NACCA

National Association of Consumer Credit Administrators

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Sent Via U.S. Mail and Email, at:
specialpurposecharter@occ.treas.gov.

The Honorable Thomas J. Curry
Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

Re: Draft Supplement to the Licensing Manual of the Office of the Comptroller of the Currency (OCC) and Proposed Special Purpose National Bank Charters for Financial Technology Companies

Dear Comptroller Curry:

The National Association of Consumer Credit Administrators ("NACCA") is an association of state financial regulation agencies formed in 1935. NACCA's members include financial regulators from each of the 50 states, the District of Columbia, Puerto Rico, and Alberta, Canada. NACCA appreciates this opportunity to comment on the draft supplement to the OCC's Licensing Manual relating to Special Purpose National Bank Charters ("SPNBC") for Financial Technology Companies.

Premature Issuance of a Licensing Manual

Although the OCC's proposal creating the SPNBC has yet to be finalized, the OCC has requested comment regarding a draft supplement to its Licensing Manual relating to the SPNBC. The OCC's proposed supplement to its Licensing Manual attempts to prescribe a process for application for the SPNBC; however, the applicability of current OCC regulations and guidance issued by the agency to this new charter is unclear. As an example, the draft states the OCC would look at business plans in light of consumer protection as it has in the past, and cites Bulletin 2013-40. This bulletin regarding deferred advance products relies upon safety and soundness concerns in cautioning banks. In previous pages, though, the supplement opines SPNBC applicants will not be subject to safety and soundness parameters.

The supplement, as opposed to providing a framework for SPNBC application processing instead sets forth a subjective, case by case, review seemingly to permit making up the rules as the agency goes along. This is an indication that further research of the "fintech" arena and the appropriate role for the OCC is needed.

NACCA suggests that forging ahead with a Licensing Manual supplement is premature as the proposal related to the issuance by the OCC of the SPNBC remains in its current comments stage. NACCA further suggests that the risks associated with the underlying legal grounds for issuance of the SPNBC warrant a more deliberate approach to the supplementation of the OCC's Licensing Manual. Therefore, NACCA urges the OCC to undertake a formal rulemaking process relating to the issuance of the SPNBC before proceeding further with its proposed Licensing Manual supplement.

Effect on State Laws

The creation of the SPNBC effectively strips the states of their ability to protect their citizens, and amounts to a wholesale preemption of state oversight and consumer protection laws. As state laws are generally designed to provide protection for the residents of that state, it is likely some companies would be applying for an SPNBC to evade state-mandated consumer protection requirements including, in the case of lending, state laws that restrict interest rates and other charges. Therefore, this type of voluntary charter merely creates a vehicle whereby regulated entities can pick and choose the laws and rules they prefer, setting up an unintended forum shopping opportunity that will likely result in greater confusion for consumers, regulators, and industry.

NACCA would like to note that many of the companies that will likely apply for an SPNBC are already effectively regulated under state laws and are able to manage their licenses online, greatly reducing the time and effort needed to apply for, and maintain, licenses in multiple jurisdictions. Many states are making efforts, or are actively engaging with companies, to identify areas to further improve state regulatory processes.

Definition of "Fintech"

Although the draft supplement states that the proposed SPNBCs would be available for financial technology or "fintech" companies, the terms "financial technology" and "fintech" are not defined. Determining whether a business is a "fintech" business can be extremely problematic. The absence of a proper definitional structure creates confusion and uncertainty as to the scope of this new regulatory oversight authority. Further, the definitional void blurs the line for consumers and regulators in determining appropriate responses to inevitable consumer complaints.

In currently popular nomenclature, the term "fintech" seems to refer to a new way of providing financial services. It should be noted that what is "new" now will not be new forever. At one time, the new way of transporting money across the country was in a Wells Fargo stagecoach strongbox, but no one would consider that to be cutting edge today. Similarly, soliciting a potential borrower for a loan over a land-line telephone was, at one time, the new and high-tech method of offering financial services.

"Fintech" vs. Conventional Delivery

If the term "fintech" refers to new ways of providing financial services, this brings up the question of whether the SPNBC is designed to address the financial service being offered or the manner in which it is offered. A financial loan is a basic transaction in which a lender gives money to a borrower with the expectation that the borrower will repay the money. There is no explanation why a transaction in which a loan applicant applies over a telephone or over a computer, or where the loan proceeds are disbursed electronically, should be regulated differently than a loan where the borrower has submitted a loan application on a paper form and receives loan funds in the form a check. The underlying activity remains the same regardless of the medium by which the product is disbursed or documented.

Further, how should a company that offers services via both "fintech" and conventional means be addressed? If a company that offers a service or product via both "fintech" and conventional means obtains an SPNBC, it would likely have a regulatory advantage over a competitor that offers the same product or service only via conventional means and is therefore restricted by state consumer protection laws.

Confusion Over "Fintech" Companies That Do Not Engage in Core Banking Activities

The draft supplement notes that, in accordance with 12 CFR 5.20(e)(1), an SPNBC must conduct one of the three core banking activities, namely taking of deposits, paying checks or lending money. It is our understanding that many companies that do not conduct any of the core banking activities mentioned above may nonetheless consider themselves to be a "fintech" company. We question how the OCC's proposal, namely the establishment of SPNBC criteria, can be fairly considered or commented on with any degree of thoroughness by stakeholders when the OCC has not advanced a clear definition of the term, resulting in ample uncertainty and confusion among regulators and industry as to the breadth and depth of the OCC's proposal.

In conclusion, NACCA agrees with the majority of members of the U.S. House Financial Services Committee who recently advised the OCC against rushing things in this important and complex matter. Before proceeding further with a proposed supplement to the OCC's Licensing Manual, NACCA urges the OCC to step back from its hurried pace and first provide a full and fair opportunity through a formal rulemaking process for stakeholders to (i) see the details of the special charter, and (ii) provide adequate opportunity for feedback.

Sincerely,

Michael Larsen
President
National Association of Consumer Credit Administrators