

## Financial Inclusion and Robust Regulation Are on the Table as OCC Pushes Ahead With Fintech Charter

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Last week the United States Office of the Comptroller of the Currency (“OCC”) issued a Draft Supplement to its Licensing Manual (“Supplement”) in furtherance of its proposal to rolling out a special purpose national bank (“SPNB”) charter for financial technology (“fintech”) companies. The Supplement outlines the process by which a fintech company may apply for a SPNB charter, and the considerations the OCC will take into account when evaluating such applications.

The Supplement reiterates OCC determination that the SPNB charter would be “in the public interest” because it would provide “uniform standards and supervision,” “support the dual banking system,” promote “growth, modernization, and competition” in the financial system, and encourage fintech companies to “promote financial inclusion.” It also makes clear the OCC’s determination to promote financial inclusion and to rebut criticisms that the SPNB charter would represent a light touch regulatory regime.

### Summary of Key Provisions

The Supplement notes that many application processes and chartering standards for SPNB applicants will be similar to those used for other bank charter applicants. It is not a ‘bank-lite’ charter; an “applicant that receives OCC approval for a charter becomes a national bank subject to the laws, regulations, and federal supervision that apply to all national banks.” This summary highlights key areas in which the OCC indicates considerations may be different; therefore we do not restate existing licensing procedures and considerations.

The OCC wants an “iterative” application process whereby the agency and applicant maintain an “open dialogue.” Like other bank charter applicants, SPNB applicants must arrange a preliminary meeting (which could become multiple meetings) and submit a pre-filing proposal that details the company’s business plan, including its plan for financial inclusion. The company should also identify “any novel policy or legal issues” of the proposal. Additionally, the OCC indicates that the applications will provide it with an “enhanced window” through which it can better understand emerging technologies and evaluate and respond to any accompanying risks.

The Supplement makes clear that an SPNB charter recipient must engage in the limited range of permissible banking activities (other than deposit taking) set out in statute, regulation, judicial precedent, or OCC guidance, including one of the core banking functions. However, the OCC acknowledges that applicants may be involved in activities that have not previously been deemed to be part of, or incidental to, the business of banking or to fall within a core banking function. When that is the case, applicants should address in their pre-filing meetings the permissibility of the proposed activities, and they may be required to prepare a supporting legal analysis. However, the Supplement makes clear that the OCC will not approve proposals from companies whose activities “inappropriately commingle banking and commerce.”

When considering a SPNB charter application, the Supplement states that “the OCC will consider, among other things, whether the proposed bank



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- has organizers and management with appropriate skills and experience.
- has adequate capital to support the projected volume and type of business and proposed risk profile.
- has a business plan that articulates a clear path and a timeline to profitability.
- includes in its business plan, if applicable, a [financial inclusion plan] that has an appropriate description of the proposed goals, approach, activities, and milestones for serving the relevant market and community.”

The OCC may impose special conditions regarding the charter to ensure that an applicant will achieve these objectives.

## **Business Plans**

The Supplement provides guidance for applicants about what must be included in their business plans, noting specifically that “companies without an established business record are subject to a higher degree of scrutiny.”

The business plan should include, among other things:

- a risk assessment, including the degree of risk the bank would generally assume and how it would manage that risk;
- a description of the bank’s records, systems, and controls, which explains the bank’s information technology platform, its compliance management program, its plans for independent auditing, and outsourcing and third-party risk management; and
- for applicants that will lend or provide financial services to consumers or small businesses, a description of a financial inclusion plan for providing fair access and treatment to the relevant market and community.

The Supplement also explains that an “SPNB will be subject to the minimum leverage and risk-based capital requirements” that apply to all national banks. However, the OCC acknowledges that SPNB applicants may have particular situations that require different approaches to determining the capital adequacy requirements. Accordingly, applicants will be required to propose in their business plans capital adequacy requirements, including a discussion of how the applicants would address adverse market conditions.

## **Supplement Feedback**

Comments on the Supplement are due by April 14, 2017, and we expect there will be many commentators. Even before issuance of the Supplement, there has been intense interest in the proposed charter. State regulators, for example, have questioned the need for, and the OCC’s authority to grant, such a charter. Moreover, the proposed charter also garnered significant bipartisan, bicameral interest among Members of Congress. On March 10, 2017, all 34 Republican members of the House Financial Services Committee urged the OCC to delay implementation of the charter to allow stakeholders and the next Comptroller of the Currency to provide further input. (Comptroller Thomas J. Curry’s five-year term ends on April 1, 2017.) In addition, key Senate Democrats expressed concerns that the proposed charter could result in “charter shopping” by fintech firms, as well as reduce consumer protections and undermine efforts to achieve greater financial inclusion. However, numerous industry groups have lauded the OCC’s efforts to bring uniformity and a level playing field for banks and fintech companies.

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