



Office of the Comptroller of the Currency

Comments of National Disability Institute on Draft Supplement to Comptroller's Licensing Manual for Evaluating Charter Applications from Fintech Companies

Washington, DC

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National Disability Institute (NDI) is a not for profit research and development organization dedicated exclusively to poverty reduction and the advancement of financial capability and inclusion for some 50 million individuals with disabilities and their families across the country. To achieve these goals, NDI has and continues to build important relationships between the disability and financial communities at national, state, and local levels. NDI's groundbreaking research has established important baselines regarding banking status and financial behavior of adults with disabilities. With the Real Economic Impact Network and some 4,400 community partners in all 50 states, NDI continues to expand supports and services that improve financial capability and inclusion for individuals across the spectrum of disabilities and their families.

NDI submits the following comments in response to the Office of the Comptroller of the Currency (OCC) issuance of a draft Licensing Manual Supplement for Evaluating Charter Applications from Financial Technology companies.

The comments focus on five points:

1. More than 20% of low and moderate income adults have disabilities which put them at risk of being excluded from the financial mainstream. While many of their financial needs overlap with other LMI populations, they have some unique challenges.
2. All banks, including SPNB's must be required to meet federal standards for accessibility and develop a plan to maintain and enhance the accessibility as technology changes.
3. People with disabilities should be explicitly identified as a vulnerable or underserved population in its requirement that SPNB's foster financial inclusion.
4. SPNBs and other chartered banks should be required to address the digital divide—the lack of access to broadband for certain LMI populations.
5. Any regulation of SPNBs should be in addition to consumer protections enforced by the CFPB, state laws, and the Americans with Disabilities Act.

For the past thirty years, advanced technologies have leveled the playing field for individuals across the spectrum of disabilities in the home, classroom, workplace, and community. From new wheelchair designs, screen readers, and augmentative communication devices, an entire

market of assistive technology products has been created to help individuals with disabilities to be more independent, productive, and included. The emergence of mobile financial services offers an extraordinary, new opportunity to dramatically improve access and participation in the economic mainstream for people with disabilities.

To achieve enhanced community participation and greater self-determined and directed lives, there is hardly anything more fundamental than financial inclusion and access to responsive financial products and services. Yet the most recent FDIC household survey results reveal that almost one in two adults with disabilities are unbanked or underbanked and far more likely than their nondisabled peers to use alternative financial services, like pawn shops, check cashing stores, and payday lenders. These statistics are even more troubling for people of color with disabilities. For too many individuals with disabilities, they are below the bottom rung of the economic ladder, more likely than their nondisabled peers to be unemployed, not have a college degree, and live in poverty with greater dependence on government benefits, such as Supplemental Security Income (SSI), Medicaid, and food assistance (SNAP).

However, the disability community is very diverse in terms of income, age, race, ethnicity, and type of disability. For example, while 22 percent of adults with disabilities are living in poverty, more than 5 million Americans with disabilities have college degrees and 2 million have incomes over \$50,000. The new generation of people with disabilities have benefitted from civil rights protections to receive equal educational opportunities in their neighborhood schools, and are attending in record numbers colleges and universities, are graduating college and beyond with advanced degrees. They are regular users of information and communications technologies (ICT), and have heightened expectations of a better economic future as active participants in the economic mainstream.

However, like their nondisabled peers, they need to be able to access and use financial products every day and to get real time information on status of accounts, billpay, and other transactions. The new frontier of mobile technology to access financial services and manage personal finances has great potential to meet the needs of underserved consumers and communities. The transformative future for people with disabilities and others of low and moderate income will depend on regulatory guidance and oversight to achieve responsible innovation with requirements to help produce improved financial inclusion.

NDI supports the current proposal and leadership efforts of OCC to set a detailed framework for bringing technology enhanced innovation to financial products and services as an opportunity to create new pathways to financial inclusion. OCC's intent to issue special purpose nation bank charters (SPNB) to Fintech companies to engage in banking activities who meet specific standards must ensure that innovative products are offered that are safe and secure for consumers with attention to issues of access and accessibility for consumers across the spectrum of disabilities, as well as other economically vulnerable populations. The requirement of a Financial Inclusion Plan and reporting on implementation are key requirements for a SPNB applicant.

I. The Needs of Low and Moderate Income (LMI) Consumers

For the LMI consumers, the ability to access financial services seven days a week and twenty-four hours a day from anywhere, can save time and money. Managing finances in real time can help with managing a budget, making ends meet, and avoiding overdraft payments which last year generated over 32 billion dollars in revenue for financial institutions.¹ There are also additional benefits of mobile banking through personal management tools, which are now becoming available online, but also via mobile applications. Timely alerts about balances and bill payments, tracking and reporting on spending habits, and status updates on savings goals and/or debt can inform and influence financial behavior and improve financial stability. Like other LMI populations, many people with disabilities are living with very low balances. They need their incoming checks to clear faster so they can pay bills. They also may need affordable short-term low dollar loans.

New Fintech applications are being introduced each month in the marketplace which represents both the challenges and opportunities of innovation. It is a significant challenge for all consumers, but especially economically vulnerable populations to understand and discern differences among products to meet their unique needs and the degree of safety and security protections regarding access to personal, financial information. Some financial management applications cannot interface with government benefits and tax credits, which then may present inaccurate assessments of an individual's financial status and result in inappropriate financial decisions on spending or saving for the future.

For LMI households, the promise and opportunities presented by new financial apps, which can often be downloaded at no cost, are also compromised by lack of access to broadband and the true cost of data plans and smart phones. Although the app download may be free, the transparency of fees applied to particular transactions varies greatly. There are no uniform requirements currently on disclosure of fees for types of service or transactions that offer the consumer more information before making a decision to download and use a mobile financial app. There is also limited understanding of how much data many of these applications use, which can significantly increase costs to the consumer, as the mobile phone operators have moved away from unlimited plans at a fixed price.

The most recent FDIC Household Survey results indicate increasing access to smart phones by adults with a disability. Although significantly less than households without a disability, almost one in two adults with disabilities have smart phone access.² However, the National Disability Institute's further analysis of FDIC data and subsequent qualitative research

¹ Moebs Services as reported in <http://www.statisticbrain.com/total-overdraft-fees/>

² Federal Deposit Insurance Corporation (2016) *2015 FDIC National Survey of Unbanked and Underbanked Households, Appendix Tables*. Table B.13.

https://www.economicinclusion.gov/surveys/2015household/documents/2015_FDIC_Unbanked_HH_Survey_Appendix.pdf

indicates a reluctance to use mobile financial services.³ Reasons provided included a lack of awareness of available options, a lack of understanding of how to use mobile financial services effectively, representing digital literacy challenges, and concerns about safety and security. For others in focus groups who did appreciate and use mobile financial services, the benefits identified included the ability to pay bills, transfer funds, and check in real time on account status that saved time and helped avoid late fees and/or overdraft payments.⁴ NDI's research results indicated a preference for personal communication with bank tellers and customer service representatives at traditional brick and mortar outlets. The research findings suggest that a hybrid approach may be needed that combines mobile and human assistance to enhance access for households with a disability who have traditionally been underserved. Elimination or reduction of in-person support services by banks as more resources are applied to mobile financial services could increase barriers to financial inclusion for economically vulnerable populations, including people with disabilities.

In understanding the needs of people with disabilities and other economically vulnerable populations defined by race, ethnicity, or other individual characteristics, it is critical to not generalize about their needs, challenges, and financial behaviors. Requirements regarding the development of Financial Inclusion Plans should not lump together all underserved populations who often have different needs and challenges. More needs to be learned on how specific underserved populations access and use mobile financial services versus traditional financial service channels. For individuals with disabilities, accessibility challenges may include the design of the application in terms of size of fonts, graphics that are not tagged, videos without text, touch screens, timing out functions, and use of colors. An accessibility challenge may be the interoperability of the mobile application with assistive technology like a screen reader, which, depending on design, may not be able to use the program at all.

For an SPNB applicant whose business plan includes lending or providing financial services to consumers, their proposed Financial Inclusion Plan should reflect an understanding and an effective response to meet these needs.

II. Information Technology Accessibility

To create a fully inclusive product and service, the SPNB applicant should be expected to meet current federal standards for accessibility as mandated in Section 508 of the Rehabilitation Act of 1973, as amended (29 U.S.C. § 794 (d)).⁵ Users with diverse accessibility needs should be a part of the design and development process early and throughout the process. Empirical evaluations with people with varying functional limitations should be a part

³ O'Day, B., Goodman, N. & Morris, M (forthcoming). *On the Edge of the Financial Mainstream: What are People with Disabilities in America Saying?*

⁴ Ibid.

⁵ US General Services Administration (undated) *Learn about Section 508 Requirements and Responsibilities*. <https://www.section508.gov/>

of required documentation submitted by the applicant that explains accessibility refinements to improve user experience. All applicants should provide an assurance of a commitment to the principles of universal design, both in terms of design for all and ease of use.

Accessibility requirements should be a part of an applicant's business plan, as compliance will help expand market reach and diminish reputation risk. Accessible design should be considered a critical part of OCC's guiding principle to "Encourage responsible innovation that provides fair access to financial services and fair treatment of consumers."⁶

As products and services are further refined to meet market demand and/or incorporate new technologies, applicants should provide a structured plan to continue to design and develop to meet diverse user access needs and an ongoing systematic approach to respond to user complaints about accessibility, with effective solutions for ease of use. Fair access to financial services and fair treatment of customers cannot be achieved without an adoption of accessibility standards as an essential part of OCC's chartering standards for review of an SPNB application.

Preliminary conditional approval of an SPNB charter should not be granted without meeting an accessibility standard to provide fair access to financial services for individuals with disabilities.

The accessibility standard would consist of four parts:

- A. Requirement that all bank charters, including SPNB charters, adopt the most up-to-date and comprehensive standards for ICT. The standards should conform to the international standards of the most current Web Content Accessibility Guidelines (WCAG).⁷ These are the standards used by the United States Architectural and Transportation Barriers Compliance Board to regulate federal agencies covered by Section 508 of the Rehabilitation Act and telecommunications equipment and software covered by Section 255 of the Communications Act of 1934.⁸
- B. Documentation that users with varying disabilities were engaged in the design, development, and beta testing of the initial product and/or improvements,
- C. Structured plan for continued improvements and updates to maintain and enhance accessibility, and
- D. Systematic approach to respond to user complaints about accessibility and development of solutions to improve access and ease of use.

⁶ Office of the Comptroller of the Currency (2016) *Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*. <https://occ.gov/publications/publications-by-type/other-publications-reports/pub-responsible-innovation-banking-system-occ-perspective.pdf>

⁷ W3C Web Accessibility Initiative (2017). Website: Web Content Accessibility Guidelines (WCAG) Overview. <https://www.w3.org/WAI/intro/wcag>

⁸ United States Access Board (2017) *ICT Refresh Website*. <https://www.access-board.gov/guidelines-and-standards/communications-and-it/about-the-ict-refresh>

III. A Commitment to Financial Inclusion

The proposed Chartering Standards require consideration of “whether an applicant will provide fair access to financial services and fair treatment of customers consistent with the safe and sound operations of the bank.” National Disability Institute strongly supports the requirement that the applicant’s business plan include a “Financial Inclusion Plan” (FIP) that describes the proposed goals, approach, activities, and milestones for serving the relevant market and community.

The commitment to financial inclusion is more than the just the development of a plan. For all SPNBs engaged in lending or providing financial services, evidence to the plan’s implementation should be a part of the operating agreement with OCC. Scheduled supervisory reviews, including onsite examination and periodic offsite monitoring, should review status of FIP implementation, as compared to proposed goals, approach, activities, milestones, and impacts on targeted low and moderate income consumers. The Report of Examination (ROE), which will be provided to the SPNB’s Board of Directors each supervisory cycle, should detail findings regarding FIP implementation, provide a rating, and detail recommendations for improvement.

Appendix B of the Licensing Manual Supplement provides more detailed information on the requirements for development of the FIP section of the business plan. NDI strongly supports OCC’s expectation that the SPNB applicant will engage underserved populations to identify financial needs and the FIP will describe approach and activities to meet those financial needs. The FIP should describe outreach activities undertaken, which community and consumer groups were targeted, what interactions took place, and what specific community financial needs were identified.

The FIP requirements, as defined by OCC, should include “any financial products or services that will foster financial inclusion, whether defined by income, geography, or other criteria, such as unserved or underserved populations.” NDI urges OCC to have the applicant explain how the described financial products or services reflect a response to what they learned from outreach activities with community unserved or underserved groups, including low and moderate income consumers. NDI urges OCC to amend the above statement to add people with disabilities, as follows:

“The products or services that the SPNB intends to offer, including any financial products or services that will foster financial inclusion, whether defined by income, geography, or other criteria, such as unserved or underserved populations, **including adults with disabilities.**” (emphasis added)

People with disabilities represent a large group of individuals who are unbanked and underbanked and more likely to use alternative financial services than their nondisabled

peers.⁹ Without specifically identifying people with disabilities within the class of unserved or underserved populations, they can be easily overlooked. People with disabilities are twice as likely to be low income than their nondisabled peers.¹⁰

The identification of milestones, including measureable goals for the accomplishment of the SPNB's financial inclusion objectives and description of a reasonable approach for meeting those goals as a core requirement of a FIP should be amended to add additional requirements regarding affordability and accessibility of products and services to respond to the needs of unserved and underserved populations as follows:

“Identification of design and development of products and services that meet accessibility standards for information and communication technology as promulgated by the United States Architectural and Transportation Barriers Compliance Board (Access Board) on January 18, 2017, as a Final Rule.”

“Identification of and method for offering products and services that provide reasonable costs and fees that do not exclude access and use by unserved and underserved populations.”

Such an approach must describe methods to inform potential and current consumers who represent unserved and underserved populations about risk and all fees and costs, including expanded data use costs from the offered products and services.

The full disclosure of terms and conditions of product and service use is a critical element of a FIP, so that unserved or underserved populations can make informed decisions that can be an effective path to financial inclusion. OCC's review of approach and methods to provide full disclosure to all customers is essential to protect less knowledgeable consumers with limited experience of potential risks and costs from a technology based financial tool or platform.

There must also be focused attention to the need for the FIP to be dynamic with improvements reflecting changing community needs, ongoing community input, and changes to the SPNB's business model regarding offered products and services and the terms and conditions being modified over time in response to market conditions.

The commitment to financial inclusion must be for the full life of the charter. We strongly support OCC's requirements that the FIP must make a long term commitment to meeting financial inclusion goals with fair access and fair treatment of LMI consumers, including individuals with disabilities. The FIP should describe a formal process to communicate with and receive public input that describes specific strategies for reaching unserved and

⁹ Federal Deposit Insurance Corporation (2016) *2015 FDIC National Survey of Unbanked and Underbanked Households, Appendix Tables*. Table B.13.

https://www.economicinclusion.gov/surveys/2015household/documents/2015_FDIC_Unbanked_HH_Survey_Appendix.pdf

¹⁰ U.S. Census Bureau (2016) 2015 American Community Survey 1-Year Estimates from American Fact Finder. Table S1811: Selected Economic Characteristics for the Civilian Noninstitutionalized Population by Disability Status.

underserved populations, including people with disabilities that focuses on the status of FIP implementation annually.

On at least an annual basis, updates or modification to the FIP plan should be considered and made based on public input. The revised FIP should be made available for public comment as part of a process of continual community engagement and quality improvements. The original and revised FIP should describe community nonprofit and public agency partnerships with an explanation of defined roles and responsibilities and allocation of resources to meet financial inclusion objectives.

IV. Closing the Digital Divide

Broadband today is more than a platform to deliver financial products and services in innovative ways to meet diverse customer needs. Broadband is a critical element of job creation, economic growth, and a pathway for low and moderate income populations to financial stability. Under the Community Reinvestment Act, infrastructure investment as a part of community development for chartered banks includes the improvement and expansion of affordable housing and facilities for health services, childcare, and education.

In LMI communities, there is also now a critical need for investment in broadband expansion and deployment strategies. The digital divide has been well documented. For individuals with disabilities who are LMI, there is a significant gap in access to broadband that would allow access to most Fintech products and services, when compared to access for nondisabled populations.¹¹

Broadband adoption and infrastructure expansion should be considered as a required element of community development under the FIP. The FIP requirements should be amended to add identification of approach, specific activities and timelines, and allocation of resources to a) increase broadband smartphone and computer access, and b) support training and education of the most economically vulnerable consumers to take advantage of online and mobile Fintech applications.

Access and skill in using the internet and apps effectively are essential for educational and economic opportunity. Adding this requirement to the FIP would be an important way a SPNB applicant can bring unserved and underserved consumers into the economic mainstream. It is a logical area for collaboration with other technology and telecommunication companies, as well as community nonprofit organizations who serve LMI populations. The FIP should describe these collaborations, as well as possible collaborations with other chartered banks, to meet these objectives.

¹¹ Goodman, N. & Morris, M. (forthcoming). *Banking Status and Financial Behaviors of Adults with Disabilities: Findings from the 2015 FDIC National Survey of Unbanked and Underbanked Households*. National Disability Institute.

V. Consumer Protections Must Not Be Weakened

To unserved and underserved consumers, the designation of a “bank” status brings a new level of credibility that access and use of the “bank’s” financial products and services will be protected. There is an expectation that their money is safe and that operation of the SPNB is sound.

The OCC granting of SPNB charters must not preempt state consumer protection rules, such as state usury caps and prohibitions against unfair or deceptive acts or practices (UDAP). Given the recent history of unfair overdraft fee practices, creation of fraudulent accounts, and use of discriminatory lending terms and conditions, state laws and oversight have played a critical role in protecting consumers by bringing enforceable actions. No regulator at a federal level can be expected to step in and protect every consumer. Fintech companies should not be allowed to evade the scrutiny of state agencies by applying for a SPNB charter.

OCC should make a part of the operating agreement with a SPNB that state UDAP statutes will apply and are in addition to OCC supervision and ongoing oversight.

To strengthen consumer protection, OCC should codify in regulation the non-preemption of state UDAP laws and coordinate and not preempt consumer protection authority of the Consumer Financial Protection Bureau.

As part of the operating agreement with a SPNB, there should be added an obligation to submit to state requests for information about potential consumer protection violations so that a timely investigation can go forward and further enforcement action can be taken if warranted.

Consumers should be further protected by OCC making clear that consumers have the right to bring civil actions in court to enforce OCC imposed consumer protections to challenge unfair, deceptive, or abusive practices.

Conclusion

People with disabilities are all too frequently below the bottom rung of the economic ladder. Twenty-six years after the signing into law of the Americans with Disabilities Act, the diverse population of individuals with disabilities, have high expectations that the goal of “advancing economic self-sufficiency” will be realized. The promotion of responsible innovation by Fintech companies with adoption of recommendations in this letter will further strengthen your requirements for financial inclusion responsibilities and consumer protections. Financial inclusion through fair and equal access to affordable, accessible, safe and sound financial products and services is an important step forward to bring people with disabilities into the economic mainstream.