



April 14, 2017

RE: NCRC Comment on Draft Comptroller's Licensing Manual: Evaluating Charter Applications from Financial Technology Companies

To Whom it May Concern:

The National Community Reinvestment Coalition (NCRC) remains concerned about granting charters to uninsured institutions, several of which are large scale lenders using new and untested underwriting and marketing techniques. Financial technology companies (fintechs) have increased their presence substantially in the lending marketplace in the last few years. In response, the Office of the Comptroller of the Currency (OCC) proposes to allow fintechs to apply for a special purpose national bank (SPNB) charter.

While the OCC has undertaken a thoughtful process for considering a fintech charter, NCRC is apprehensive that a number of complex issues have not been thoroughly examined. These include what exactly is a fintech. A specific and narrow definition is imperative so that scores of nonbanks, including payday lenders and others with questionable lending practices, do not suddenly declare themselves as fintechs and flood the agency with applications.

If the OCC proceeds, it needs to establish rigorous standards for consumer compliance, fair lending, community reinvestment, and safety and soundness for a fintech charter. In addition, it should only approve a few fintech charters during the first couple of years, regarding these as pilot approvals while complicated consumer compliance and fair lending issues continue to be considered. NCRC appreciates that the OCC adopted our suggestions for financial inclusion plans (FIPs) which have the potential to require meaningful community reinvestment and fair lending goals.

NCRC is an association of more than 600 community-based organizations that promote access to basic banking services including credit and savings, to create and sustain affordable housing, job development, and vibrant communities for America's working families. Our members include community reinvestment organizations, community development corporations, local government agencies, faith-based institutions, community organizing and civil rights groups, minority- and women-owned business associations, and social service providers from across the nation.

NCRC and our members witnessed firsthand the devastation of foreclosures and equity stripping caused by unregulated subprime lending in the years preceding the Great Recession. NCRC acknowledges that the OCC is not adopting a regulatory model towards fintechs of benign neglect that enabled the abusive lending causing the financial crisis. The OCC has listened carefully to the comments regarding consumer protection, fair lending, and community reinvestment during its consideration of fintech charters over the last several months.



If the agency proceeds in granting charters to fintechs, it must expect rigorous compliance with consumer protection, fair lending, and community reinvestment requirements. It must also respond more fully to concerns regarding preemption of usury cap and other state-level consumer protection law.

The draft licensing manual exhibits sensitivity to these critical issues but still needs significant improvement. The licensing manual is too vague on expectations and requirements for various sections of the charter application. The following is NCRC's suggestions for bolstering the charter application process and increasing the OCC's expectations concerning fintech compliance with consumer protection laws, fair lending laws, and community reinvestment.

#### *Compliance with Consumer Protection and Fair Lending Law*

The draft manual discusses standards ensuring the SPNB will treat consumers fairly and comply with laws and regulations. However, the manual focusses on requirements for a business plan and does not require a separate section of the charter application in which a fintech would specifically discuss how it will comply with consumer protection and fair lending laws and regulations. The OCC requires the applicant to discuss in the business plan how the fintech will establish a compliance management program that will include how it will adhere with fair lending and unfair and deceptive practices laws. While this is commendable, this is currently only a subsection of a business plan. In addition, the draft manual in Appendix B on FIPs asks the fintech to describe how its products will be offered on a "fair and non-discriminatory basis." Again, while this subsection of Appendix B touches on the importance of compliance with fair lending and consumer protection, it is not sufficient.

Because fintechs present novel and complex issues related to compliance with consumer protection and fair lending law, the OCC manual and fintech charter application must include a separate section entitled "Compliance with Consumer Protection and Fair Lending Laws." This separate section must include a comprehensive checklist of consumer protection and fair lending laws. The fintech must be asked how it will comply with each of the enumerated statutes.

The section on compliance with consumer protection and fair lending laws must require a fintech to answer a series of questions about how its data gathering and underwriting systems will not discriminate through redlining or predatory pricing based on prohibited characteristics. Media reports include stories of companies charging higher prices based on the demographic composition of residents in zip codes.<sup>1</sup> Another recent column in the American Banker claims that some fintechs are using college education, and in particular attendance at Ivy League

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<sup>1</sup> Julia Angwin, Terry Parris Jr. and Surya Mattu, ProPublica, When Algorithms Decide What You Pay, October 5, 2016, <https://www.propublica.org/article/breaking-the-black-box-when-algorithms-decide-what-you-pay>



colleges, in their underwriting decisions.<sup>2</sup> These underwriting practices are being adopted without disparate impact analysis to assess whether they discriminate against protected classes.

A fintech must indicate in its application how its data gathering and underwriting approaches do not result in disparate impact. The fintech must bear the burden of proof through the use of verifiable data that it is not discriminating. Hence the OCC needs to add a separate section on consumer compliance and fair lending that requires detailed information on any possible fair lending issues. These issues cannot be dealt with adequately in subsections in a risk management section.

Similarly, the consumer compliance and fair lending section of the charter application must require a fintech to describe how its disclosures of loan terms and conditions will be clear and will not confuse borrowers into being steered towards high cost and unaffordable loans. Again, fintechs must bear the burden of proving that they are responsible lenders since the OCC would be granting a charter that would facilitate nationwide lending and since a number of surveys have revealed serious concerns regarding the high cost and deceptive nature of lending practices at a number of fintechs.

Finally, the fintech must be required to carefully address usury caps and any other state laws that would be preempted by the OCC charter. The OCC has stated throughout this process that the fintech charter application process is an opportunity for the OCC to achieve the objectives and purposes of consumer protection laws, including those that would not apply directly to a SPNB.<sup>3</sup> NCRC's strong preference would be that a fintech would simply comply with state usury cap laws. If the fintech does not plan to voluntarily comply with a cap in a preempted law, how does it plan to protect consumers in the affected states? Will it offer responsible loans that adhere to some price controls and other features that assure affordability such as limits on debt-to-income ratios? The public has a right to see how the fintech intends to respond to the purpose of consumer protection laws in their states, and the public must have full information about a fintech's intentions so that the public can provide the OCC with informed comments about the suitability of the fintech's plans. The OCC must require fintechs to address how they will assure consumer protections in all cases, but especially in states with preempted laws.

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<sup>2</sup> Penny Crosman, Is it OK for Lending Algorithms to Favor Ivy League Schools?, American Banker, March 9, 2017, <https://www.americanbanker.com/news/is-it-ok-for-lending-algorithms-to-favor-ivy-league-schools>

<sup>3</sup> The most recent OCC statement to this effect is on page 15 of the Draft Licensing Manual which states, "Where a law does not apply directly, the OCC may work with a fintech company to achieve the goals of the particular statute or regulation through the OCC's authority to impose conditions on its approval of a charter."



### *Financial Inclusion Plan (FIP)*

As stated above, NCRC appreciates that the OCC adopted our suggestion that a fintech must submit a FIP as part of its business plan. NCRC also appreciates that Appendix B asks the fintech to include a number of items in its FIP including the products and services it intends to offer, how these products will foster financial inclusion, geographical areas to be served, identification of credit needs and how these needs will be met by the SPNB, and measurable goals.

NCRC asks the OCC to clarify that FIPs must be submitted by all applicants seeking a fintech charter. The draft manual makes a few references suggesting that FIP requirements will not be universally applicable.<sup>4</sup> However, the OCC says it anticipates that fintech applicants will wish to pay checks or lend, two retail activities that can be readily covered by a FIP. In addition, if some fintech applicants seek to be an institution that is more wholesale or limited purpose in nature, the Community Reinvestment Act (CRA) establishes precedents for community development lending, investing, and service that would be appropriate for the FIPs of these fintech applicants. Thus, FIPs must be required of all fintech applicants.

NCRC asks the OCC to expand the requirements for a FIP. When Appendix B discusses measurable goals, it must include examples of specific quantitative measures so that the OCC is establishing the expectation that a fintech cannot offer vague goals but must instead establish rigorous quantitative goals. For instance, goals could be expressed as percentage of loans made to underserved populations such as low- and moderate-income people compared to peer lenders and demographic benchmarks. In addition, goals for community development (CD) financing (CD loans and investments) could be expressed as CD financing as a percentage of assets or Tier 1 capital. Again, comparisons to peers could be made to see if a fintech is proposing to meet or exceed peer performance.

In terms of identifying credit needs, the OCC could likewise establish expectations of rigor by asking fintechs to consult with federal agency studies, academic research, and information provided by community groups. For example, a fintech could identify particular metropolitan areas or states to target for serving un- or underbanked populations based on the latest FDIC survey, which identifies areas with particularly high percentages of un- or underbanked populations.

The OCC must also establish expectations that fintech discussions about geographical areas served must not be conducted in a casual manner with guesses but instead identify areas to be served based on its data and experience. Fintechs, with their technological savvy, should be able

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<sup>4</sup> See pages 5 and 13 of the Draft Licensing Manual available via <https://www.occ.gov/publications/publications-by-type/licensing-manuals/file-pub-lm-fintech-licensing-manual-supplement.pdf>



to identify geographical areas in which a significant amount of their lending and financial service activity occurs. Within those areas, the fintech should establish goals and plans for how it will reach traditionally underserved populations including people of color, low- and moderate-income persons, neglected neighborhoods, and underserved rural areas. The fintech should also present a needs analysis that identifies particular needs or populations they seek to serve. For example, some states have high numbers of immigrant populations with limited English proficiency. How will the fintech reach out to these populations, and will the fintech have versions of their websites in languages other than English?

The OCC recognizes that a FIP needs to be updated since business strategies, demographics, and economic conditions will change. The OCC also correctly asks a fintech to regularly receive public input in executing its FIP. The OCC, however, must establish a more formal process for fintechs to update their FIPs and receive public input. One possibility is timing public comment periods to coincide with examination cycles. In advance of an OCC compliance examination, the fintech must be required to publish an updated FIP, explain any changes to its updated FIP, and report on progress on its goals under its current FIP. The fintech must use verifiable data (including publicly available data when possible) for reporting on goal attainment under its current FIP so members of the public have meaningful opportunities to comment on the extent of goal attainment. The fintech and OCC should take public comments for 60 days. The OCC should then assess the extent to which the fintech responds to public comments in finalizing its updated FIP.

#### *Prefiling Communications with the OCC*

The draft manual discusses that the OCC encourages fintechs to conduct exploratory meetings with the OCC in order to resolve complex and novel issues. While NCRC understands the intent of these meetings, we are concerned that secretive pre-filing meetings have the potential to introduce bias into the application process. The OCC may inadvertently become pre-disposed to approving a charter if these meetings align the thinking of both the agency and the fintech. This may occur even in situations where a significant defect may be present in the charter application such as questionable practices or policies including fair lending or consumer compliance. In order to prevent this type of “group” think, NCRC urges the OCC to make immediately available to the public materials disseminated and discussed at these meetings. In addition, meeting minutes must become publicly available immediately. The OCC is not the only agency to which NCRC has expressed these types of concerns. We hope, however that the OCC leads the way in resolving these concerns by adopting our suggestions for sunshine and public information regarding these meetings.



### *Filing Procedures*

The OCC must specify that in addition to the initial public comment period of 30 days, the OCC may extend the comment period and conduct public hearings in instances of unresolved and complex issues affecting consumer protection law, fair lending, and community reinvestment. Likewise, the OCC should honor joint requests by a fintech and community groups to extend the comment period so that fintechs can refine FIPs in response to public input. Extensions of the public comment period and hearings are part of OCC procedure regarding nationally chartered banks but the OCC must specify that these filing procedures apply to fintechs as well.

### **Conclusion**

NCRC urges the OCC to make the fintech application process considerably more rigorous with high expectations for the FIP and compliance with consumer protection and fair lending laws. The grant of a national charter is a privilege, not a right. It thus must be accompanied by high standards conferring public benefits on fintech customers and their communities. Moreover, if the OCC proceeds with fintech charters, the first couple of years must be regarded as pilot years where only a few fintech charters are granted each year so that fintech performance can be carefully assessed and monitored with the aim of resolving complex fair lending and consumer compliance issues along with safety and soundness concerns.

Thank you for the opportunity to comment on this important matter. The below organizations support NCRC's letter. If you have any questions, you can contact me on [jtaylor@ncrc.org](mailto:jtaylor@ncrc.org) or Josh Silver, Senior Advisor, on [jsilver@ncrc.org](mailto:jsilver@ncrc.org).

Sincerely,

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John Taylor  
President and CEO

### **Organizations in Support of NCRC's Letter**

Accion Chicago

Affordable Homeownership Foundation, FL

Akron Summit Community Action, Inc., OH



Another Chance of Ohio, OH  
Asian Pacific Islander Small Business Program, CA  
Azul MSI, CA  
Bankers Small Business CDC of California  
California Capital Financial Development Corporation  
California Reinvestment Coalition  
California Resources and Training  
CAMEO-California Association for Micro Enterprise Opportunity  
Campus District, Inc., OH  
Casa of Oregon  
Chicago Community Loan Fund  
City of Dayton Human Relations Council, OH  
City of Euclid, Ohio  
City of South Euclid, Ohio  
Coastal Enterprises, Inc., ME  
Community Link, NC  
Community Reinvestment Alliance of South Florida  
Community Service Network Inc, MO  
County Corp, OH  
Delaware Community Reinvestment Action Council, Inc.  
Empire Justice Center, NY  
Fair Finance Watch, NY  
Fair Housing Center of Metropolitan Detroit, MI  
Fair Housing Contact Service, OH  
Federation of Network Ministries, OH  
Financial Justice Coalition of SE Michigan



Florida Housing Counselor Network  
Friendly Center Incorporated, OH  
GCMI, OH  
Genesis Housing Development Corporation, IL  
Good Neighbor Foundation, TN  
Hamilton County Community Reinvestment Group, OH  
HomeOwnership Center of Greater Dayton, OH  
HomesteadCS, IN  
HOPE of Evansville, IN  
Institute of Cultural Affairs – USA, IL  
Junction Coalition, OH  
MANNA, Inc., DC  
Metropolitan Milwaukee Fair Housing Council, WI  
Metropolitan St. Louis Equal Housing and Opportunity Council  
Michigan Community Reinvestment Coalition  
National Housing Counseling Agency, GA  
Nazareth Housing Dev. Corp, OH  
PathStone Enterprise Center, NY  
RAA - Ready Aim Advocate, MO  
REVA Development Corporation, FL  
Slavic Village Development, OH  
Struggle for Miami's Affordable and Sustainable Housing (SMASH), FL  
The Housing Research & Advocacy Center, OH  
Transformations CDC, OH  
U SNAPBAC NON PROFIT HOUSING CORP, MI  
Vermont Slauson Economic Development Corporation, CA



Vision of Restoration, Inc., IL  
Western New York Law Center  
Woodstock Institute, IL