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*Via electronic submission*

June 13, 2019

Ms. Beth Knickerbocker  
Chief Innovation Officer  
Office of the Comptroller of the Currency  
Constitution Center  
400 7th Street SW  
Washington, DC 20219

Re: OCC Innovation Pilot Program

Dear Ms. Knickerbocker:

The Independent Community Bankers of America (“ICBA”)<sup>1</sup> welcomes the opportunity to respond to the Office of the Comptroller of the Currency’s (“OCC”) Request for Comment (“RFC”) regarding the establishment of an Innovation Pilot Program (“Program”). The proposed Program would build upon the OCC’s existing financial services innovation infrastructure to provide national banks and other eligible entities with proactive supervision designed to facilitate financial technology (“fintech”) innovation.

ICBA supports and encourages community banks as they innovate, both organically and through partnerships with other innovators, such as fintech companies. Partnering with bank-enabling fintechs holds the promise for community banks to engage their customers on a level that has heretofore been limited to multi-billion-dollar financial institutions with multi-million-dollar research and development budgets. As community banks make their “build, buy, or partner” decisions, resource constraints frequently point them to “partnering” to accomplish their goals and meet customer needs.

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<sup>1</sup> The Independent Community Bankers of America® creates and promotes an environment where community banks flourish. With more than 52,000 locations nationwide, community banks constitute 99 percent of all banks, employ more than 760,000 Americans and are the only physical banking presence in one in five U.S. counties. Holding more than \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.4 trillion in loans to consumers, small businesses and the agricultural community, community banks channel local deposits into the Main Streets and neighborhoods they serve, spurring job creation, fostering innovation and fueling their customers’ dreams in communities throughout America. For more information, visit ICBA’s website at [www.icba.org](http://www.icba.org).

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## Background

The OCC is proposing to create a Program that would build on its innovation initiatives by supporting the testing of novel or innovative financial products, services, and processes. The proposed Program has five goals. It is designed to (1) provide a consistent and transparent framework for engagement with the OCC, (2) support responsible innovation, (3) further the OCC's understanding of, and ability to supervise, innovative activities, (4) foster development of controls and safeguards and (5) promote overall OCC policy objectives. In the RFC, the OCC asserts that financial institutions look to their regulators for information on how innovation is deployed in an effective and responsible manner.

## ICBA Comments

### Executive Summary

ICBA supports the OCC's stated goals of the Program. ICBA has long supported a legal and regulatory framework that fosters innovation while still requiring all financial service providers be subject to the same oversight and adhere to the same regulatory standards as banks.

ICBA believes that in-market testing in real world situations has the potential to offer valuable information for improving products and providing better value to consumers. As expressed in response to several other agencies' proposed sandbox programs, ICBA believes that regulatory sandboxes have the potential to explore and enable new technological developments that otherwise might be prohibited or curtailed by existing laws or regulations. Further, regulatory sandboxes can provide benefits for regulators that might not otherwise gain exposure or experience with such innovation. As proposed, the Program would provide eligible entities with regulatory input early in the development of proposed innovative activities.

As the regulators interact more with the technology, they presumably will be able to fine-tune existing regulations to account for its novelty. For example, the U.S. Government Accountability Office ("GAO") found that the lack of clarity and coordination on fair lending and use of alternative data and modeling creates uncertainty for bank-enabling fintechs. According to GAO's report, some fintechs forgo the use of alternative data for underwriting purposes because they do not know if it will produce outcomes that violate fair lending laws.<sup>2</sup>

In general, regulatory sandboxes also provide enough incentive for a financial institution to introduce an innovative technology in close collaboration with regulators, yet provide an

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<sup>2</sup> U.S. Government Accountability Office, *Financial Technology: Additional Steps by Regulators Could Better Protect Consumers and Aid Regulatory Oversight* (Mar. 2018) at 48, available at: <https://www.gao.gov/assets/700/690803.pdf> ("GAO Fintech Report").

interim step before full-scale implementation. The regulatory sandbox concept encourages close collaboration from the regulator so that issues are identified and addressed before wide-scale introduction.

A common theme expressed among fintechs partnering with banks has emerged - legal and regulatory uncertainties pose barriers to marketplace innovations. While properly designed and tailored regulations certainly help consumers, overly broad or outmoded regulations create uncertainty and do not protect consumers but serve as a barrier to innovation. Ideas and programs like the OCC's will help lessen that barrier to innovation. ICBA supports a regulatory framework from which community banks and financial technology companies can cooperatively create products, cultivate solutions, and address barriers to delivering superior service.

While ICBA firmly believes that the proposed Program will help accomplish these goals, we respectfully ask that the OCC consider additional refinements to its proposed Program, including:

- An expedited approval process for entities to participate in previously approved pilots.
- Widely adopting promising ideas by allowing banks to participate in pilots developed by their vendor, regardless of whether the bank was a party to the original application.
- Posing a series of tailored requests for information on regulations that might govern innovative fintech, including specific requests or sets of questions that seek to address specific problems.
- Allowing technological novelty as a sufficient policy goal for approval in the Program.
- Permitting pilots to continue indefinitely, or alternatively, provide avenues for participants to request extensions.
- Establish a procedure for notifying participants of apparent non-compliance with the Program terms, along with an opportunity for the applicant to respond to the notice or an opportunity to cure the contested issue.
- The addition of a safe harbor or waiver for pilot projects that meet a certain set of heightened criteria or reporting requirements.
- Establish a hard deadline by which the OCC will respond to expressions of interest.
- Include other federal and state regulators in preliminary conversations.
- Develop a mechanism that reduces a bank's burden of conducting due diligence on pilots already accepted into the Program.

### **Eligible Entities**

The OCC proposes limiting participation in the Program to OCC-supervised financial institutions, including those engaging a third party. The Program would also allow eligible entities to either propose a pilot individually, in conjunction with a third party, or as a collaborative effort among

multiple banks. Finally, the proposal makes clear that third parties may not independently submit proposals for pilot projects.

ICBA agrees with the proposed eligibility standards for entity participation in the Program. Given the fact that the OCC's overall mission is the chartering and supervision of national banks and their subsidiaries, it would not be appropriate for the OCC to invite other, non-OCC supervised entities to enjoy the benefits of the Program.

ICBA recommends that the OCC create an expedited approval process for entities that wish to participate in a previously approved pilot. If a large company applies and receives approval for a pilot, then it would be beneficial for other, unaffiliated companies to similarly participate in the pilot program. Without such an option, pilots could become exclusionary, thereby depriving community banks and their customers of a pilot's potential benefits. If this option is pursued, the OCC would still have final authority on which companies to approve, thereby providing limitation from uncontrolled and widespread proliferation of pilot programs.

Similarly, there could be scenarios where a third-party, such as a large data processing vendor with thousands of bank-clients, develops new pilots. ICBA encourages the OCC to amend the Program to include a mechanism whereby clients of that vendor could utilize approved pilot programs, even though the bank-client was not a party to the original application. This would also allow community banks to participate in pilot programs where participation would otherwise be impeded by first movers, who are likely to be large-scale financial institutions.

Promising ideas should be emulated and widely adopted. If a pilot is good for one bank's population of customers, then that benefit should be extended to the customers of other community banks that might not have the resources nor risk appetite to develop a new program in-house. ICBA asks the OCC to acknowledge such realities and to develop an avenue that would allow other community banks to participate, as well.

### **Eligibility Criteria**

The Program would require entities to demonstrate compliance with several criteria before being eligible for participation. Interested entities would have to show (1) how OCC involvement in the pilot is necessary and (2) how the proposed activity has the potential to meet one of the Program's goals.

#### *Demonstrating Necessity of OCC Involvement*

Eligible entities would have to demonstrate that the proposed activity is within the OCC's scope of supervisory authority and that sufficient regulatory uncertainty exists as to warrant entry

into the Program. Such uncertainty would include when an activity is not clearly addressed by existing regulation, is unproven, or may result in new legal or policy implications.

To aid banks in this endeavor, ICBA recommends that the OCC pose a series of pointed requests for information (“RFI”) on regulations that might govern innovative fintech, such as the Equal Credit Opportunity Act (“ECOA”) or the Fair Credit Reporting Act (“FCRA”). These RFIs could proffer a series of hypotheticals that could help spur focused discussion on unclear areas of fintech regulation.

#### *Demonstrating Potential to Meet Program Goal*

In addition to demonstrating a need for OCC involvement, the Program also requires entities to explain how the proposed activity would meet one of the OCC’s policy goals, including whether the activity would meet the evolving needs of consumers, promote financial inclusion, improve the efficiency/effectiveness of financial services, mitigate significant risks to the banking system, or advance risk management.

ICBA believes that the requirement to meet certain policy goals is a rational approach to vet entry into the Program. However, the OCC should consider additional policy goals beyond those stated above. For example, the OCC could invite proposed pilot projects that incorporate new technology, without a need to explicitly meet one of the policy goals. This would further enable the OCC to monitor new technology that has yet to find a specific use-case.

#### **Program Length**

The OCC anticipates that most approved pilots will last no less than three months and no more than 24 months, depending on the case-by-case attributes of each pilot, based on the nature, objective, and risks. If necessary, the OCC plans to suspend an approved entity’s participation in the Program if it finds that a party is not complying with the Program in good faith.

ICBA appreciates that approved pilots will have flexible periods for implementation. However, the OCC should allow for certain pilot projects to continue indefinitely, or alternatively, provide avenues for participants to request extensions and potentially expand the pilot’s scope.

Regarding dismissal from the Program, ICBA agrees with the OCC’s position that bad actors should be removed, and suggests that additional guidance on removal parameters would be useful. Additionally, ICBA proposes that the Program establish a procedure for notifying participants of apparent non-compliance with the Program terms, along with an opportunity for the applicant to respond to the notice or an opportunity to cure the contested issue. Providing such notice and response opportunities would provide due process to the Program.

## Program Tools

The OCC anticipates that the Program will provide approved pilots with resources, as appropriate, including interpretive letters, supervisory feedback, and technical assistance from the OCC's subject matter experts. The RFC goes on to explain that the OCC will not provide statutory or regulatory waivers nor absolve entities from complying with applicable laws and regulations.

While the resources outlined above will be beneficial for certain pilots, the lack of a safe harbor or waiver may detract from broader interest in participation. Perhaps the most significant benefit that sandboxes or pilots can provide is the comfort of certainty. Absent legal and regulatory certainty, many entities may be reluctant to invest resources in innovative products or technology that modify gray areas.

In addition to safe harbor and waiver protections, ICBA recommends that the OCC explore additional avenues that encourage innovation, such as proofs of concept that are championed in other countries. A proof of concept model is similar to a sandbox, but includes a specific request or set of questions raised by regulators that seek proposals that address specific problems.<sup>3</sup> This model would marry a sandbox model with more traditional rulemaking tools, such as an advance notice of proposed rulemaking ("ANPR") or request for information ("RFI").

## Controls and Safeguards

The Program would require approved entities to incorporate reasonable controls in pilot programs that are commensurate with the known risks of each project. The OCC also expects each applicant to include an exit strategy should the pilot be found as unsafe, unsound, or places consumers at undue risk. Finally, the OCC expects approved entities to monitor pilot performance and pre-establish metrics that would trigger the need for a voluntary termination of the project.

ICBA believes that including controls and safeguards as critical components of the Program is an appropriate requirement that will help reinforce the self-regulatory component of the Program.

## Expressions of Interest

The proposal lays out the process by which interested entities can seek OCC approval for participation in the Program. The Program encourages eligible entities to engage the OCC in a preliminary discussion, first. The cost of researching applicable laws and regulations can be

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<sup>3</sup> GAO Fintech Report at 63, discussing other federal regulators use proofs of concept, such as the CFTC's LabCFTC and the Federal Reserve Bank of Boston's participation in Hyperledger.

significant for fintechs and small community banks. This cost is at best an impediment to innovation, and at worst, an insurmountable barrier for community banks that desire to incorporate new technology. Fintechs and banks report that it is difficult for them to navigate the myriad regulations, agencies and laws that might apply to the new technology and partnerships.<sup>4</sup> Ideally, the OCC could help interested applicants identify applicable laws and regulations during these preliminary conversations.

After preliminary discussions, the proposal explains that eligible entities can submit expressions of interest (“EOI”) to the Office of Innovation or to their supervisory office. The OCC expects the EOI to be tailored to the scope and complexity of the proposed pilot, and include matters such as an outline of the proposed pilot, a delineation of other regulators that might have overlapping supervisory authority, and due diligence material, such as information on relevant third parties. The proposal also explains that, depending on the proposed pilot, the OCC might require additional information, such as a description of the laws and regulations anticipated to apply to the proposed entity.

While community banks continue to meet the needs of their customers in local communities, they understand that continued success is dependent upon the adaptation of banking products and services to meet the evolving needs of the market. Fintech companies offer possible partnerships and collaborative relationships that can help community banks enhance the customer experience and promote mutually beneficial relationships.

To quickly and efficiently embrace new technology, community banks need to be able to collaborate with fintech firms. The obvious challenge with collaboration is the introduction of new risks requiring aggressive identification and mitigation. In order to identify, manage and minimize these risks, community banks need to identify and collaborate with partners who are in a strong position to assist in prudent risk management in real time.

However, regulatory review should not be a barrier to allowing community banks to innovate at the speed necessary to remain competitive and operate on a level playing field. Instead, ICBA advocates that the OCC and other federal financial regulators timely respond to bank and fintech partner requests for feedback and assessments of proposed activity. ICBA recommends that the OCC establish a timeframe by which it is bound to respond to formal EOIs, perhaps 60 days. This will help assure applicants of a timely response and assuage concerns that their applications will be held in non-decision limbo. Additionally, ICBA urges the OCC to develop checklist guidelines and standards to aid in this process.

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<sup>4</sup> GAO Fintech Report at 41.



## Submission of Information and Reports

The RFC states the OCC will request periodic information and reports to monitor the progress of approved pilot programs. Such information may include key performance indicators, issues identified, and any steps to address additional issues. ICBA supports this information requirement as it could inform community banks on how best to apply for admission into the Program.

## Publication of Information

The RFC discusses how the OCC may publish best practices or lessons learned when conducting a pilot. If the OCC does elect to publish such material, the RFC states that the OCC will maintain the confidentiality of proprietary information. Regarding the OCC's disclosure of information, ICBA recommends that the agency proactively identify which information will be treated as exempt from Freedom of Information Act ("FOIA") requests.

Apart from responses to FOIA requests, the OCC should consider hosting a conference or series of events that would convene banks, regulators, and fintechs in one space. The parties could benefit from meeting with one another and discussing how the overall regulatory and innovation process could be improved.

## Coordination with Other Regulators

The RFC states that the OCC supervisory offices may coordinate examination work with other applicable regulators. As discussed above, ICBA supports the Program's facilitation of preliminary, informal discussions with OCC staff. This would help community banks avoid the costs of developing proposals that are unlikely to meet the OCC's approval process.

Additionally, this could help companies detect potential problems before the application is fully developed. To aid in this endeavor, ICBA recommends the inclusion of other relevant federal and state regulators in such preliminary conversations. Additionally, ICBA recommends that the OCC develop a mechanism by which other regulators are informed of a party's participation in an approved pilot. This potentially would eliminate the need for bankers to duplicate the due diligence conducted by the OCC and others. A less burdensome due diligence process for approved pilots should be a goal of the Program.

ICBA is optimistic that the OCC's proposed Program is designed to address many regulatory uncertainties and usher in an era where regulators can quickly adapt to new technologies and



changing marketplaces. If you have any questions or would like additional information, please do not hesitate to contact me at (202) 659-8111 or [michael.emancipator@icba.org](mailto:michael.emancipator@icba.org).

Sincerely,

/s/

Michael Emancipator  
Vice President and Regulatory Counsel

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