

United States House of Representatives
Committee on Financial Services
Washington, D.C. 20515

August 31, 2018

The Honorable Jeb Hensarling
Chairman
Committee on Financial Services
2129 Rayburn HOB
Washington, DC 20515

Dear Chairman Hensarling:

I am writing to request that you schedule a hearing in the Financial Services Committee (“Committee”) to review the decision by the Office of the Comptroller of the Currency (“OCC”), which was announced on July 31, 2018, to begin accepting special purpose national bank charter applications from non-depository financial technology (“fintech”) companies.^[1]

Although many traditional financial institutions serve their customers well, a sizable portion of the country’s population continues to be ignored or poorly served by the existing financial system. According to the Federal Deposit Insurance Corporation (“FDIC”), about 9 million U.S. households are unbanked, and another 24.5 million households are underbanked, meaning that even if the household had a checking or savings account, they still utilize alternative, if not less safe, financial products and services, such as a payday loan.^[2] Furthermore, Reveal from the Center for Investigative Reporting found evidence of the discriminatory practice of redlining in more than 60 metro areas across the country, where African Americans, Latinos, and other minorities were denied conventional mortgage loans at rates far higher than their white counterparts.^[3] I believe that our financial system can, and must, do more to promote better access to fair and affordable financial services and products for all hardworking American consumers.

I am hopeful that within a proper framework, fintech companies can—either on their own or in partnering with traditional financial institutions—help address some of these shortcomings by providing ways for consumers to obtain financial products and services that will empower them to achieve their goals. For that reason, Committee Democrats have proactively engaged with numerous stakeholders this term to better understand the wide range of policy issues relating to fintech, including by convening a roundtable with top executives of several fintech firms to discuss their initiatives to provide innovative financial products and services for consumers and small business owners. While I am pleased several of the Subcommittees have also had hearings about fintech developments,^[4] I believe that the OCC’s groundbreaking announcement necessitates that Comptroller Joseph Otting appear before the full Committee as soon as possible to discuss the matter. This would ensure that all Committee members are afforded the opportunity to better understand the OCC’s action, and to consider the potential impact this step may have for consumers, small businesses, traditional financial institutions, the broader financial system, and the economy.

It is worth noting that while some stakeholders have touted the capacity for fintech firms to expand access to credit in supporting the OCC’s efforts,^[5] other stakeholders, including consumer groups, civil rights organizations, small business owners, and community banks, have raised concerns about the substance of the OCC’s fintech charter framework.^[6] Additionally, some stakeholders have challenged the legal authority that the OCC appears to be relying on as the basis of their decision. For example, state bank supervisors have

^[1] <https://www.occ.gov/news-issuances/news-releases/2018/nr-occ-2018-74.html>

^[2] <https://www.fdic.gov/householdsurvey/>

^[3] <https://www.revealnews.org/article/for-people-of-color-banks-are-shutting-the-door-to-homeownership/>

^[4] <https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=402951>;
<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=401938>;
<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403735>; and
<https://financialservices.house.gov/calendar/eventsingle.aspx?EventID=403178>.

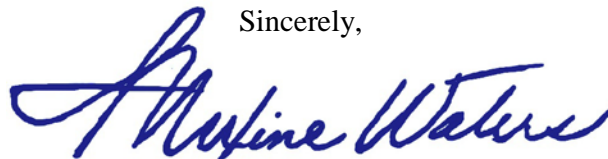
^[5] For example, see <https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-nhoopes-20180130.pdf>, <https://www.occ.gov/topics/responsible-innovation/comments/comment-financial-innovation-now.pdf>, and <https://www.occ.gov/topics/responsible-innovation/comments/comment-mcgreivy-ola.pdf>.

opposed the OCC's plans,^[7] and have made initial attempts to challenge the OCC's proposal in court.^[8] Because of questions about the legal authority of OCC's decision combined with the fact that aspects of the OCC's framework appear to be ambiguous and likely to be administered in an *ad hoc* fashion, some experts have already called for Congress to step in.^[9]

Furthermore, a couple of fintech firms have already applied for a different banking charter that would allow them to establish a state-chartered, federally-insured industrial loan company ("ILC") regulated by the FDIC. When the first fintech company applied for the ILC charter, I wrote former FDIC Chairman Martin Gruenberg to ask the FDIC to hold a public hearing on the application the agency had received to allow for a fuller vetting of the policy issues and questions with respect to granting federal deposit insurance backed by U.S. taxpayers to a fintech company before the application was approved. While that company ultimately withdrew its ILC application, given the broad range of views from stakeholders on the OCC's fintech charter, it is equally important for Congress to fully examine the appropriateness of the OCC's action, and to ensure that the correct balance is ultimately adopted to encourage companies to responsibly innovate and promote greater access to credit while maintaining robust safeguards and consumer protections.

I believe that it is incumbent on the Committee to invite Comptroller Otting to answer questions and provide the Committee with the OCC's rationale and legal justification for this new special purpose national bank charter for fintech companies. Given that the OCC's recent decision could result in new fintech charters being granted before the end of the year, I urge you to schedule this hearing as soon as practicable.

Sincerely,



MAXINE WATERS
Ranking Member

cc: The Honorable Joseph Otting, Comptroller of the Currency

^[6] For example, see <https://www.icba.org/news/press-releases/2018/08/01/icba-statement-on-treasury-occ-regulatory-announcements>, <https://www.occ.gov/topics/responsible-innovation/comments/comment-independent-community-bankers.pdf>, <https://www.occ.gov/topics/responsible-innovation/comments/comment-main-street-alliance.pdf>, <https://ourfinancialsecurity.org/2017/01/joint-letter-regulators-250-groups-urge-occ-not-offer-fintech-charters/>, http://www.nclc.org/images/pdf/banking_and_payment_systems/fintech/comments-fintech-jan2017.pdf, <https://www.occ.gov/topics/responsible-innovation/comments/comment-crl.pdf>, <https://www.occ.gov/topics/responsible-innovation/comments/comment-nrcr.pdf>, and <https://financialservices.house.gov/uploadedfiles/hhrg-115-ba15-wstate-alevitin-20180130.pdf>.

^[7] <https://www.occ.gov/topics/responsible-innovation/comments/comment-csbs-comment-letter-special-purpose-national-bank-charters-fintech.pdf>

^[8] See <https://www.csbs.org/csbs-files-complaint-against-comptroller-currency> and <https://www.csbs.org/csbs-complaint-against-occ-concerning-federal-fintech-charter>. Also see similar complaint filed against the OCC by the New York State Department of Financial Services, available at: <https://www.dfs.ny.gov/about/ea/ea170512.pdf>.

^[9] For example, a Bipartisan Policy Center ("BPC") task force led by former Republican Senator Olympia Snowe and Karen Mills, former Administrator of the Small Business Administration, issued a report on improving small business financing, and wrote, "If the OCC does move forward with a [fintech] charter, the lack of certainty about its legal authority to issue the charter will remain in question and likely spawn additional lawsuits.... Even if the courts uphold the OCC's authority to establish a nonbank charter, that authority was not designed with modern fintech companies and other nonbanks in mind. Rather than the OCC stretching existing authorities to address current gaps in regulation, Congress should explicitly authorize the OCC to issue a federal nonbank charter that can engage in lending and payments activities, other than the acceptance of FDIC-insured deposits." See <https://bipartisanpolicy.org/library/main-street-matters-ideas-for-improving-small-business-financing/>.