



June 14, 2019

Via Electronic Mail

Office of Innovation
Office of the Comptroller of the Currency
400 7th Street, S.W.
Washington, D.C. 20219

Re: OCC Innovation Pilot Program

Ladies and Gentlemen:

The Bank Policy Institute¹ appreciates the opportunity to comment on the Office of the Comptroller of the Currency's proposed Innovation Pilot Program (Pilot Program). This proposal is particularly welcome in two respects. First, the proposal demonstrates the OCC's recognition that technologically driven innovation is remaking our world, and certainly our banking system. The ability of national banks to compete and to better serve their customers depends critically on arriving at the right answers around examination and regulation.² Second, the OCC recognizes that asking the right questions – and seeking public comment on those questions – are necessary to get the right answers.

We share the OCC's belief that a thoughtful recalibration of the regulatory approach to innovation could facilitate responsible innovation by moving new products and services more quickly to the market and streamlining banks' internal operations – for the benefit of bank customers and the economy. That said, the proposed Pilot Program only partially addresses the barriers to innovation facing banks today, and we urge the OCC to re-examine the proposed Pilot Program as part of a broader effort to recalibrate its overall approach.

¹ The Bank Policy Institute is a nonpartisan public policy, research and advocacy group, representing the nation's leading banks and their customers. Our members include universal banks, regional banks and the major foreign banks doing business in the United States. Collectively, they employ almost 2 million Americans, make nearly half of the nation's small business loans, and are an engine for financial innovation and economic growth.

² For purposes of this letter, we refer to institutions covered by the proposal as banks, though we recognize that some non-bank financial institutions chartered or licensed by the OCC are covered as well.

The Pilot Program's stated objectives (at page 3) appropriately include "promot[ion] [of] OCC policy objectives, including the review and, as necessary, the adaptation of supervisory approaches that might unintentionally or unnecessarily inhibit responsible innovation".

Innovation is fundamental to the business of banking and a bank's ability to adapt to the changing needs of customers.³ Thus, the problem the proposal seeks to address is far more significant than any government-managed pilot program could solve. As described in a media report:

"Financial services has been largely untouched by machine learning except for fraud," said Douglas Merrill, CEO and founder of Zest Finance.... "It's not like financial services firms are dumb. Every large financial institution has someone in a lab working on machine learning, and all those people know these new algorithms are much better than the old ones. But none of them get into production," primarily because of regulatory issues like explainability. Bank technologists agree. "The biggest fear I have with applying machine learning to anything is, I don't think the regulators are there yet," one said on condition of anonymity. I can use it to detect anomalies. But when it comes to how we treat people or how we apply policy to customers, that's where regulators have a tough time. They're used to seeing a flowchart -- if you use this condition, you get this."⁴

Meanwhile, non-bank fintech firms have the ability to experiment and make mistakes in the course of innovation. If the banking industry is to remain competitive – and if bank customers are to receive the lower costs and broader access to financial products that innovation can produce – a fundamental shift in examination culture is required. That shift would need to include a public mandate from the OCC that banks may experiment and innovate consistent with a bank's risk appetite without regulatory approval (or "non-objection"), provided that any mistakes are self-identified and promptly corrected. Such an approach would include granting banks the ability to undertake pilot projects *without* reliance on the OCC (i.e., other than normal course, ex post examination). It would mark a shift from the current environment, where banks (rightly or wrongly) fear that a new product or process heightens the risk of a Matter Requiring Attention (MRA) or other sanction, regardless of whether the mistake was material to the financial condition of the bank.

We also recommend the OCC acknowledge that pilot programs, by definition, are limited in scope and highly unlikely to constitute an unsafe or unsound banking practice. Under decided law, such a pilot almost certainly could not threaten the financial integrity of the institution, have a direct effect on its financial soundness, or pose an abnormal risk of loss.⁵ Therefore, even if a pilot proves unsuccessful, that fact should not merit an MRA.

We are also concerned that banks may be exposed to even greater regulatory risks, to the extent examination teams apply a "strict liability" approach to innovation undertaken outside the prescribed Pilot Program

³ Indeed, the OCC's Spring 2019 Semiannual Risk Perspective identifies a bank's failure to innovate as itself a key strategic risk. See OCC Semiannual Risk Perspective, 2019-49 (May 20, 2019) ("Banks that do not assess business relevancy and impacts from technological advancement or innovation, or are slow adopters to industry changes, may be exposed to increasing strategic risk.")

⁴ Crosman, Penny, "Can AI's 'Black Box' Problem Be Solved?" *American Banker* (December 31, 2018).

⁵ 12 U.S.C. 1818; *Johnson v. OTS*, 81 F.3d 195, 204 (D.C. Cir. 1996) (defining those practices as ones "that threaten the financial integrity of the institution"); *Gulf Federal Savings & Loan Association v. Federal Home Loan Bank Board*, 651 F.2d 259 (5th Cir. 1981) ("The breadth of the 'unsafe or unsound practice' formula is restricted by its limitation to practices with a reasonably direct effect on an association's financial soundness."); *Seidman v. Office of Thrift Supervision*, 37 F.3d 911 (3d Cir. 1994) ("The imprudent act must pose an abnormal risk to the financial stability of the banking institution.... Contingent, remote harms that could ultimately result in 'minor financial loss' to the institution are insufficient to pose the danger that warrants cease and desist proceedings."); *Hoffman v. FDIC*, 912 F.2d 1172, 1174 (9th Cir. 1990) (requiring "abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds") See, e.g., *First National Bank of Eden v. Department of the Treasury*, 568 F.2d 610 (8th Cir. 1978) (defining as "contrary to generally accepted standards of prudent operation, the possible consequences of which, if continued, would be abnormal risk or loss or damage to an institution, its shareholders, or the agencies administering the insurance funds").

process.⁶ Thus, to allow banks to remain competitive and use technology to better serve their customers, we encourage the OCC to take more significant steps to find efficiencies within the existing supervisory process and, only as a secondary priority, determine how to expedite review of those relatively few pilots that, due to their unusual nature, necessitate special OCC staff attention.

- First, as noted above, the OCC should clarify publicly that a bank is not required to seek the review and approval of its examination team prior to developing or implementing a new product, process or service; that unsuccessful pilots will not warrant an MRA or other sanction unless they constitute an unsafe or unsound practice or a violation of law; and that innovations undertaken without seeking prior OCC approval will not be subject to stricter scrutiny or a “strict liability” regime.⁷ We also recommend that the OCC revisit and clarify all existing guidance on innovation to reduce the current uncertainty regarding the development of products, processes and services; outdated or unnecessary supervisory expectations should be rescinded.
- Second, the Pilot Program should be narrowly defined. The current eligibility criteria could potentially include any new bank product or process, or change thereto. We recognize that the OCC likely considered the broad scope a benefit to innovation, as it would allow a wide range of activities to qualify. We are concerned, however, that innovations that qualify but are not submitted would inevitably be viewed more stringently in subsequent examinations. Thus, we suggest that the Pilot Program be limited to (1) multi-bank projects involving novel issues and (2) cases raising novel interpretive issues under the National Bank Act or any other statute over which the OCC has rulemaking (and thus, interpretive) authority.
- Third, the OCC should recognize that the Consumer Financial Protection Bureau (CFPB) has exclusive rulemaking and interpretive authority with respect to Federal consumer financial laws in accordance with the Dodd-Frank Act, including the prohibition on unfair, deceptive or abusive acts or practices. Thus, under law, only the CFPB can offer a national bank a binding interpretation. Therefore, upon a bank’s request, the OCC should facilitate discussions between a bank and the CFPB when new bank consumer products raise novel issues under those laws, and leave to the CFPB any legal interpretations of these statutes.
- Fourth, the OCC should clarify that any pilot period is effectively a “safe zone” and that a bank will not be assigned MRAs if it acts in good faith during the course of an approved pilot.
- Fifth, the OCC should expand and prioritize the Office of Innovation’s efforts to enhance technology awareness of examination staff.⁸

I. **The OCC Should Clarify the Underlying Law and Examination Expectations With Regard to Innovation.**

The post-crisis examination and enforcement regime and resulting compliance focus of banks have hindered bank efforts to innovate. Meanwhile, the banking industry has faced competition from fintech firms and other sophisticated non-bank innovators that do not bear the same costs or regulatory consequences as banks and have greater latitude and ability to try new approaches, make mistakes, learn from them, and press on—even though

⁶ As discussed below, while publicly referred to as a regulatory sandbox, the OCC proposal – unlike several other regulatory sandbox initiatives – includes no safe harbor for innovation conducted under its auspices.

⁷ We recognize that the development and/or implementation of a new product, process or service could potentially involve a bank investment or structure (e.g., the establishment of an operating subsidiary) that could trigger an OCC application or notice requirement pursuant to Part 5 of the OCC’s regulations.

⁸ As the proposal recognizes, “Regulators adopting sandboxes also benefit from these programs, which allow them to observe industry innovations, learn and build expertise, and use the knowledge to effectively monitor risks and adapt supervision in a timely manner.”

those firms, while not subject to safety and soundness examination, are subject to the same consumer financial laws as national banks.

To effectuate the proposal's intention that the Pilot Program focus on "new or unique activities where uncertainty is perceived to be a barrier to development and implementation," we believe the OCC should clarify that its prior review and approval is *not* required for innovative activities. This could include an unequivocal statement encouraging innovation and the use of bank pilot programs, and a recognition that, even if that program ultimately proves unsuccessful, it is unlikely to result in an MRA or other supervisory sanction. Such a recognition would be appropriate given that such pilots generally are by definition immaterial to the financial condition of the bank.

There is precedent for such a statement and strong evidence that it can be effective. In December 2018, the Federal banking agencies, Treasury's Financial Crimes Enforcement Network, and the National Credit Union Administration, released a *Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing*, which was designed to encourage banks to "consider, evaluate, and, where appropriate, responsibly implement innovative approaches" to BSA/AML compliance.⁹ The statement notes the importance of bank pilot programs to test and validate the effectiveness of innovative AML approaches and states that pilot programs in and of themselves should not subject banks to supervisory criticism even if the pilot program ultimately proves unsuccessful. It goes on to note that programs that expose AML compliance program gaps "will not necessarily result in supervisory action with respect to that program." By all accounts¹⁰, this statement has reinvigorated efforts to modernize AML efforts.

In addition to making an affirmative, clarifying statement, the OCC could also foster innovation by revisiting all its relevant existing guidance and handbooks. For example, the OCC's guidance on new, modified or expanded bank products and services states "Management should discuss plans with its OCC portfolio manager, examiner-in-charge, or supervisory office before developing and implementing new activities..."¹¹ However intended, it is easy to read this guidance as requiring a supervisory non-objection prior to commencing any new activity. During its review, the OCC should identify and eliminate supervisory expectations that are unnecessary or outdated to provide banks more flexibility and certainty to experiment and innovate.

We recognize that the challenges facing some banks as they seek to innovate may not be based on specific guidance from the OCC, or a specific mandate from the examination process. In some cases, bank compliance staff or business units may simply be exercising undue caution. For example, we have certainly heard and read numerous reports that bank reluctance to use new credit underwriting criteria in lieu of a FICO-based decision rule come from a perception that doing so without regulatory permission would warrant an MRA, but there is no way to know whether in some cases that conclusion is only being inferred. We believe such cases enhance, not diminish, the need for the OCC to clarify its approach publicly.

A. Any Pilot Program Should Not Come with an Adverse Inference for Innovation Conducted Independently.

Although the OCC helpfully describes the Pilot Program as voluntary, we are concerned that any such program could create an examination presumption that any mistakes made outside the process could have been

⁹ See "Joint Statement on Innovative Efforts to Combat Money Laundering and Terrorist Financing," December 3, 2018, available at www.fincen.gov/sites/default/files/2018-12/Joint%20Statement%20on%20Innovation%20Statement%20%28Final%2011-30-18%29_508.pdf.

¹⁰ See *supra* n. See also *Wall Street Journal*, "Banks Take the Hint from Regulators and Test AI to Spot Criminals," January 10, 2019, available at www.wsj.com/articles/banks-take-the-hint-from-regulators-and-test-ai-to-spot-criminals-11547150262.

¹¹ OCC Bulletin 2017-43

avoided if the OCC had co-developed, reviewed, tested and approved the innovation, and therefore should be criticized and possibly punished through means such as MRAs, management downgrades, or enforcement action.

Thus, we urge the OCC to clarify that an institution may run a pilot on its own, and that doing so outside an OCC construct will not create any adverse inference with respect to the pilot or the quality of the bank's management.

We emphasize, however, that this approach should not discourage constructive dialogue between banks and their examination teams. Rather, we continue to strongly encourage these discussions in the ordinary course. They are fully consistent with both maintaining necessary transparency between banks and the OCC and the OCC's rightful emphasis on the need for examination teams to fully understand the operations of banks for which they are responsible.

B. To Better Facilitate Innovation, the OCC Should Streamline and Clarify Applicable Guidance.

The proposal describes the OCC's intention to apply its examination expectations and regulatory tools on the basis of the facts and circumstances applicable to the particular pilot at issue. While the discussion relating to the case-by-case approach provides helpful clarity, it also raises the question of how relevant guidance or tools will be applied in the context of the Pilot Program. For example, will the applicable guidance on (i) third party risk management continue to be OCC Bulletin 2013-29 (and related FAQs issued in 2017), and (ii) the development of new or expanded bank products and services continue to be OCC Bulletin 2017-43, or will a somewhat different set of expectations apply during the pilot period? Alternatively, will examiners apply the existing guidance in a different manner? Relatedly, will there be differences in the ability of an institution to rapidly receive an interpretive letter or ask the OCC to utilize other similar "regulatory tools"?

In the specific area of third-party risk management, there is a real risk that examination staff will view all third-party relationships, particularly innovative or novel arrangements, as automatically "high risk," impeding even small-scale efforts to innovate with new technologies and new partners (including those that are extraordinarily unlikely to constitute an unsafe or unsound practice).

While the OCC has stated that the guidance is not intended to be used as a checklist for compliance,¹² many banks report feeling obligated to treat it – and related FFIEC handbooks – as a set of requirements more akin to a regulation. As one outside counsel to banks recently testified:

"There is confusion about the fact that the Constitution and statutes are higher level authorities than a regulation, guidance or handbook. Some supervisory staff mistakenly believe that guidance can override a statute. . . Some supervisory staff mistakenly believe that guidance is not governed by the statutes or regulations and that they can pick and choose among the applicable guidance or law."¹³

As the nature of banking evolves and becomes even more reliant on partnerships to provide efficiency and better serve customers, it will be increasingly important for the OCC to clarify how it will treat such relationships and new innovations during development, testing, implementation, and production. For instance, traditional banking relationships are increasingly challenged by trends and new international requirements to enable customer authorized data sharing. In many of these instances, the third-party relationship stems from a relationship of the customer that the bank must fulfill rather than a relationship the bank has otherwise initiated. These changing

¹² See SR 18-5/CA 18-7 Letter: Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018).

¹³ See United States. Cong. Senate. Committee on Banking, Housing, and Urban Affairs. *Guidance, Supervisory Expectations, and the Rule of Law: How do the Banking Agencies Regulate and Supervise Institutions?*, April 30, 2019 (statement of Margaret E. Tahyar at p. 16).

dynamics and the fast pace of change challenge traditional modes of thinking and warrant greater clarity and flexibility for banks.

II. The OCC Should Establish a Narrower Scope for the Pilot Program

The proposed eligibility criteria established for the Pilot Program are very broad. While we recognize that the OCC likely used a broad standard to maintain flexibility and allow banks maximum opportunities to participate in the Pilot Program, we are concerned that banks will feel obligated to submit a wide range of activities and concepts, including new products and services in varying stages of development, to the OCC prior to adopting them, simply because they are eligible. Accordingly, we suggest that the Pilot Program be limited to (1) multi-bank projects involving novel issues, and (2) cases raising novel interpretive issues under the National Bank Act or any other statute over which the OCC has rulemaking (and thus, interpretive) authority. This recommendation should further the objective of the Pilot Program to focus on novel and more complex activities and initiatives.

III. The OCC Should Consider the Potential Risks of Duplicating the Efforts of Other Regulators, Including the CFPB Through its No-Action Letter and Proposed Product Sandbox Processes Regarding Innovative Consumer Financial Products and Services.

The proposal helpfully suggests that aspects of the Pilot Program will be coordinated with other regulatory bodies, as appropriate (*e.g.*, when requested by the participating bank).¹⁴ We believe that such coordination will be critical to avoid conflicting expectations for participating banks and will be especially important in the context of CFPB-examined institutions. While having consistent legal interpretations and examination standards has always been necessary, it has become far more important as consumer lending has moved on-line, and where non-banks now compete with banks.

The CFPB's role here is crucial for three reasons. First, Congress in section 1061 of the Dodd-Frank Act transferred all "consumer financial protection functions" from the federal banking agencies to the CFPB, including "all authority to prescribe rules or issue orders or guidelines" pursuant to any Federal consumer financial laws.¹⁵ This includes exclusive rulemaking, and therefore interpretive, authority with respect to what constitutes an unlawful unfair, deceptive, or abusive act or practice.¹⁶

¹⁴ The proposal states (at page 8) that "The OCC has established processes for cooperating and coordinating with other regulators. For example, the OCC frequently engages other regulators to promote collaboration and to facilitate information sharing on innovation-related topics. In addition, OCC supervisory offices may coordinate examination work with other applicable regulators. OCC business units may also collaborate on interagency statements and rulemakings." The proposal further notes that the memorandums of understanding can be used to facilitate the fulfillment of respective responsibilities, including coordinating work and sharing confidential supervisory information. Finally, it notes that the OCC will consider on a case-by-case basis coordination with other regulators within the program.

¹⁵ 12 U.S.C. §§ 5512, 5581. Congress has granted the CFPB exclusive examination authority for insured depository institutions with total assets of \$10 billion or more, as well as primary enforcement authority for those institutions, for the purposes of Federal consumer financial laws as defined in the Dodd-Frank Act. Dodd-Frank Act, Section 1025; 12 U.S.C. § 5515. In addition, all "consumer financial protection functions" from the federal banking agencies have been transferred to the CFPB, including "all authority to prescribe rules or issue orders or guidelines" pursuant to any Federal consumer financial laws. Dodd-Frank Act, Section 1061; 12 U.S.C. § 5581. Furthermore, the CFPB's authority over the Federal consumer financial laws extends to non-bank affiliates of CFPB supervised insured depository institutions.

¹⁶ 12 U.S.C. § 5531.

Second, given the foregoing, as both a legal and practical matter, only the CFPB can provide a binding legal opinion with respect to whether a proposed service or product violates (or would violate) the consumer financial laws subject to its rulemaking authority.

Third, only the CFPB can ensure that common interpretations will bind all firms subject to the consumer financial protection laws. Indeed, this is likely why Congress decided to give it exclusive regulatory authority: to ensure consistent standards across all firms, bank and non-bank.

New products and processes, particularly those using artificial intelligence and machine learning, have the potential to raise novel questions under federal and state consumer financial laws.¹⁷ To that end, the CFPB has taken an affirmative step to promote innovation in consumer financial products and services through its recently proposed No-Action Letter and Product Sandbox processes.¹⁸ An important concern with respect to the development of innovative consumer financial products and services is the possibility of duplicative or even conflicting efforts banks (and particularly those subject to CFPB supervision) may need to undertake to achieve regulatory clarity when creating innovative products and services.

The CFPB's exclusive authority over Federal consumer financial laws, makes it best positioned to lead efforts to promote regulatory clarity and standards regarding innovative consumer financial products and services. In BPI's comment letter to the CFPB on its No-Action Letter and Product Sandbox processes, we urged the CFPB, as the primary regulator overseeing Federal consumer financial laws, to lead coordination among other Federal and state regulatory authorities to achieve greater regulatory certainty for applicants subject to multiple regulatory frameworks.¹⁹

Further, as part of moving toward a more streamlined regulatory environment, coordination may also be needed with the states, for example through the Conference of State Bank Supervisors as part of its Vision 2020 initiative.²⁰ As many Federal and state agencies continue to form offices for innovation and technological development, regulatory coordination becomes even more paramount to achieve a more sustainable environment for innovative banking services.

Therefore, we urge the OCC to clarify that its process will not include a review of whether a proposed product or service is consistent with the consumer financial laws subject to exclusive CFPB rulemaking authority. Such review, if any, would be sought from the CFPB. Of course, the OCC would retain authority to determine whether an activity constituted an unsafe or unsound practice under the Federal Deposit Insurance Act or otherwise violated any provision of the National Bank Act.

We also strongly encourage the OCC to further its regulatory coordination efforts with the CFPB and the other Federal and state regulators through a memorandum of understanding, so as to avoid duplication and ensure greater consistency on these and other issues. Moreover, we urge the OCC to limit the application of its residual authority to undertake enforcement against unfair and deceptive acts or practices (UDAP) for banks testing innovative products and services.²¹ A UDAP violation during a pilot would be highly unlikely. A pilot under the Pilot

¹⁷ See Greg Baer & Naeha Prakash, [Machine Learning and Consumer Banking: An Appropriate Role for Regulation](#) (Mar. 14, 2019).

¹⁸ Policy on No-Action Letters and the BCFP Product Sandbox, 83 Fed. Reg. 64036 (Dec. 13, 2018).

¹⁹ Letter from Naeha Prakash, Senior Vice President & Associate General Counsel, Bank Policy Institute, to CFPB (Feb. 11, 2019).

²⁰ Conference of State Bank Supervisors, [Vision 2020 for Fintech and Non-Bank Regulation](#) (announced May 10, 2017).

²¹ See Interagency Guidance Regarding Unfair or Deceptive Credit Practices, OCC Bulletin 2014-42 (Aug. 22, 2014).

Program is by definition a test: in the words of the proposal, “small-scale, short term tests to determine feasibility or consider how a large-scale activity might work in practice.”

IV. The OCC Should Make the Pilot Program a True Sandbox.

The pace of technological change requires innovative companies to move quickly, experiment and make mistakes. Accordingly, to further the effectiveness and objectives of the Pilot Program, including by encouraging both quick action and experimentation, the OCC should (i) clarify that during the Pilot Program period, a bank is in a “safe zone” free from MRAs if it remains within the scope of the approved pilot, and (ii) provide for expedited review of pilot requests.

A “safe zone” from supervisory action, including MRAs, is particularly appropriate given the limited duration and scope of a pilot under the Pilot Program. As noted above, by definition, pilot programs are limited in scope, and thus so too is their impact on the financial condition of the bank. Thus, we urge the OCC to clarify that for such a pilot under the Pilot Program, supervisory action will not be taken for activities undertaken in good faith.²² Relatedly, to promote greater certainty, appropriately incentivize banks to engage in responsible innovation, and encourage participation in the Pilot Program, the OCC should:

- Provide greater clarity around actions/activities that could trigger revocation or early “exit” from the Pilot Program;
- Provide assurances that the OCC will not take retroactive actions (MRAs/enforcement) following the conclusion of the pilot period for actions/activities undertaken in good faith during the pilot period;
- Highlight that one of the expected outcomes of pilot activities is that the OCC will provide Pilot Program participants with clarity around how OCC examiners intend to monitor/review a particular project on a going forward basis once the pilot period ends (i.e., during and following the off-ramp phase); and
- Clarify that the pilots under the Pilot Program would be staffed jointly by OCC-Headquarters and local examiners to provide greater assurance that any new legal or policy matters are appropriately established as outcomes from pilot activities.

While the proposal addressed the anticipated Pilot Program period (no less than three and no greater than 24 months), no less crucial is a better understanding of the time required for the OCC to approve a pilot request and get ramped up to engage. As the OCC is aware, many pilot ideas tend to move quickly, especially when attempting to be first to market. A crucial question is therefore whether the timelines involved with the Pilot Program would move at the rapid pace that innovation demands.

Accordingly, banks considering an application to the Pilot Program would benefit from further information regarding pilot application timelines, requirements for application review, time to ramp up engagement with the OCC following acceptance of the pilot proposal, and OCC input into the length of the pilot period (or ability to extend the pilot period). Institutions that are interested in participation in the Pilot Program will often need some level of assurance that they will not lose crucial time – *e.g.*, to delay efforts until the OCC is able to fully engage on the pilot and/or respond to requests for interpretations and the like. Banks considering participation in the Pilot Program would welcome additional specificity concerning how quickly the OCC could vet, approve, and commence pilots.

²² For the same reasons described above, this concept should apply to any small-scale bank pilot regardless of whether it is in the Program.

V. OCC Efforts to Foster Responsible Innovation Should Include an Expanded Focus on Examiner Awareness of Technology Trends.

Especially in the face of non-bank competition with banks, innovation should be a top priority of the OCC. The Office of Innovation is well-positioned to drive the thoughtful recalibration of the regulatory approach to innovation necessary to bring responsible innovative products and services to fruition more quickly and effectively.

The OCC Office of Innovation should promote OCC staff's understanding of the broader benefits and risks associated with bank innovation. This might require the OCC to reevaluate its examination framework for identifying the risks of new products and services. These risks include the risks of a regulated bank *not* innovating and thus failing to adapt effectively to changing technologies and corresponding market and customer expectations. On this point, we agree with the OCC's Spring 2019 Semiannual Risk Perspective, which identified that failure to innovate is in itself a key strategic risk.²³

Examination staff focused on a particular bank would benefit from additional context on innovation matters, such as familiarity with innovation efforts by the banking industry and by non-bank competitors, as well as broader technology trends. For example, the Office of Innovation could advise on-site supervisors relating to a potential new product or service of the context of disintermediation risks from non-bank competitors that could occur should the bank not innovate in that area. The Office of Innovation might also work with supervisors and OCC policymakers to ensure that staff have access to the requisite technological expertise to understand a new product or service and ensure the bank has identified the risks of pursuing—or not pursuing—that innovation. To achieve this outcome, the OCC could consider supplementing existing OCC resources with expertise from outside the traditional banking sector, such as engineers, data scientists, and developers whose expertise lies in technological innovation and its associated risks.

* * * * *

The OCC Office of Innovation has become a central point to help banks of varying shapes and sizes discuss the impact of changing customer expectations, market forces and technological change on the business of banking and its intersection with regulation and examination. We greatly appreciate your efforts and thank you for your willingness to engage with industry on this and other key issues.

²³ See note 3 above.

The Bank Policy Institute appreciates the opportunity to comment on the proposal. If you have any questions, please contact the undersigned by phone at 202-589-1933 or by email at greg.baer@bpi.com.

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'G. Baer', with a long horizontal flourish extending to the right.

Greg Baer
President & CEO
Bank Policy Institute