Opportunity Fund working capital for working people

January 13, 2017

Mr. Thomas Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219
(Emailed to: specialpurposecharter@occ.treas.gov)

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

Dear Comptroller Curry,

Thank you to the OCC for the opportunity to provide input on the important topic of issuing special purpose national bank charters for fintech companies.

Opportunity Fund is a Community Development Financial Institution (CDFI) that has been lending to underserved small business owners since 1994 and is currently the largest non-profit microlender in California. Because we lend only to small businesses, our comments focus specifically on small business credit. Our comments focus on the potential public policy benefits of a thoughtfully developed, flexibly implemented and thoroughly enforced special purpose national bank charter for fin tech companies. We believe all new chartered entities providing small business credit must implement strong disclosures and protections for business owners, report their lending activity and outcomes and comply with CRA-like requirements for financial inclusion and investment in underserved communities. Lastly, in order to protect both consumers and business owners and ensure that state usury caps are upheld, we support the charter only being granted to fintechs offering products at lower than 36% APR equivalent.

CDFIs and Potential for Special Purpose National Bank Charters

In addition to facilitating innovation in the private sector, a special purpose national bank charter for fin tech companies could also potentially empower non-for-profit CDFIs like Opportunity Fund to effectively expand our reach. In 2016 Opportunity Fund developed a partnership with fintech lender Lending Club to accept specified referrals from California small business loan applicants that do not meet Lending Club's criteria. In 2017 that partnership will be expanded to Oregon and Washington and include participation by another CDFI, Craft3. Based on initial West Coast pilot results we hope to further expand this partnership to other states and with other lenders including fintechs, CDFIs and traditional financial institutions.

Opportunity Fund is currently pursuing this pilot in states outside of California that do not require licensing however we believe that a special purpose national bank charter may be a more streamlined way to expand to other states in the future. This would create efficiencies in licensing and reporting requirements at the state level, as well as allow us to standardize our product offerings, all of which could translate into serving more business owners at a lower cost. While we believe that a special purpose bank charter could facilitate innovation and expansion for private and mission-based lenders, borrower protection, data reporting and financial inclusion investments must be part of the charter requirements. Ultimately, a special purpose charter should enable the best and the brightest financial services companies to lift up high quality, transparent offerings for all Americans.

Responsible, Transparent Business Lending

For many small business owners, the potential benefits of fintech have been outweighed by unclear, high-cost loan products which leave them worse off. Opportunity Fund released research in May 2016, "Unaffordable, Unsustainable: The New Small Business Lending on Main Street"[1] which showed that for our sample of over 100 CA businesses with alternative loans, they faced average APRs of 94% and total monthly loan costs of 178% of available cash flow. Our analysis of the loan agreements found that the majority of fintech and non-bank lenders did not disclose clear interest rates, terms, or APR for these loans. Disclosures that were provided to the small businesses were presented in a manner which made it difficult to decipher the true cost of the loans and the cash flow required for successful repayment. Far too many businesses are forced to close their doors as a result of irresponsible financing.

Small business financing is not directly regulated by any federal agency despite the fact that most small business owners are not any more financially sophisticated than the average consumer. It is imperative that a special purpose charter for those fintechs offering small business financing clearly address this regulatory gap. The OCC can look to the Small Business Borrower's Bill of Rights[2] which lays out key rights that all small business borrowers deserve. The Small Business Borrower's Bill of Rights represents the first national consensus regarding responsible small business lending practices, adopted by over 80 organizations. The six rights are as follows:

1. The Right to Transparent Pricing and Terms
2. The Right to Non-Abusive Products
3. The Right to Responsible Underwriting
4. The Right to Fair Treatment from Brokers
5. The Right to Inclusive Credit Access
6. The Right to Fair Collection Practices

As a founding member of the Responsible Business Lending Coalition, we also endorse the comments sent along by that group which further expand on these principles in the context of the special purpose national bank charter. While we are encouraged by other industry efforts underway to increase transparency of pricing and terms, we believe the special purpose fintech charter cannot simply require disclosure of APR and other key financing terms but must go much further in the following ways:

- **APR Cap**: A charter should only be granted to providers offering products below 36% APR, whether they be for consumer or business use. This not only respects existing state laws on usury but also is consistent with federal law protecting military service members.

- **Require Underwriting**: The OCC should place extra scrutiny on lenders that receive daily payment directly from a business owner's checking or merchant account and should require underwriting to ensure these loans are sustainable for business owners.

- **Evaluate all Activities**: Under no circumstances should a charter be granted to a lending company that simultaneously holds a separate company offering unregulated products (such as merchant cash advances). The OCC should be vigilant in ensuring that fintechs do not use corporate structure to isolate or hide unregulated activity while benefiting from the charter for some activities.

Consistent Data on Small Business Loans and Outcomes

Another implication of no clear national small business financing regulator is a lack of nationwide data on business loans. This problem includes both regulated financial institutions as well as fintechs. This lack of data not only makes it challenging for policy makers and others to clearly understand the gaps to financing facing certain populations but also makes it challenging for potential regulators to compare different fintechs based on their outcomes. Although the Consumer Financial Protection Bureau has a mandate to begin collecting small business finance data from all types of lenders, to the extent the special purpose charter is implemented before this mandate is underway, it is critical that the OCC also gather this information.

The OCC should work in close contact with the CFPB to determine the key small business lending data points to collect, including loan applications and loans made by census tract and the performance of those loans. This would enable the OCC to assess the performance of special purpose charter grantees in meeting community credit needs and expanding financial inclusion which has been stated as central goal of this effort. In addition, the OCC should develop an efficient, transparent method for accepting complaints from consumers and community groups about both borrower protection and financial inclusion violations, and can look to the CFPB's complaint process as a best practice in this area.

Prioritize Meaningful Investment in Financial Inclusion

The OCC's request for comments indicates that fair access to financial services is a key part of the agency's mission and a central goal of the special purpose national bank charter process. Opportunity Fund strongly supports the OCC's focus on financial inclusion and believes that all fintechs seeking a charter (whether they serve consumers and/or small businesses) should be required to make significant investments in financial inclusion, similar to the CRA obligations insured depository institutions are required to meet. Fintechs should be required to serve (either directly or indirectly) a meaningful proportion of low and moderate income(LMI) customers in all geographies in which they provide services and make particular efforts to reach minority communities. As part of the special purpose charter process we also encourage the OCC to ensure that other regulations to which these new banks are subject do not have the unintended consequence of excluding underbanked consumers, such as overly restrictive rules on the identification requirements for new accounts.

For those fintechs that aim to serve these customers directly, the OCC should assess whether the products provided are beneficial (as opposed to predatory) as well as the rates of utilization and outcomes (repayment, fees etc) for LMI consumers. As a starting point, the OCC should ensure a fintech is not redlining by excluding lower income communities in online advertising. For example, a business owner in lower-income East San Jose searching for online financing should see the same online advertisements from a fintech as a business owner in nearby upper-income Palo Alto, any discrepancy would imply redlining.

We believe only those providers who can both demonstrate that their offerings are designed to be beneficial to consumers and are actively used by LMI consumers/business owners should receive credit for direct financial inclusion investment. Any provider that offers a product which cannot be demonstrated to be beneficial for a majority of consumers served, should not receive a special purpose charter, regardless of utilization rates or renewal rates. Evidence of positive benefit would vary depending on the product but may include reduction in fees, improved credit score, ability to access capital at lower rates, increased savings balances or other positive financial outcomes.

For those fintechs that offer products that do not directly serve LMI customers, the OCC should assess whether the organization has a history of and future plan to invest in financial inclusion through partnerships, investments, philanthropy and/or other means. One potential method for investing in financial inclusion is through referral partnerships, such as Opportunity Fund's partnership with Lending Club mentioned earlier. In the case of partnerships, the OCC should assess whether the fintech is making a significant and meaningful investment of resources in developing, implementing and improving partnerships, as well as assessing the outcomes of those partnerships in terms of LMI customers served. For investments and philanthropy, the ultimate outcomes of those investments for LMI consumers as well as dollars lent/invest/donated should be considered. In all cases, we encourage the OCC to set financial inclusion standards that are truly meaningful for each organization applying for a charter.

Conclusion

In conclusion, Opportunity Fund supports the creation of a special purpose national bank charter for fintech companies if and only if the OCC includes strong borrower protection, data reporting and financial inclusion requirements for all chartered entities including a 36% APR rate cap. Done well, this is a unique opportunity to expand positive financial innovations for all American consumers and business owners. We hope the OCC will seriously consider our comments and would be happy to expand on any questions you may have.

Sincerely,

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Eric Weaver, CEO & Founder

[1] http://www.opportunityfund.org/assets/docs/Unaffordable%20and%20Unsustainable-The%20New%20Business%20Lending%20on%20Main%20Street_Opportunity%20Fund%20Research%20Report_May%202016.pdf
[2] www.responsiblebusinesslending.org