

Insights: Alerts

OCC Issues Additional Guidance for Evaluating FinTech Charter Applications

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On March 15, the Office of the Comptroller of the Currency (OCC) provided additional detail on evaluating national bank charter applications from financial technology (FinTech) companies that engage in the business of banking. The guidance came in the form of a draft supplement to the agency's existing *Licensing Manual*.¹ Although the OCC has taken the next step in making special purpose national bank (SPNB) charters available for FinTech companies, there remain political issues surrounding this initiative, including the expected imminent appointment of a new Comptroller of the Currency who may have a different view on the subject.²

This additional guidance supplements the OCC's December 2016 announcement saying it would move forward with considering a SPNB charter³ for FinTech companies that provide banking products and services. The OCC published and requested public comment on the SPNB paper describing the issues associated with offering national bank charters to FinTech companies.⁴ The OCC received more than 100 comment letters on the SPNB paper.⁵ The draft supplement, informed by the comments received on the SPNB paper, explains how the OCC would evaluate applications from FinTech companies and the conditions for approving such charters.

After considering those comments, the OCC states that in evaluating applications from FinTech companies for an SPNB charter, the agency would be guided by certain threshold principles that inform the draft supplement:

- The OCC will not allow the inappropriate commingling of banking and commerce;
- The OCC will not allow products with predatory features nor will it allow unfair or deceptive acts or practices; and
- There will be no "light-touch" supervision of companies that have an SPNB charter. Any FinTech companies granted such charters will be held to the same high standards that all federally chartered banks must meet.

This supplement explains how the OCC will apply the licensing standards and requirements in existing regulations and policies that govern the review and decision making with respect to chartering national banks to FinTech companies applying for special purpose national bank charters. The supplement also describes unique factors that the agency will consider in evaluating applications from FinTech companies; expectations for promoting fair access, fair treatment, and financial inclusion; and the agency's approach to supervising those FinTech companies that become national banks.

Initial Steps Toward Obtaining an SPNB Charter

- **Prefiling Communications with the OCC:** The OCC notes that applying for a national bank charter is an iterative process, and the OCC “finds it mutually beneficial for the applicant and the OCC to maintain an open dialogue throughout the process.”⁶ The prefiling stage may include one or more formal prefiling meetings with OCC Licensing and other appropriate staff. Before the initial formal prefiling meeting, organizers should provide the OCC with an overview of the FinTech charter proposal, including a discussion of the business plan and the relevant market, as well as any novel policy or legal issues and any unique aspects of the proposal. In addition, the OCC will request informational submissions for review in advance of the submission of an application, such as a draft business plan.⁷
- **Activities of the Proposed SPNB:** All activities of a national bank, including an SPNB, are limited to those that are permissible for national banks under a statute, regulation, or federal judicial precedent, or that the OCC has determined to be permissible. Under 12 C.F.R. § 5.20(e)(1), a SPNB that conducts activities other than fiduciary activities must conduct at least one of the following three core banking activities: taking deposits, paying checks, or lending money. The OCC anticipates that SPNBs likely will elect to demonstrate that they are engaged in paying checks or lending money.⁸
- **Filing Procedures:** The filing procedures for an SPNB will be substantially the same as those applicable to any other national bank.

Chartering Standards

Once a firm submits a proposal, the OCC determines whether it satisfies the chartering standards in the OCC’s regulations and policies. The OCC also states that it will not approve proposals that would result in an inappropriate commingling of banking and commerce. In considering applications for SPNB charters, the OCC will coordinate as appropriate with other regulators with jurisdiction over the proposed SPNB to facilitate simultaneous consideration of any applications or approvals that may be required by those regulators.

Although the OCC would expect some members of the organizing group, the proposed board of directors, and management to have experience in regulated financial services, other relevant experience will depend on the specific products or services offered by the proposed SPNB. For example, the OCC notes that it may be important for one or more of the organizers, managers, or directors of a proposed bank with novel technology-based products or services to have experience with those activities.

Business Plan

In addition to the generally applicable information in the Business Plan Guidelines⁹, applicants should consider the supplemental guidance below on specific parts of the business plan:

- **Risk Assessment:** An applicant’s business plan should include a risk assessment that identifies and discusses the particular risks the organizers expect the proposed bank to face given its business model (which may include, for example, concentration risk, compliance risk, reputation risk, strategic risk, and operational risk).
- **Records, Systems & Controls:** This section of the business plan describes the applicant’s system for customer record keeping and transaction processing and the internal controls that

will enable the bank to protect customer data and process transactions in an accurate and efficient manner. This section also describes the bank's compliance management programs.

- **Financial Management:** This section of the business plan should propose both minimum capital levels the bank will adhere to initially that are sufficient to support the proposed bank's business plan until the bank can achieve and sustain profitable operations and minimum capital levels the bank will adhere to after profitability that would be appropriate for its ongoing operations. This section should also discuss how the proposed bank would address adverse market conditions that could deplete capital, such as broad market volatility or volatility specific to a business line, and also address liquidity and funds management.
- **Monitoring & Revising the Business Plan:** This is an ongoing requirement, and technology-dependent businesses will need to have mechanisms in place to accommodate new or evolving technologies.
- **Alternative Business Strategy; Contingency Plans; Recovery & Exit Strategies:** Depending on the applicant's proposed business strategy and structure, the OCC may require an applicant to include an alternative business strategy detailing how the bank will manage potential scenarios when expectations — such as operating expenses, marketing costs, or growth rates — differ significantly from the original plan.
- **Financial Inclusion Plan (FIP):** The OCC expects an applicant for an SPNB charter whose business plan includes lending or providing financial services to consumers or small businesses to demonstrate a commitment to financial inclusion.¹⁰

Chartering Decision

The OCC grants approval of a charter application in two steps: preliminary conditional approval and final approval. A national bank must generally open for business within 18 months of the OCC's preliminary conditional approval, unless the OCC grants an extension.¹¹ The OCC imposes a number of standard requirements on a bank when it grants preliminary conditional approval. The OCC may also place additional special requirements on SPNB charters with certain characteristics. In addition, the OCC may impose standard and special conditions that remain in place after the bank opens for business.¹² The OCC will impose assessments on an SPNB through special conditions established at the time of preliminary approval.

Receipt of final approval from the OCC means the OCC has issued a charter for the bank, and the bank can begin to conduct banking business. In general, the OCC states that it "would approve applications to charter an SPNB from any companies that have a reasonable chance of success, will provide fair access to financial services, will ensure compliance with applicable laws and regulations, and will promote fair treatment of customers and foster healthy competition." After the OCC issues final approval and the SPNB opens for business, the OCC will supervise the SPNB, as all other national banks, under scheduled supervisory cycles, including on-site examination and periodic offsite monitoring.

Public Comments

The OCC states that it typically does not solicit comments on procedural manuals and supplements; however, "consistent with its guiding principles of transparency and fostering open dialogue with stakeholders," the OCC will accept comments through close of business April 14, 2017. Comments should be submitted to specialpurposecharter@occ.treas.gov.

¹ <https://www.occ.gov/publications/publications-by-type/licensing-manuals/index-licensing-manuals.html> .

²The five-year term of the current Comptroller of the Currency, Thomas J. Curry, expires on April 1, 2017.

³For purposes of this supplement, the term “special purpose national bank” means a national bank that engages in a limited range of banking activities, including one of the core banking functions described at 12 C.F.R. § 5.20(e)(1), but does not take deposits within the meaning of the Federal Deposit Insurance Act (FDIA) and therefore is not insured by the Federal Deposit Insurance Corporation (FDIC).

⁴ <https://www.occ.gov/topics/bank-operations/innovation/comments/special-purpose-national-bank-charters-for-fintech.pdf>.

⁵In response to comments received voicing concerns about consumer protection standards applicable to SPNBs, the OCC notes that a FinTech company that is approved for a national bank charter “would be subject to consistent federal consumer protection standards and federal supervision and regulation.” Furthermore, based on the application of federal preemption, state law applies to an SPNB “in the same way and to the same extent as it applies to other national banks. For example, state laws that address anti-discrimination, fair lending, debt collection, taxation, zoning, crime, and torts, generally apply to national banks and would also apply to SPNBs.” The OCC also states that it “does not approve charter applications from any company that plans to offer financial products and services with predatory, unfair, or deceptive features and so would not approve any such application from a FinTech company.”

⁶FinTech companies seeking an SPNB charter should make an initial inquiry concerning a charter application through the OCC’s Office of Innovation, innovation@occ.treas.gov. The Office of Innovation is the primary point of contact within the OCC for all inquiries by FinTech companies, including questions and preliminary inquiries related to chartering. If a FinTech company is interested in further discussions regarding an SPNB charter, the Office will schedule an exploratory meeting with the appropriate OCC staff, including the OCC Licensing Division. The meeting will include a discussion of the company’s business model, the *Licensing Manual*, and the OCC’s expectations.

⁷The OCC will expect an SPNB applicant, whose business plan includes lending or providing financial services to consumers or small businesses, to demonstrate a commitment to financial inclusion.

⁸The OCC notes that in some cases, the activities proposed for an SPNB may include activities that have not previously been determined to be part of, or incidental to, the business of banking or to fall within an established core banking function. If so, the company should discuss in prefiling meetings with the OCC the permissibility of the activities and their status as core banking activities.

⁹ <https://www.occ.gov/static/licensing/form-business-plan-v2.pdf>.

¹⁰The OCC recognizes that there are many different activities SPNBs could engage in to promote financial inclusion. While the OCC encourages the development of innovative products or services designed to address the needs of low- and moderate-income individuals and communities, the OCC notes that SPNBs could also demonstrate their commitment to financial inclusion in more traditional ways. For example, the OCC has supported national banks’ participation in programs, such as financial literacy and credit counseling services, that improve individuals’ understanding of the financial products and services that meet their needs. Investments in certain funds or organizations may also be part of an effective FIP. See OCC Summary of Comments and Explanatory Statement: Special Purpose National Bank Charters for Financial Technology Companies, available at <https://www.occ.gov/topics/bank-operations/innovation/summary-explanatory-statement-fintech-charters.pdf>.

¹¹ See 12 C.F.R. § 5.20(i)(5)(iv).

¹²Conditions may be imposed directly in the preliminary approval letter, or the OCC may require as a condition of approval that the applicant enter into an operating agreement with the OCC.

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