

## *Just the Facts.* Bank Charters for Fintechs

*The Financial Technology Association (FTA) is a nonprofit trade organization that educates consumers, regulators, policymakers, and industry stakeholders on the value of technology-centered financial services and advocates for the modernization of financial regulation to support inclusion and innovation. FTA's "Just the Facts" series aims to inform financial technology policy discussions in order to safeguard consumers and advance the development of trusted, digital financial markets and services.*

**In the face of an increasingly concentrated banking landscape in the U.S., some fintech firms are seeking charters to offer consumers additional choice, targeted product offerings, and lower costs.**

- Since the mid-1980s, the number of banks in the United States [has declined by more than 50%](#) and from [2011 to 2016 only a handful of new FDIC-insured commercial bank charters were approved](#).
- Concentration is [increasing](#) as well, with the top 15 banks holding over 56% of total deposits in 2020, and [two banks](#) generating nearly half of all ACH payments.

**Fintech companies are transforming the way small businesses and consumers offer, access, and benefit from financial services and markets.**

- Legacy financial services models often result in higher costs to consumers and small businesses, and don't always deliver the solutions that meet their needs or expectations in the digital era. Fortunately, fintechs are able to leverage new technologies through mobile and internet platforms and can improve efficiency and transparency, increase access and inclusion, and reduce consumer costs.
- By advancing choice for consumers and small businesses, fintech solutions encourage competition and innovation across the ecosystem. These advances are coming at a critical time for the American economy. Millions remain underbanked or underserved, income and wealth inequality continues to grow, and businesses struggle to access credit and continue to rebuild from the devastation caused by the COVID-19 pandemic.

**The Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), and state banking authorities have broad chartering authority and expertise to safely regulate fintech-centered banks.**

- Pursuant to the well-established dual banking system in the United States, entities involved in the business of banking can choose to be chartered at the federal or state level.
- At the federal level, the National Bank Act gives the OCC the authority to grant a charter "[i]f...it appears that such association is lawfully entitled to commence the business of banking."
- The manner in which the "business of banking" is conducted is constantly evolving and in turn banking regulators have broad statutory authority, tools, and knowledge to authorize and oversee a range of chartered banking entities, whether full-service or more limited. The [OCC](#) has long used its broad bank chartering authority to charter both insured and uninsured banks, including [by issuing special purpose bank charters](#) for credit card banks, community development banks, and trust banks. Notably, until the introduction of deposit insurance in 1933 all national banks were uninsured.
- State banking regulators have similar chartering authorities as do federal regulators. Industrial Loan Companies (ILCs) are FDIC-insured state-chartered depository institutions, none of which are members of the Federal Reserve System. Accordingly, the FDIC serves as the [primary federal banking supervisor of ILCs](#). An ILC charter subjects the entity to banking supervision by both state and federal banking regulators.

**Applying banking regulation and oversight to fintech firms subjects these firms to heightened supervision and regulatory requirements – it is the opposite of deregulation.**

- The decision of a company to opt into banking regulatory oversight results in heightened regulation and supervision. Banking supervisors are keenly focused on whether banks are being operated in a safe and sound manner.
- Banks are subject to regular examinations, including with respect to privacy, fair lending, and consumer protection compliance, and must take affirmative steps to mitigate risks identified by regulators.
- In its most recent approvals of two ILC applications, the FDIC underscored its focus on safety and soundness by [imposing capital and other requirements that exceed](#) those typically imposed on traditional *de novo* banks and ensured pursuant to Dodd Frank that the parent company of the ILC will serve as a “source of financial strength” for the ILC. The OCC has likewise in its recent trust bank approval orders imposed capital and other requirements that go beyond the requirements that apply to full-service OCC-chartered banks.

**Fintechs being granted bank charters does not lead to the mixing of commerce and banking.**

- Fintechs, as their name implies, are focused on financial services – these are not commercial firms. Accordingly, as with all financial services providers, fintechs are subject to key consumer protection laws. And fintechs that obtain bank charters become subject to the same activities restrictions as any other bank.
  - To the extent that the parent company of an ILC is not subject to the Bank Holding Company Act (BHCA) and Fed supervision, the FDIC has adopted regulations providing a comprehensive framework for the supervision of the ILC and the parent company that controls it. Requirements that the FDIC can and does impose under these regulations include certain parent capital and liquidity commitments, as well as limitations on the parent company’s ability to influence the operations of the ILC. This approach has upheld [the safety and soundness of industrial banks for many decades](#).
- Likewise, in the case of an uninsured national bank or a special purpose national bank whose parent is not subject to the BHCA, the OCC has broad authority to impose restrictions and requirements on both the bank and its parent company, including significant capital and liquidity commitments intended to ensure that the parent company will serve as a source of strength.

**Consumers in America deserve access to services provided by firms that are seeking to advance financial choice, access and opportunity and that are voluntarily seeking enhanced regulatory oversight.**

- Sound policy and regulation should permit viable chartering and licensure paths for new entrants offering safe and consumer-centric services, and oppose efforts to arbitrarily limit competition and the chartering authority provided to financial regulators. By recognizing the benefits of new models predicated on customer access, success, and empowerment, regulators can bring fintech firms into the regulatory fold and ensure more holistic oversight.

**U.S. statutory frameworks grant broad chartering authority to regulators and for decades have provided financial services firms flexibility to pursue charters appropriate for their business models.**

- It is longstanding practice in America that financial services entities have the ability to pursue statutorily authorized bank charters depending on the services they offer. Broad chartering authority and innovation in the provision of banking services is healthy and pro-consumer since it safely introduces competition and enables the offering of tailored and customer-centric services that otherwise may not be offered.