

Office of Comptroller of Currency Seeks Comment on Proposed “Fintech Charter”

December 21, 2016

The Office of the Comptroller of the Currency (“OCC”) announced on Friday, December 2, that it seeks comments on whether it should grant “special purpose” national bank charters to financial technology companies. Some of the proposed benefits of a special purpose bank charter would be the creation of a unified Federal framework for activities that are now regulated through a patchwork of state-level requirements and the opportunity to expand the scope and types of services offered to communities that are underserved by traditional financial services.

The OCC may grant charters for national banks and federal savings associations under the National Bank Act and Home Owners' Loan Act. See 12 U.S.C. § 1 et seq. and § 1461 et seq. These charters authorize banks to conduct business nationwide, and enable uniform, comprehensive federal oversight. In its paper published on Friday, the OCC stated that they see no legal limit on their authority to grant special purpose charters, so long as the recipient is engaged in fiduciary activities, or the core banking functions of lending money, paying checks, or receiving deposits. Similar special purpose charters have been used in the creation of trust banks and credit card banks.

Firms chartered as special purpose banks will generally be subject to the same laws and requirements as full service national banks and membership in the Federal Reserve System. These laws include statutes on legal lending limits and real estate holdings. Special purpose banks will also be subject to the Bank Holding Company Act, the Bank Secrecy Act, federal anti-money laundering laws, the economic sanctions administered by the U.S. Department of the Treasury's Office of Foreign Assets Control, and certain provisions of the Federal Trade Commission Act and the Dodd-Frank Act. Although the special purpose charter will allow preemption of state licensing requirements, certain other state laws may still apply, including anti-discrimination and fair-lending laws. OCC has specified that federal statutes or regulations applying only to FDIC insured national banks would not apply to any uninsured special purpose national bank.

The OCC has suggested “baseline supervisory expectations” for any entity seeking its proposed special purpose charter. These include:

- A robust, well-developed business plan
- A governance structure commensurate with business risks
- Minimum and ongoing capital levels requirements (determined by the scope and nature of the bank's proposed activities)
- Liquidity requirements
- A strong compliance infrastructure
- A demonstrated commitment to financial inclusion, fair access to finance services, and fair treatment of customers
- A comprehensive framework for recovery strategies from stress events potentially impacting the entity

The chartering process for fintech companies seeking the new special purpose charters will map the standard process for bank chartering. See [Comptroller's Licensing Manual](#). The OCC has specifically recognized that it “may need to tailor some requirements that apply to full service national banks to address the business model” of individual special-purpose banks.

In addition to general feedback, the OCC has requested comments from the public on a series of questions as follows:

1. What are the public policy benefits of approving fintech companies to operate under a national bank charter? What are the risks?
2. What elements should the OCC consider in establishing the capital and liquidity requirements for an uninsured special purpose national bank that limits the type of assets it holds?
3. What information should a special purpose national bank provide to the OCC to demonstrate its commitment to financial inclusion to individuals, businesses and communities? For instance, what new or alternative means (e.g., products, services) might a special purpose national bank establish in furtherance of its support for financial inclusion? How could an uninsured special purpose bank that uses innovative methods to develop or deliver financial products or services in a virtual or physical community demonstrate its commitment to financial inclusion?
4. Should the OCC seek a financial inclusion commitment from an uninsured special purpose national bank that would not engage in lending, and if so, how could such a bank demonstrate a commitment to financial inclusion?
5. How could a special purpose national bank that is not engaged in providing banking services to the public support financial inclusion?
6. Should the OCC use its chartering authority as an opportunity to address the gaps in protections afforded individuals versus small business borrowers, and if so, how?
7. What are potential challenges in executing or adapting a fintech business model to meet regulatory expectations, and what specific conditions governing the activities of special purpose national banks should the OCC consider?
8. What actions should the OCC take to ensure special purpose national banks operate in a safe and sound manner and in the public interest?
9. Would a fintech special purpose national bank have any competitive advantages over full service banks the OCC should address? Are there risks to full-service banks from fintech companies that do not have bank charters?
10. Are there particular products or services offered by fintech companies, such as digital currencies, that may require different approaches to supervision to mitigate risk for both the institution and the broader financial system?
11. How can the OCC enhance its coordination and communication with other regulators that have jurisdiction over a proposed special purpose national bank, its parent company, or its activities?
12. Certain risks may be increased in a special purpose national bank because of its concentration in a limited number of business activities. How can the OCC ensure that a special purpose national bank sufficiently mitigates these risks?
13. What additional information, materials, and technical assistance from the OCC would a prospective fintech applicant find useful in the application process?

Notably, four of the questions raised by the OCC seek to address how federally chartered fintech banks could support financial inclusion and financial deepening for underserved communities, while three touch on managing prudential risks.

[View the full text of the OCC's proposal](#). Comments are to be submitted by email to specialpurposecharter@occ.treas.gov and received by January 15.

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