedent.); *see* Letter of National Consumer Law Center and 43 Other Organizations to OCC, *Receiverships for Uninsured National Banks*, at 1 (Nov. 2016), *available at* http://www.nclc.org/images/pdf/rulemaking/occ-fintech-charter-44grps.pdf ("The OCC's legal authority to charter non-depository lenders unilaterally and without Congressional assent is doubtful . . .").

entities to avoid state licensing requirements and supervisory oversight and invite attempts to skirt consumer protection laws.

National chartering of non-depository financial institutions will result in the export of interest rates.

Our first concern is that national charters for fintechs would eviscerate state interest rate limitations that curb the extension of exorbitantly priced credit and check the worst excesses found in the high-cost lending market. Currently, there are no federal interest rate caps that effectively cover the financial products and services offered by national banks. On the other hand, many states, including Illinois, have enacted interest rate limitations and other consumer protections that regulate many financial products in the states[3] such as high-cost small-dollar consumer loans. For instance, in Illinois, lenders offering high-cost small-dollar installment loans must be licensed and are subject to a statutory scheme that consists of interwoven consumer protection laws, which among other protections include limits on the amount of interest, fees, and charges that lenders can impose on such loans and limit the length of time a consumer may be kept in high-cost debt.[4] In regard to interest rate limitations, it is well-documented that usury caps are the single most effective way of ending the harms of payday and other high interest consumer lending.[5]

Lending laws like these curb the risk and severity of default and protect against the perils of trapping vulnerable borrowers in an endless cycle of high-cost debt. In Illinois, the legislature enacted interest rate limitations and related reforms only after abuses persisted for over a decade despite successive regulatory attempts at remediation by other means. However, under the National Bank Act, the application of state interest rate limitations is preempted as to national banks.[6] With the OCC's proposed extension of national charters to fintech companies, uninsured non-depository small-dollar lenders, traditionally subject to state interest rate limitations, will have incentive to seek out and set up shop in states with the least safeguards against usury. These federally-chartered fintechs will export their high-cost loan products across borders to compete with the regulated financial products offered by lenders in other states. The ability of federally-chartered fintechs to export to other states and sidestep their consumer protection laws will create internal pressure by state-chartered financial institutions on their state legislatures in states that

---

[3] *See* Carolyn Carter et al., NCLC, Installment Loans: Will States Protect Borrowers From A New Wave Of Predatory Lending? at 45 (July 2015), http://www.nclc.org/images/pdf/pr-reports/report-installment-loans.pdf ("NCLC, Installment Loans").

[4] Consumer Installment Loan Act ("CILA"), 205 ILCS 670/15(a), lenders licensed under CILA offering open-end lines of revolving credit pursuant to the Financial Services Development Act ("FSDA"), 205 ILCS 675, *et. seq.*, are subject to a 36% interest rate limitation; *see* CILA, 205 ILCS 670(17.2), an interest rate of up to 99% can be applied to highly regulated, small-dollar consumer loans of $1,500.00 or less; *see also* Payday Loan Reform Act, 815 ILCS 122/2-5 (e-5) "no lender may charge more than $15.50 per $100 loaned on any payday loan…"

[5] Center for Responsible Lending, *Springing the Debt Trap: Rate caps are only proven payday lending reform* (Dec. 13, 2007), *available at* http://www.responsiblelending.org/sites/default/files/nodes/files/research-publication /springing-the-debt-trap.pdf.

[6] 12 U.S.C. §§ 85, 86; *Marquette National Bank v. First of Omaha Serv. Corp.*, 439 U.S. 299 (1978).

have robust consumer protections. State-chartered financial institutions in the states with robust consumer protections will seek to 'even the playing field' by weakening or repealing state consumer protection laws. The pressure will be particularly focused on state laws that limit interest, fees and charges, and will result in another round of rampant growth in predatory low-dollar high-cost lending.

National charters will interfere with state Attorney General ability to bring law enforcement actions and will harm consumers.

Additionally, states have historically regulated non-depository financial institutions. That oversight should not be eliminated.

Because state attorneys general do not enjoy visitorial powers, they often rely on state licensing agencies that do have visitorial oversight to identify areas of concern, make referrals and lend assistance. If national charters are granted to non-depository financial institutions, and our sister state agencies are preempted from directly conducting their traditional oversight functions, our state-level enforcement capabilities will suffer. While state attorneys general have authority to enforce the federal ban on unfair, deceptive and abusive acts and practices (UDAAPs) against almost any market participant that engages in offering consumer financial products and services,[7] our enforcement authority is considerably weaker with regard to federally-chartered entities. For instance, with respect to national banks, we can enforce only specific Consumer Financial Protection Bureau regulations,[8] not the broad federal ban on UDAAPs.[9] Additionally, when prosecuting enforcement actions pursuant to our state laws to enjoin unfair and deceptive practices, we cannot investigate national banks using our pre-litigation discovery powers but, instead, must gather evidence from secondary sources.[10]

Moreover, we have previously experienced difficulties inherent to exclusive agency oversight in a rapidly evolving marketplace such as fintech. In the decade leading up to the financial crisis of 2007-2008, and the first few years of the great recession that followed, the OCC's relationship with the states was strained by its expansive attempts to preempt state enforcement of state consumer protection laws in relation to national banks. The OCC took the position that the states had no enforcement authority over national banks or their subsidiaries concerning the enforcement of state consumer fraud matters.[11] This could happen again with respect to non-depository entities, such as payday and installment lenders, auto loan lenders, check cashing entities and alternative payment systems.

---

[7] Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5552(a)(1)
[8] Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5552(a)(2)(B)
[9] Dodd-Frank Wall Street Reform and Consumer Protection Act, 12 U.S.C. § 5552(a)(2)(A)
[10] See, *Cuomo v Clearing House Ass'n L.L.C.*, 557 U.S. 519 (2009).
[11] 12 CFR § 7.4000 (2009); *See also*, 12 C.F.R. § 7.4006 ("Section 7.4006"), the OCC's regulation stating that "[u]nless otherwise provided by Federal law or OCC regulation, State laws apply to national bank operating subsidiaries to the same extent that those laws apply to the parent national bank."

Granting federal bank charters to non-depository fintechs will strip state regulators of their existing visitorial powers over those institutions, and the loss of state visitorial powers will dilute regulatory supervision and serve to weaken consumer protections. The traditional role of the states in regulating non-depository financial institutions should be preserved.

It is better to have more – not fewer - cops on the beat and consumer protection laws on the books to prevent consumer fraud.

Recent history has proven there is an obvious advantage to an enforcement system that consists of federal and state consumer protection laws and cooperative enforcement actions. Federal Trade Commission and Consumer Financial Protection Bureau oversight and enforcement actions are not enough to address every fraudulent scheme or unfair practice. State oversight and enforcement activity are necessary to assure overall consumer protections. While the federal agencies play an important role in consumer protection, they are sometimes unable to move quickly and obtain relief against institutions that harm consumers in local, state and regional financial markets. On the other hand, state regulators and state attorneys general remain in close proximity to their citizens, are conversant with the local customs and commercial practices, and attuned to local market conditions. State regulators and state attorneys general are more agile and better equipped to sense the impact of mounting problems at the local, state and regional levels. State regulators and attorneys general also have the ability to prioritize local, state and regional actors that federal agencies may not have the resources or interest to prioritize until there is a sizable national impact. These factors have long put state regulators and law enforcement in the best position to take swift action on an appropriate scale when problems first emerge but are still manageable.

Additionally, there are many consumer protections imbedded in our state licensing laws that non-depository financial institutions will be able to avoid if granted a national charter. For instance, in Illinois, the Check Cashing Act limits the amount of fees a merchant can charge to cash a check;[12] licensees under the Transmitter of Money Act are required to pay into the TOMA Consumer Protection Fund, which benefits those who suffer monetary loss arising out of a transaction gone awry;[13] the Consumer Installment Loan Act caps the amount of money that can be lent and the length of time a loan can last, and it provides for disclosures of the interest rate, fees, and frequency and amounts of payments;[14] and the Payday Loan Reform Act dictates that a lender cannot make a payday loan if a consumer would be in debt for more than 45 consecutive days, cannot make a payday loan to a consumer who has two existing payday loans, provides an interest-free off ramp for consumers who cannot meet the balloon payment at the end of the loan

[12] Illinois Check Cashing Act, 815 ILCS 315/2.
[13] Illinois Transmitter of Money Act, 205 ILCS 657/93(b).
[14] Illinois Consumer Installment Loan Act, 205 ILCS 670/17.3(a).

term, among other protections.[15] The consumer protections that these and other state licensing schemes afford would not apply to federally-chartered fintechs.

Conclusion

The Office of the Illinois Attorney General opposes the OCC's proposal to grant new federal lending charters to non-depository fintech companies because a national charter would enable these companies to avoid state interest rate caps, state oversight, and other consumer protections. Thank you for your attention to our concerns and we look forward to a continued dialogue on this issue.

Sincerely,

//S//

Deborah Hagan
Chief, Consumer Protection Division

[15] Illinois Payday Loan Reform Act, 815 ILCS 122/2-5.