

May 30, 2016

Office of the Comptroller of the Currency
innovation@occ.treas.gov

Re: Supporting Responsible Innovation through an Office of Innovation

To Whom It May Concern:

I thank you for the opportunity to contribute toward the goal of supporting responsible innovation in the federal banking system. In response to the bureau's March whitepaper, this comment letter argues that establishing a centralized Office of Innovation will more effectively further that goal than will entrusting the responsibility to an existing unit within the OCC. It further recommends that the Office employ a different engagement model for Small Banks than for Midsize and Large Banks.

This letter proceeds in three parts. Part I evaluates the goals, structure, and successes of two other regulatory agencies' attempts to pursue similar goals: the UK Financial Conduct Authority's Project Innovate and the Consumer Financial Protection Bureau's Project Catalyst. Part II, drawing from these lessons, proposes several different structures for the OCC Office of Innovation: Current, Collaborate, and Concierge. Of these structures, Part III argues that the Concierge Model best supports the goal of supporting responsible innovation among Small Banks and that the Collaborate Model best supports that goal among Midsize and Large Banks.

I. OTHER AGENCIES SUCCESSFULLY OPERATE INNOVATION OFFICES

a. Concierge Model: The UK Financial Conduct Authority's Project Innovate

The early success of Project Innovate shows that a centralized OCC Office can promote consumer-friendly fintech innovation. In October 2014, the Financial Conduct Authority (FCA) established the Project to provide direct support to firms as they attempt to introduce new products into the market and to coordinate fintech regulatory policy across the UK government. Since then, the Project has served over 200 UK firms and facilitated FCA authorization for over a dozen of these firms.¹ Across major fintech markets, Project Innovate has enabled the UK's regulatory regime to stand out for its simplicity, transparency, and constructive engagement with start-up firms.²

The FCA structured Project Innovate to reduce barriers that prevent consumer-friendly fintech start-ups from bringing their products to market. Any interested business may interact with the Project through "informal steers," which introduce entrepreneurs to the regulatory landscape. In addition, Project Innovate hosts roundtables and workshops to identify and resolve

¹ FCA, "Project Innovate & Innovation Hub Explained," November 2015, <http://www.fca.org.uk/your-fca/documents/project-innovate-explained-video-transcript>. FCA, "Innovate Finance Global Summit," May 2016, <http://www.fca.org.uk/news/innovate-finance-global-summit>.

² Ernst & Young, *UK Fintech: On the Cutting Edge*, February 2016, 51, <https://www.gov.uk/government/publications/uk-fintech-on-the-cutting-edge>.

regulatory questions around complex topics like robo-advising and regtech. To qualify for access to the Project's more hands-on "Innovation Hub," which provides direct and sustained support, a fintech entrepreneur must only demonstrate that he or she has conducted preliminary research into the relevant regulations and that the business benefits consumers in an innovative way. Of 400 such applications, the Hub has directly supported 200. According to entrepreneurs, Innovation Hub support helps in three ways: it offers direct support in navigating regulatory landscape, it reduces costs that otherwise would go toward regulatory consultants and lawyers, and it educates all co-founders on the importance of compliance. Once a business is ready to bring its product to the market, a Project Innovate case manager will guide the entrepreneur through the FCA authorization application and continue to assist the business with regulatory questions for as long as a year after authorization. Through these initiatives, Project Innovate actively advances disruptive and innovative fintech business models.

This year, Project Innovate will expand the scope of its services. The most significant initiative is to create the world's first Regulatory Sandbox, which aims to enable innovative firms to test ideas through controlled experiments. For FCA-authorized firms, the FCA may reduce regulatory uncertainty by waiving, modifying, or offering individual guidance on relevant rules for its Sandbox ideas. If these tools do not provide sufficient comfort to a particular Sandbox firm, the FCA may offer a narrowly tailored no-action letter. For firms not authorized by the FCA, the FCA will provide restricted authorization so the firm can test its ideas within the Sandbox parameters. The FCA recently opened up applications for the first cohort of applicants, and regulators will select proposals based on factors like maturity of idea, benefit to retail consumers and businesses, and alignment with the goals of the Sandbox.³ If the Sandbox program is successful, it will accelerate the introduction of innovative ideas into the UK market.

In addition to the Regulatory Sandbox, other HM Treasury initiatives seek to "ensure that the UK continues to be the best place in the world to be a fintech company."⁴ For example, HM Treasury will create "Fintech Bridges" with major fintech markets. These Bridges will enable fintech firms to scale more easily in both countries by coordinating regulatory action between governments. The FCA signed the first such regulatory cooperation agreement, with the Monetary Authority of Singapore, on May 11, 2016.⁵ As the FCA establishes more formal partnerships with other governments, the Fintech Bridge program will further the Treasury's goal of supporting the UK fintech industry at home and abroad.

³ FCA, "Innovator Businesses: Project Innovate," May 2016, <https://innovate.fca.org.uk/innovation-hub/regulatory-sandbox>. FCA, "Innovate Finance Global Summit," April 11, 2016, <http://www.fca.org.uk/news/innovate-finance-global-summit>. FCA, "Regulatory Sandbox," November 2015, <https://www.fca.org.uk/static/documents/regulatory-sandbox.pdf>.

⁴ HM Treasury Economic Secretary Harriett Baldwin, "FinTech: Making Sure the UK Continues to be the Global Capital," April 11, 2016, <https://www.gov.uk/government/speeches/fintech-making-sure-the-uk-continues-to-be-the-global-capital>.

⁵ HM Treasury, "First Ever FinTech Bridge Established Between Britain and Singapore," May 11, 2016, https://www.gov.uk/government/news/first-ever-fintech-bridge-established-between-britain-and-singapore?utm_content=buffera7f8a&utm_medium=social&utm_source=twitter.com&utm_campaign=buffer&utm_term=BII%20List%20Fintech%20ALL.

Through these initiatives and others, the FCA has established one model of fintech regulation that the OCC might emulate. The Australian Securities and Investment Commission recently pledged to launch an even more “far-reaching” regulatory sandbox, which will allow fintech firms to prototype ideas before securing a full license.⁶ Concierge Models like these emphasize active engagement between entrepreneurs and regulators, the use of limited safe harbors to encourage innovation, and government support for particular firms and for the fintech industry generally. To be sure, this structure cuts against traditional models of regulation because it “picks winners,” offers prospective interpretation of rules, and devotes significant regulator resources to specific firms.⁷ However, the success of Project Innovate may show that supporting innovative fintech ideas requires adopting innovative regulatory models.

b. Collaborate Model: The Consumer Financial Protection Bureau’s Project Catalyst

Launched in 2012, Project Catalyst provides another model for OCC regulation. The Project employs a small staff and reports directly to the CFPB Director. The Project’s mission is “to encourage consumer-friendly innovation and entrepreneurship in markets for consumer financial products and services.”⁸ Broadly speaking, the Project fulfills that mission through communication and collaboration. The Project pursues the first goal by engaging directly with established and start-up consumer finance companies at “office hours” in San Francisco and Washington, industry conferences and conventions, and other forums. According to a former Project Catalyst employee, these conversations enable the Bureau to stay current on industry trends, to draft forward-looking rules, and to encourage consumer-friendly innovation.⁹

The Project pursues its second goal, collaboration, through three principal initiatives: a pilot program, trial disclosure programs, and no-action letters. The pilot program enables the Bureau to partner with and learn from financial companies launching consumer-friendly products. For example, Project Catalyst has partnered with Barclays Bank Delaware and Consumer Credit Counseling Service of Delaware Valley on preventing credit card default through early intervention counseling, with American Express on promoting saving through prepaid cards with dedicated savings accounts, and with H&R Block on encouraging taxpayers to save a larger portion of their tax refunds through education campaigns.¹⁰ Former CFPB analysts have expressed frustration that the Bureau has not captured the full promise of the

⁶ Swati Pandey and Michelle Price, Reuters, “Australia Watchdog to Publish Fintech ‘Sandbox’ Proposal,” May 18, 2016, <http://www.reuters.com/article/us-finance-summit-australia-fintech-idUSKCN0Y90JC>.

⁷ For an analysis of why it is challenging to supervise fintech through traditional regulatory models, see Chris Brummer and Daniel Gorfine, *Fintech: Building a 21st Century Regulators’ Toolkit*, October 2014,

⁸ <http://www.consumerfinance.gov/about-us/newsroom/consumer-financial-protection-bureau-launches-project-catalyst-to-spur-consumer-friendly-innovation/>.

⁹ Interview with former Project Catalyst employee.

¹⁰ CFPB, “CFPB Announces Project Catalyst Research Pilot,” September 25, 2014, <http://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-project-catalyst-research-pilot/>. CFPB, “Announcement of Pilot to Promote Regular Saving Behavior Among Prepaid Card Users,” September 12, 2014, http://files.consumerfinance.gov/f/201412_cfpb_project-catalyst-announcement.pdf. CFPB, “CFPB Announces Project Catalyst Research Pilot on Tax-Saving,” October 2, 2014, <http://www.consumerfinance.gov/about-us/newsroom/cfpb-announces-project-catalyst-research-pilot-on-tax-time-saving/>.

program, because it takes too long to design and approve each pilot. To date, the Project has launched approximately six projects.¹¹

The trial disclosure program encourages consumer finance products, in collaboration with the CFPB, to experiment with more effective and innovative disclosures to consumers. If the Bureau approves a specific trial and the trial remains in compliance with those terms and conditions, the Bureau will not deem the trial to have contravened applicable federal law. The Bureau underwent a robust notice-and-comment period process to design the disclosure program and took into account feedback from industry groups, consumer advocates, and other stakeholders.¹² The result is an opportunity for controlled innovation: according to former employees, the Bureau has been willing to extend temporary waivers because the guarantee is limited to disclosure, rather than to consumer protection generally.¹³

The no-action letter is Project Catalyst's third tool. The Bureau finalized its standards for granting such letters last year. Like Project Innovation's no-action program, Project Catalyst anticipates deploying the letters to reduce regulatory uncertainty around consumer-friendly fintech innovations. Unlike Project Innovation, however, the Project only plans to issue between one and three no-action letters per year. Further, a Project Catalyst no-action letter provides less comfort than an FCA letter because it does not extend to other regulatory agencies' actions and because it does not operate within a broader regulatory sandbox program.¹⁴ Unless the no-action letter program expands in scope, it does not contribute meaningfully to the Project's goal of collaborating with consumer-friendly products and services.

Project Catalyst therefore provides a different model than Project Innovate. Where the former assists consumer-friendly fintech products in limited and targeted ways, the latter accelerates the growth of specific firms and of the industry generally. Project Catalyst is less nimble, ambitious, and risk tolerant than Project Innovate, but such restrictions may be appropriate for the United States because of factors like regulatory complexity across federal and state agencies and robust consumer protection laws. In this way, the Collaborate Model more closely aligns with traditional models of regulation: rather than "picking winners" and offering prospective interpretation of rules, the Model selects specific projects on which government and private firms can work together. The success of Project Catalyst may show that the OCC can advance consumer-friendly fintech innovation through low-risk experiments.

II. THE OCC MAY CHOOSE CURRENT, COLLABORATE, or CONCIERGE MODEL

Project Innovate and Project Catalyst demonstrate that an Office of Innovation can support responsible innovation. If the OCC decides to establish such an Office, it must determine which goals and responsibilities it should entrust to the Office. In its March whitepaper, the OCC

¹¹ Interview with former Project Catalyst employee.

¹² CFPB, "Policy to Encourage Trial Disclosure Programs," October 2013, http://files.consumerfinance.gov/f/201310_cfpb_1032e-trial-disclosure-policy.pdf. See pp. 19 - 22 for the Bureau's selection criteria and waiver procedures.

¹³ Interview with former Project Catalyst employee.

¹⁴ CFPB, "Policy on No-Action Letters," October 16, 2014, <https://www.federalregister.gov/articles/2014/10/16/2014-24645/policy-on-no-action-letters>.

suggested more than ten possible purposes. The chart below lists many of these purposes and notes which regulatory model corresponds to that level of engagement with the fintech sector:

Responsibility	Model¹⁵
Hold regular meetings with fintech innovators to maintain an ongoing understanding of financial industry innovation	CURRENT
Develop educational materials on innovation for banks and OCC personnel	CURRENT
Designate lead experts on responsible innovation who could support bank innovation and provide advice based on a broad view of innovation trends and developments across the federal banking system	CURRENT
Share success stories describing responsible innovations that provide fair access to financial services and fair treatment	CURRENT
Holding meetings with interested stakeholders and appropriate OCC officials and coordinating among OCC examiners and experts to identify supervisory, policy, legal or precedent-setting issues, or concerns early in the process	CURRENT
Promote ongoing dialogue through formal outreach, including workshops, meetings, and “innovator fairs”	CURRENT or COLLABORATE, depends on scope
An existing unit within the OCC assumes the responsibility as the agency’s central point of contact on innovation. The unit could be responsible for ensuring appropriate OCC staff and experts are involved early when considering innovative proposals by banks and nonbanks.	CURRENT or COLLABORATE, depends on scope
Serve as a forum to vet ideas before a bank or nonbank makes a formal request or launches an innovative product or service	COLLABORATE
Issue guidance on expectations related to products and services designed to address the needs of low- to moderate-income individuals and communities and may encourage innovative approaches to financial inclusion by promoting awareness of other activities that could qualify for Community Reinvestment Act consideration.	COLLABORATE
Streamline OCC licensing procedures, where appropriate, or develop new procedures where existing procedures may not work for certain innovative activities	CONCIERGE
Allow banks to test or pilot new products and services on a small scale before committing significant bank resources to a full rollout. Such a program could entail board approval and appropriate limitations that would protect consumers and would not involve giving banks a safe harbor from consumer laws and regulations during the testing phase of a new product.	CONCIERGE

This section briefly evaluates the strengths and weaknesses of an OCC Office of Innovation that emulates each model. Regardless of the model, however, the Office cannot succeed without broader buy-in from OCC leadership and personnel. Interviews with former CFPB and OCC employees suggested that the OCC could achieve this “institutional support” by

¹⁵ If a responsibility fits into a less engaged model, it necessarily falls into the more engaged models. For example, a responsibility labeled “Current” also could fit within the Concierge Model, but not vice-versa.

designing the Office to report directly to the Comptroller, encouraging OCC personnel to embrace responsible innovation, and incorporating the Office into the OCC's strategic mission. All interviewees insisted that the Office, no matter how limited its responsibilities, would fail without efforts like these.

a. Current Model

This model, in which the OCC tasks the goal of supporting responsible innovation to an existing unit or designated lead expert, holds several advantages over the more engaged models. As the above chart reflects, even an informal structure can accomplish important responsibilities like developing educational materials and holding regular meetings with fintech leaders. Existing points of engagement between the OCC and financial institutions – examiners, licensing offices, designated experts, and others – already provide sufficient opportunity for most banks and nonbanks, particularly the larger institutions, to discuss and resolve regulatory questions. Further, this model creates fewer reputational, legal, and operational risks for the OCC, because the goals are more limited and achievable. For that reason, the OCC may decide to experiment with an informal structure before launching a formal unit; this plan would enable OCC leadership to identify which responsibilities and areas are best suited for the Office to oversee and to design the Office accordingly. In addition, this plan would allow the OCC additional time to study models such as Project Innovate and Project Catalyst.

On the other hand, the Current Model cannot support responsible innovation to the same degree as other models. As the March whitepaper notes, “the current process can result in some inconsistencies and inefficiencies.” If the OCC spreads accountability for responsible innovation across multiple units, these groups might duplicate efforts, send mixed signals to fintech firms and banks, and generate disagreement within the OCC. It will remain difficult for the OCC to work constructively with the complex, fast-moving fintech sector. Assigning responsible innovation to a single Office will both avoid these bad outcomes and empower the Office to achieve more ambitious goals.

b. Collaborate Model

This model allows the OCC to capture the benefits of establishing an Office without incurring the substantial risks that come with sandbox-like concierge services. Among other benefits, the Collaborate Model will convey to OCC personnel, other regulatory agencies, supervised banks, and the fintech sector that the OCC has dedicated itself to supporting responsible innovation. It also will enable the bureau to consolidate responsible innovation activities within a single unit, which in turn will increase the efficiency and creativity with which the OCC can launch initiatives to support responsible innovation. Further, as one *American Banker* editorial argues, the Office will benefit financial institutions by establishing a clear point of contact, allowing the OCC to scale its expertise, and accelerating the introduction of innovative technologies to the market.¹⁶ Finally, an Office might empower the OCC to play a larger role in coordinating policy-making across the Federal Reserve, FDIC, Treasury

¹⁶ Stuart Frankel, “Banks’ Embrace of Fintech Stymied by Regulatory Ambiguity” in *American Banker*, May 13, 2016, <http://www.americanbanker.com/bankthink/banks-embrace-of-fintech-stymied-by-regulatory-ambiguity-1080994-1.html>.

Department, CFPB, and other agencies, as well as with state regulators. In these ways, the OCC Office of Innovation could engage constructively with fintech firms and issue guidance to reduce regulatory ambiguity.

The Collaborate Model does not present significant risks for the OCC, but it does present opportunity cost. In choosing not to establish a regulatory sandbox, the Office will avoid sanctioning innovations that harm consumers and that require significant regulator attention to oversee. However, the OCC will not have established a model that more directly promotes the fintech sector. As the UK and other Concierge Models sponsor the fintech ecosystems in their respective countries, fintech firms may choose to establish themselves in those markets. The U.S. will have missed an opportunity to advance financial inclusion, to create jobs, and to promote the competitiveness of its banking system.

c. Concierge Model

This model promises the greatest benefit and the greatest risk. Most importantly, as Project Innovate demonstrates, this model can meaningfully accelerate the introduction of consumer-friendly innovations into the market. A regulatory sandbox program can support as many innovations as the OCC chooses to assist, and that level of assistance can range from providing regulatory guidance, to issuing no-action letters, to shepherding specific firms through the appropriate authorization processes. In addition to direct support, the Concierge Model will promote the fintech industry by signaling to investors and banks that the OCC welcomes responsible innovation. As a consequence, investors and banks may be more willing to finance and partner with the sector. Finally, this model will enable the OCC to supervise the dynamic fintech sector with a correspondingly dynamic regulatory structure. Engaging closely with cutting-edge technologies will enable the OCC to anticipate policy questions that existing regulation does not contemplate and to issue guidance as needed. The Concierge Model therefore enables policy to evolve alongside technology, rather than in reaction to it.

However, the Concierge Model creates significant risk for the federal government, for fintech firms, and for consumers. Within the OCC, the Office may cause controversy if OCC personnel do not agree that the bureau should advantage specific firms through tools like regulatory sandboxes.¹⁷ Across the federal government, the OCC must carefully coordinate the Concierge Model tools – such as no-action letters and temporary licenses – with the regulatory agencies relevant to each experiment. Each experiment will require substantial attention and organization from OCC and other government personnel. If these coordination efforts fail, fintech firms will need to devote resources toward justifying their activities to regulators and consumers. The experiment will have adversely affected the very fintech firms that the OCC sought to help. To that end, the OCC must design each pilot to minimize risk to consumers and to ensure that the government would not become liable in the event an experiment harms consumers. Before launching a Concierge Model Office of Innovation, the OCC should carefully assess these risks and determine how to mitigate them.

¹⁷ Interview with former OCC examiner.

III. RECOMMENDATION: HYBRID OFFICE OF INNOVATION, with CONCIERGE FOR COMMUNITY BANKS and COLLABORATE FOR LARGER BANKS

The best approach is to establish an Office of Innovation that supports responsible innovation by engaging differently with banks of different sizes. The particular strengths and weaknesses of each model make more engaged models appropriate for Small Banks and less engaged models appropriate for Midsize and Large Banks.

The Office of Innovation should employ a Concierge Model for Small Banks, particularly community banks with less than \$10 billion in assets. These banks generally do not have as much opportunity to address regulatory issues with regulators: they interact with OCC examiners only during exams every 12 to 18 months, and they are not subject to the same degree of scrutiny by the CFPB, Federal Reserve, and other regulators.¹⁸ In addition, these banks may pass over opportunities for responsible innovation simply because they lack the regulatory expertise to design innovate partnerships with fintech start-ups. The OCC can encourage community banks to pursue consumer-friendly innovation not only by offering Concierge Model services, but also by sharing best practices with other small banks. Through these efforts, the OCC can help community banks partner with fintech firms and remain competitive with larger banks even as fintech disrupts the industry.¹⁹

For Midsize and Large Banks, the Office of Innovation should employ a Collaborate Model. The Office should not too rigidly delineate where concierge services end and collaborate services begin, because it may determine that certain regional banks should benefit from the sandbox toolkit. The OCC does not need to devote substantial resources toward supporting responsible innovation among the largest banks, which are well-positioned to advance the goal on their own. If bank executives encounter regulatory ambiguity, they can turn to their resident OCC examiners and to sophisticated compliance lawyers (both in-house and outside counsel). In addition, these banks have created large fintech groups to identify investment and partnership opportunities. The OCC can facilitate those opportunities by issuing broad guidance and addressing regularity ambiguity, but the large banks will advance responsible innovation without a Project Catalyst equivalent in the OCC Office of Innovation.

To advance these goals, the Office of Innovation should consist of at least three components. A Community Bank Unit, dedicated to supporting responsible innovation through concierge services, will coordinate with community bank portfolio managers across district and field offices, the Senior Deputy Comptroller for Midsize/Community Bank Supervision, and other OCC units and leaders responsible for small bank supervision. A Midsize and Large Bank Unit, dedicated to supporting responsible innovation through collaborate services, will coordinate with the examiners-in-charge, Senior Deputy Comptroller for Midsize/Community Bank Supervision and Senior Deputy Comptroller for Large Bank Supervision, and other OCC units and leaders responsible for Midsize and Large Bank oversight. A Third component, the Interagency Coordination Unit, will coordinate policy-making across regulatory agencies like Treasury, CFPB, Federal Reserve, Small Business Administration, SEC, and state bank

¹⁸ Interview with former OCC examiner.

¹⁹ Tim Melvin, "Fintech is Friend and Foe to Community Banks" in *Real Money*, May 25, 2016, <http://realmoney.thestreet.com/articles/05/25/2016/fintech-friend-and-foe-community-banks>.

supervisors. For example, one task force within this Group could lead the OCC's Marketplace Lending Efforts. Consistent with the Treasury Department's recent recommendations in *Opportunities and Challenges in Marketplace Lending*, this OCC task force can support Treasury's efforts to share information about the applicability of current regulations, enforcement efforts, and potential regulatory gaps, as well as to educate stakeholders about existing rules and regulatory authorities in this market.²⁰ The Office of Innovation will improve the OCC's ability to support responsible innovation, because it will consolidate and coordinate regulatory efforts both within the OCC and across the federal government.

If the OCC decides to establish an Office of Innovation, it should task the Office with developing a framework by which personnel in the Concierge and Collaborate units can evaluate fintech innovations. For Concierge personnel, the framework should define how features like audit involvement, beta testing, and compliance controls can minimize risk. It also should direct fintech innovators to expand access to safe, affordable credit for previously excluded communities. For Collaborate personnel, the framework should clarify the level of guidance OCC personnel should offer to individual innovators and determine the topics OCC personnel should prioritize when issuing broad guidance to the sector. The Office can draft *OCC Bulletins* to ensure that OCC personnel, other regulators, supervised banks, and fintech innovators understand the Office's goals, responsibilities, and initiatives.

For these reasons, I encourage the OCC to create an Office of Innovation. Thank you for your consideration.

Sincerely,

Andrew Ruben²¹
Yale Law School Class of 2017

²⁰ Treasury Department, *Opportunities and Challenges in Online Marketplace Lending*, May 10, 2016, https://www.treasury.gov/connect/blog/Documents/Opportunities_and_Challenges_in_Online_Marketplace_Lending_white_paper.pdf.

²¹ I base my recommendations on formal interviews with former OCC and CFPB regulators, as well as on informal conversations with fintech entrepreneurs and bank executives. However, the views expressed are my own and do not reflect those of any other individual or of Yale Law School.