

“Responsible Innovation” or a “Regulatory Train Wreck?” The OCC Announces it will Accept Fintech Applications for Special Purpose National Bank Charters

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On July 31, 2018, the Office of the Comptroller of the Currency (“OCC”) [announced](#) that it will begin accepting applications from non-depository FinTech companies for special purpose national bank charters. It’s a long-awaited announcement that represents the culmination of a two year process during which the OCC sought stakeholder feedback and public comment on the issue.

Among the notable points that the OCC makes in the policy statement are the following:

- The OCC has the authority to issue special purpose charters to FinTech companies, an issue that was the subject of previously dismissed legal challenges brought by the Conference of State Bank Supervisors (“CSBS”) and the New York Department of Financial Services (“NYDFS”). In the policy statement, the OCC reiterates its position that the National Banking Act and OCC regulations (12 C.F.R. § 5.20) authorize the agency to grant charters to non-depository FinTech companies that engage in at least one of the “core banking activities” — lending, paying checks or deposit-taking — in addition to the special purpose charters for trust/fiduciary activities;
- The OCC’s decision will benefit consumers by encouraging “responsible innovation” in the banking industry. The OCC states that its decision will expand consumer choice, foster innovation in the banking sector, and “level the playing field” between regulated and non-regulated banking services institutions while ensuring FinTech companies operate safely and soundly;
- FinTech companies will be held to the same standards and supervision as their similar non-FinTech counterparts, including requirements concerning capital, liquidity, and risk management. OCC-chartered FinTech companies will also be required to maintain a contingency plan for significant financial stress scenarios. The special purpose national bank will not be required to be FDIC-insured, since they will be non-depository institutions; and
- FinTech companies may engage in any activity deemed to be [permissible](#) for a national bank.

The OCC also released a supplement to the *Comptroller’s Licensing Manual* entitled “Considering Charter Applications From Financial Technology Companies”, which provides additional details about these and other requirements (available [here](#)).

The OCC's announcement was not greeted with universal praise. The CSBS, for example, called the decision "a regulatory train wreck in the making," arguing that the policy "exceeds the current authority granted by Congress to the OCC."

The new policy raises several questions, including: how many FinTech companies will actually apply for a charter, in light of the application of federal regulations that would not otherwise apply to a special purpose charter? What impact will the financial inclusion and contingency risk exposure plan requirements have on potential applicants? Will the CSBS and the NYDFS renew their legal challenges to the OCC's authority to grant such charters, and will they be successful?

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