

Fintech: The Community Bank Perspective

On behalf of the more than 5,700 community banks represented by ICBA, we thank Chairman Crapo, Ranking Member Brown, and members of the Senate Banking Committee for convening today's hearing on "Fintech: Examining Digitalization, Data, and Technology." We appreciate you raising the profile of a critical issue for the future of credit, payments, and American prosperity. As outlined below, ICBA believes that fintech is a promising development for consumers, businesses, and community banks. To achieve the full potential of fintech, policymakers must ensure that it does not jeopardize safety and soundness and consumer protection. In particular, the Office of the Comptroller of the Currency's (OCC's) special purpose national bank charter fails to address these concerns and deserves closer scrutiny by Congress.

The promise of fintech

Technological innovation and deployment continue to alter the way that consumers and businesses conduct banking and commerce. Community bankers are embracing innovative fintech solutions to simplify the banking experience for consumers and facilitate and speed transactions. Fintech offers a wealth of opportunities for community banks. These include: simplifying the banking experience for consumers; providing a more detailed and sophisticated understanding of customers and targeting products and services to the market segments where they are most valued; creating innovative uses of data to ease and speed decision making and providing access to the cloud infrastructure to lower costs.

Many community banks have partnered with fintech companies to access the opportunities described above. The challenge facing regulators is to encourage technological innovation that doesn't unfairly disadvantage existing market participants and doesn't put the financial system or consumers at risk.

OCC special purpose charter fails to address these concerns

In August, the OCC announced that it would accept applications for a new special purpose charter for non-depository online marketplace lenders, other fintech companies, and any other company that the OCC considers to be in the "business of banking." While the special purpose charter will subject online lenders and fintech companies to more oversight and regulation than they have had, it fails to address the essential questions concerning the regulatory framework that will govern the supervision of these firms.

For instance, while the [OCC Policy Statement on Financial Companies' Eligibility to Apply for National Bank Charters](#) says that "grant(ing) special purpose charters does not alter existing barriers separating banking and commerce," it is unclear whether the owners or affiliates of an OCC chartered fintech company would be regulated in the same way that the Bank Holding Company Act restricts the commercial activities of a bank holding company. Allowing corporate conglomerates like Google or Amazon to own banks violates the U.S. policy of maintaining the separation of banking and commerce, jeopardizes the impartial allocation of credit, creates conflicts of interest, and

unwisely extends the federal safety net to commercial interests. If the OCC truly wants to separate banking and commerce, the agency should issue a rule that states that any special purpose national bank charter and/or its owners or affiliates will be subject to the same restrictions as those that apply under the Bank Holding Company Act.

ICBA supports the development of a fintech regulatory framework that is no less stringent than that which applies to insured depository institutions. The OCC should publish transparent capital and liquidity requirements for these firms that specifically address minimum levels considered appropriate for a fintech firm to be well capitalized. Fintech capital and liquidity requirements should be no less rigorous than those that apply to insured depository institutions. Such a framework would promote a fair regulatory system, protect consumers, maintain the separation of banking and commerce, and support safety and soundness at these companies.

Fintech charter should have statutory authority

Because the scope of the chartering authority under the 150-year old National Bank Act is unclear, ICBA urged the OCC to obtain specific legal authority from Congress before creating a special purpose charter for fintech companies, a step that could fundamentally change the financial market place, put safety and soundness at risk, and jeopardize consumers. Furthermore, the OCC should issue rules, subject to notice and comment, which would prescribe the scope and requirements of the new special purpose national bank charter.

A full bank charter is the best point of entry for fintech companies

Varo Money (which has rebranded itself as Varo Bank) recently received preliminary approval from the OCC for a full bank charter that will allow it to accept FDIC-insured deposits. Varo Money provides mobile payments and accounts services. This, in our view, is how fintech companies that want bank charters should enter banking. Varo Bank will be subject to full array of national bank regulation and supervision, and if it creates or is acquired by a holding company, the holding company will be subject to consolidated Federal Reserve examination and oversight, as would any other de novo national bank.

Online marketplace lender performance raises serious concerns

The recent problems some online marketplace lenders have experienced with liquidity and earnings, as well as with compliance, make it important that these lenders be subject to safety and soundness supervision and regulation. [They could become a source of systemic risk.](#) These companies have not experienced a serious economic downturn yet and already they have been subject to serious funding and capital issues.

Congress should close the industrial loan company loophole

A loophole in the Bank Holding Company Act allows fintech companies and commercial holding companies to acquire industrial loan companies (ILCs) without being subject to federal consolidated supervision. In recent months,

Square, SoFi Bank, and most recently, Nelnet Bank, have applied for ILC charters. All of these companies have holding companies and affiliates that engage in diverse, non-financial, commercial activities.

Expansion of ILCs through fintechs and commercial companies would put the federal safety net, and ultimately the American taxpayer, at risk. ILCs are the functional equivalent of full-service banks. Commercial holding company ownership of ILCs will effectively combine banking and commerce, contrary to long-standing American economic policy.

ICBA supports statutory closure of the ILC loophole and urges the FDIC to impose an immediate two-year moratorium on the approval of deposit insurance for ILCs.

Historically, limited purpose charters have evolved far beyond their original purpose and intent

The industrial loan company charter should provide a cautionary example for financial regulators. Special purpose bank charters have the potential to evolve beyond their original purpose and intent and end up having all of the advantages and benefits of a full-service bank charter with limited supervision and regulation.

Closing

Thank you again for convening today's hearing. ICBA urges Congress to exercise thoughtful and vigorous oversight of the emergence of fintech and its implications for consumers, businesses, and the broader economy. We are pleased to have the opportunity to offer the community bank perspective and look forward to working with this Committee as consideration of this important issue unfolds.