

FinTech is Coming: The OCC Proposes Allowing FinTech Companies to Apply for Special Purpose National Bank Charters

On December 2, 2016, during a speech at Georgetown University, Comptroller of the Currency Thomas Curry [announced](#) that the Office of the Comptroller of the Currency (OCC) will allow financial technology (FinTech) firms to apply for limited-purpose national bank charters. The OCC concurrently released "[Exploring Special Purpose National Bank Charters for FinTech Companies](#)" (White Paper), which sets forth the principles for FinTech chartering. During his [speech](#), Comptroller Curry highlighted the issues in the White Paper, which focused on the: (1) OCC's authority, reasons and concerns in deciding to grant limited-purpose charters to FinTech firms (2) implications of granting a charter; (3) chartering process; (4) features and attributes of a national bank charter; and (5) baseline supervisory expectations.

In this Alert, we discuss the issues outlined above and other key aspects of the OCC's proposed FinTech National Bank Charter. Suffice it to say, it appears to us that the OCC is ready to embrace the realities of modern technology meeting banking services.

Key Aspects of the Proposed FinTech National Bank Charter

- **Activities:** A FinTech national bank must engage in one of these activities: fiduciary activities, receiving deposits, paying checks or lending money. Additionally, the FinTech bank only may engage in activities permissible for national banks. The OCC would consider on a case-by-case basis the permissibility of a new activity that is not currently permissible for national banks.
- **Preemption:** A FinTech national bank would enjoy the same preemption as other national banks. Under the National Bank Act, state laws that significantly interfere with the banks' powers do not apply to national banks. Notably for the FinTech industry, state licensing laws are preempted by the OCC. Therefore, a FinTech national bank would not need to comply with the costly and burdensome state licensing system.
- **Capital and Liquidity:** The OCC expects an entity to have minimum and ongoing capital and liquidity commensurate with the risk and complexity of the entity's activities. The OCC expects an entity to propose a minimum level of capital that the entity would meet or exceed at all times.
- **Deposit Insurance:** If a FinTech national bank accepts deposits other than trust funds, deposit insurance would be required. However, if the FinTech bank is not accepting deposits, it would not need to obtain deposit insurance.
- **Federal Reserve Membership:** A FinTech national bank must become a member of the Federal Reserve System.
- **Community Reinvestment Act (CRA):** The CRA encourages depository institutions to "help meet the credit needs of the local communities in which they are chartered consistent with the safe and sound operations of such institutions." (12 U.S.C. § 2901(b)). Institutions are evaluated on lending, investment and services tests, and the results of those evaluations are made public and are taken into consideration when an institution seeks regulatory approval to expand its products and services or merge with another entity. The CRA does not apply to uninsured banks, so non-deposit taking FinTech banks would not be subject to the CRA. However, the OCC has indicated that it may impose CRA-like requirements on a FinTech bank as part of the OCC's conditional approval of the charter. Additionally, if the entity is engaged in lending, it would need to show its commitment to financial inclusion in its business plan that it submits to the OCC as part of the application.
- **Consumer Protection:** Depending on the size and activities of the entity, it may be subject to supervisory oversight by the Consumer Financial Protection Bureau (CFPB). Thus, it is possible that by becoming a FinTech national bank, an entity would be supervised by not one but two federal regulators – the OCC and CFPB. This is an important aspect of federal supervision that FinTech companies should consider.
- **Compliance Risk Management:** An entity would need to have a well-developed compliance management system, including compliance with BSA, AML, OFAC and consumer protection laws.
- **Resolution Plan:** An entity would be subject to the receivership provisions in the National Bank Act. The OCC is promulgating a [rule](#) regarding resolution of uninsured national banks that may apply to FinTech national banks.
- **Chartering Process:** An entity interested in becoming a FinTech national bank would need to apply to the OCC. The application process for a FinTech entity is much the same as it is for traditional banks. The charter process includes the following:
 - **Prefiling stage**, which involves both formal and informal discussions with the OCC and completion of the application and business plan
 - **Filing stage**, including filing the application and publishing notice of the filing
 - **Review and evaluation stage**, in which the OCC conducts background and field investigations and analyzes the application based on set criteria
 - **Decision stage**, which includes the preliminary conditional approval phase, the organization phase, including raising necessary capital, and the final approval phase

Next Steps

The OCC requested feedback on all aspects of its White Paper, providing 13 targeted questions to solicit responses from stakeholders. Questions ranged from the public policy benefits of such a charter to what elements should be considered when determining capital and liquidity standards, among other topics. Comments may be submitted to the OCC until January 15, 2017.

If you are interested in commenting on the White Paper or want to consider applying to become a FinTech national bank, we can help. Our team includes former Members of Congress and former senior members of agencies such as the OCC, the Federal Deposit Insurance Corporation, and the Federal Reserve, as well as former senior staff from the Senate Banking Committee and the House Financial Services Committee. We also boast a large number of team members who have previously worked within the financial services sector. Our financial services policy expertise, coupled with the deep knowledge of our technical practitioners, allows us to provide our clients with unmatched representation in Washington DC and beyond, on and across legislative, regulatory and transactional matters.

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