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Online Lender Seeking Charter Goes Where Wal-Mart Failed
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An online lender aimed at high-earning millennials is trying to go where Wal-Mart failed more than a decade ago in obtaining an industrial bank charter.

General Motors, General Electric and Target are among companies that have the charter, which allows them to avoid compliance with the extensive regulations of the Bank Holding Company Act (BHCA).

For SocialFinance, or SoFi, the industrial charter could also be a way to avoid the patchwork of state regulations requiring expensive and time-consuming compliance, which other online lenders, money transmitters and other financial technology businesses say is a significant hurdle to the seamless development of fintech nationwide. The barriers to obtaining an industrial-bank charter are daunting: None has been issued since the 2007-08 financial crisis. The undertaking would involve endorsement by the Federal Deposit Insurance Corp.).

“I think it will be a long process to get approval of an insured-depository charter from the FDIC for any industrial bank charter, but even more so for a fintech charter,” Michael Krimminger, a partner at Cleary Gottlieb Steen & Hamilton LLP in Washington and former FDIC general counsel, told Bloomberg BNA.

Fintech Charters on Hold

The application by SoFi, which confirmed to Bloomberg BNA its intention to seek a charter, comes as an effort by the Office of the Comptroller of the Currency to provide fintech companies more uniformity remains in flux in the early months of the Trump administration. Meanwhile, state regulators who oppose that OCC proposal for a national fintech bank charter have come up with their own way to streamline and unify licensing requirements.

SoFi's industrial bank charter would be issued by a state, most likely Utah, home to 15 active industrial banks, a little more than half the national total (only six states charter industrial banks, with the name rooted in the banks’ early historical clientele of factory workers, rather than a characteristic of the institutions).

As with other state-chartered banks, a SoFi industrial bank could lend money in other states according to its home state's interest-charging rules, which in Utah are liberal. That is a key consideration for the lending industry.

Industrial banks operate much like regular banks, but with the significant advantage of the BHCA exemption. The BHCA largely prohibits the owners of regular banks from owning other businesses outside of financial services.

“There's been a long history of many people in the regulatory world wanting industrial banks to be brought under some kind of holding company oversight, as all other insured banks are, and I really don't see that changing going forward,” Krimminger said.

Wal-Mart Stymied
Wal-Mart's 2005 application for an industrial bank charter ignited opposition from the banking industry and the company's other critics. Although Wal-Mart said the bank would focus on processing credit and debit card purchases in its stores, bankers feared the corporate might behind the industrial bank would empower Wal-Mart to crush community banks, much as opponents say its big-box stores have obliterated local retailers.

The FDIC imposed a short-term moratorium on approving insurance for industrial-bank applicants, bills were introduced in Congress to bar cross-ownership and in 2007, Wal-Mart withdrew its application.

Objections to industrial banks go beyond fears of economic concentration, Greg Omer, a partner at Thompson Coburn LLP in St. Louis and former chief counsel of the Missouri Division of Finance, said.

A key concern is tied to breaching the historical barrier against blending banking and commerce: "Allowing a mix runs the risk that as the commercial sector goes up and down, so does the bank go up and down," Omer said. The bank's safety and soundness also could be jeopardized if it is tapped to prop up the owner's other businesses, he said.

The first effort by federal regulators to offer fintech companies a workaround of state-by-state compliance is now in limbo after President Donald Trump replaced its architect, Comptroller of the Currency Thomas Curry, in May.

Curry had spearheaded a plan to offer a national bank charter to fintech companies that would preempt state licensing laws and, for lenders, state interest-rate restrictions.

With the OCC on the verge of issuing its final guidelines for charter applications, Trump replaced Curry with an acting comptroller, big-bank lawyer Keith Noreika.

States File Suit
The Conference of State Bank Supervisors asked a federal court April 26 to block the OCC from proceeding with its charter proposal, which the state regulators say exceeds the OCC's legal authority.

In May, CSBS announced an initiative to streamline and unify licensing requirements.

The CSBS formula is standardization: If every state agrees to uniform rules for online lending or money transmission, and adopts the same forms for registration and licensing, then compliance will be simple and affordable. The model is the Uniform Commercial Code (UCC), a set of laws governing the selling of goods and services that has largely succeeded in its goal of creating a single regulatory regime.

Winning unanimous consent to fintech laws among all 50 states is unlikely to be easy — or fast, in an industry in which speed and flexibility are watchwords. The UCC was first published in 1952, and it has yet to be adopted in full by every state (Louisiana is the outlier). Different states have approved modifications, or have not enacted all amendments and revisions to the code.

"Even though the states are unified in wanting to maintain their jurisdiction over fintech as opposed to giving it up to federal regulators like the OCC, it is very difficult for all of those state authorities to come to agreement and establish a framework that actually will fit for fintech," former Consumer Financial Protection

Bureau assistant director and deputy general counsel Quyen Truong said. Truong is now a partner in the Washington office of Stroock & Stroock & Lavan LLP.

Adding another level of uncertainty, at least at the federal level, is the evolving effect of the Obama-to-Trump changeover in the White House on Jan. 20. The five-year term of FDIC Chairman Martin Gruenberg expires in November, and other top regulators also will be replaced by Trump appointees in the next few years.

“The problem of transition, in the leadership at the independent agencies including the OCC and the FDIC, makes it difficult for the agencies to take on big issues like this quickly,” Truong said. “On top of that, you have questioning by the Republican leaders, particularly those in Congress, as to what they want to have happen in the fintech space.”
“All of those factors just really slow the train down.”