CFSi Center for Financial Services Innovation

May 31, 2016

Thomas J. Curry
Comptroller of the Currency
400 7th St. S.W.
Washington DC 20219

RE: Comments on Responsible Innovation Whitepaper

Dear Comptroller Curry,

The Center for Financial Services Innovation (CFSI) is submitting this letter in response to the request for comments on "Supporting Responsible Innovation in the Federal Banking System," issued by the Office of the Comptroller of the Currency (OCC) and published on March 31, 2016. Like you, we recognize the important role that access to high-quality financial products plays in helping consumers improve and maintain their financial health. We believe that finance can be a force for good in people's lives and that meeting consumers' need responsibly is ultimately good for both the consumer and the provider.

CFSI is a national authority on consumer financial health. We believe that financial health comes about when a consumer's day-to-day financial systems enable them to build resilience and pursue opportunities. We lead a network of financial services innovators – banks, the fintech community, processors, servicers, non-profits, and community-based organizations – all committed to building higher quality products and services. CFSI informs, advises, and connects our network to seed innovation that will transform the financial services landscape. We hear the pain points and the see the opportunities from a variety of different viewpoints from both industry and consumers.

Through our consulting work, our Financial Capability Innovation Funds, and our Financial Solutions Lab, we have fostered innovative products and technologies that improve the financial health of consumers. Our vision is to see a strong, robust, and competitive financial services marketplace, where the diversity of consumer transaction, savings, and credit needs are met by a range of providers offering clear, transparent, and high-quality products and services at reasonable prices.

In this letter we first provide some overall reactions to the OCC's whitepaper. Next we provide some specific responses to some of the issues raised by the OCC:

- Foster a culture of innovation
- Provide a clear front door

- Collaborate broadly and deeply
- Support sandboxes and a chance to experiment
- Establish principles versus rules *per se*
- Promote meaningful risk management

We also share some of our "blue sky" thoughts on opportunities for the innovation ecosystem, and finally we offer some concluding remarks.

Overall Reactions

Importance of OCC's Efforts to Support Responsible Innovation

We applaud the OCC for grappling with the issues raised by financial technology and other innovations. Your work will also help other regulators evolve their thinking in this space, which will be essential for the innovation landscape. In fact, there are many constituencies, new to the OCC, involved in this ecosystem. Banks – both large and small – as well as innovators, fintech providers, consumer groups, and the investment community need and want guidance and clarity from the regulators.

We would encourage you to consider a broad range and scope of innovation – one that includes a variety of innovations that occur within the layers of financial services. For example, think about innovations at the distribution layer, the consumer experience/user interface layer, the product layer – including tweaks and combinations of existing products as well as fundamentally new products – and the infrastructure layer. Furthermore, we are hopeful that the OCC will support innovation across the broad array of financial products and services – for example, payments, savings, disclosures, accessibility, underwriting, and convenience – that can lead to better consumer outcomes.

There is some concern that many banks and non-bank partners may go into a holding pattern while the OCC develops its framework for innovation. We are hopeful that the OCC will send a signal and actively encourage banks and non-bank partners to continue to innovate in the interim as you work to develop this framework for innovation.

We are hopeful that this is only the beginning of an ongoing process to integrate innovation into the federal financial regulatory landscape, and that the process will continue to evolve and grow over time as new technologies and opportunities present themselves. We appreciate that the OCC has taken the lead in this effort.

Defining Responsible Innovation

The OCC's definition of responsible innovation is broad and inclusive on the whole. We see four areas where the definition may leave room for ambiguity or might be too limiting for today's business environment.

First, the definition is not clear about how the word "responsible" will be interpreted. The OCC's paper points out: "the financial crisis was fueled in part by innovations such as option adjustable rate mortgages, structured investment vehicles, and a variety of complex securities that ultimately resulted in significant losses for financial institutions and their customers and threatened the entire financial system." However, innovation in and of itself is neither positive nor negative – the real test of innovation is whether it's use results in a positive outcome for consumers in terms of their financial health. We believe that innovation can be used in ways that lead to both success for the consumer and profitability for the provider.

We encourage the OCC to clarify the term "responsible" by addressing the potential upside of innovation, rather than limiting what type of innovation can be "responsible." Innovation should improve customer outcomes. For innovations in consumer finance, CFSI has recently released a set of metrics that providers can use to measure their consumers' financial health. This set of metrics could be used as a foundation for an OCC framework to determine whether an innovative consumer product is responsible.

Second, we worry that the last clause of the definition – that responsible innovation "is aligned with the bank's overall business strategy" – may limit the reach of innovation. Many innovations push banks to serve customer segments that are traditionally underserved by the banking system. We are particularly sensitive to this issue because we focus on underserved consumers, and we were born out of an interest in seeding innovation for un- and underbanked Americans. The terms underserved, unbanked, and underbanked express how this segment has been left out of most banks' strategic focus. Some 68 million US adults are under-banked and 108 million lack traditional credit scores. We worry that by limiting banks to think only about innovations in line with their current strategy, the OCC will inadvertently limit solutions for segments that have been traditionally ignored by the banking system. Indeed, the OCC should be challenging banks and other financial service providers to actively serve the needs of these segments.

Third, we recognize there is a distinction between modernizing – updating core systems and processes and replacing legacy systems – and innovating. For example, there is a difference between installing a new system for clearing payments and introducing a new way to do loan servicing that would reduce the cost of servicing – both are modernizing, but the second may be more of an innovation. A more specific definition of responsible innovation can clarify where along the continuum a new product, service, or practice is a modernization versus an innovation.

Financial institutions and financial service providers should be encouraged to modernize their platforms, improve processes and systems, and be open to consumers' needs simply as sound business practices.

Fourth, there needs to be some better-defined construct of partnerships – where two entities – at least one of which is a bank – are working together on a new solution. We see this construct of partnership as different from simply a vendor relationship, and thus it should be treated differently from a regulatory standpoint.

Creative partnerships can include new ways of distributing existing products, improving user interfaces or experiences, refining or combining existing products, introducing fundamentally new products, and improving the infrastructure of the system. Furthermore, industry actors need to be clear on what they should expect regarding regulatory scrutiny, especially with regard to data and privacy requirements. With greater clarity, innovation can thrive as banks experiment with innovation themselves or partner with third parties.

We are hopeful that the OCC will support partnerships for innovation across various types of financial products and services, including payments, savings, disclosures, accessibility, lending, and investing. Our experience with the Financial Solutions Lab, a program managed by CFSI with founding partner JPMorgan Chase, shows us that innovators are working across these verticals and increasingly introducing products that are a hybrid of the verticals themselves. For example, we have seen tools that provide consumers who experience income volatility a way to save when paychecks are high and to tap their savings or to access credit when paychecks are low.

Specific Responses to Issues in Innovation

Foster a culture of innovation.

Successfully fostering responsible innovation in financial services will require a large cultural shift at all levels within the OCC. Clearly the Controller is already thinking about this. But it is also important for regulators to think through who is on the exam team. Examinations and examiners can cause banks to shy away from working with innovators, which in turn hinders them from incorporating products and services that could better serve their customers. Developing an expertise in examinations with innovation in mind can lead to examiners helping to promote responsible innovation – and more successful innovation would have room to take root and ultimately benefit more consumers.

One idea to facilitate the cultural shift within the regulatory community would be to bring innovators into the exam team by recruiting examiners outside of traditional banking circles –

including innovation and fintech firms themselves. This step would demonstrate that the OCC has both an open mind and an open door, and would provide additional expertise and understanding around the process of innovation. On an ongoing basis, it will be important to think through how the exam team is trained and kept up to date in the rapidly evolving world of financial innovation.

The OCC may even want to consider how they are defining the roles and responsibilities of the boards of banks. It may be possible to leverage the Board level to ensure a culture and practice of responsible innovation within the banks that leads to positive financial health outcomes for consumers.

Provide a clear front door and process for innovators, both incumbents and startups.

The paper mentions the possibility of creating a centralized office on innovation. While it would be extremely helpful for all interested parties – not just banks – to have a clear place to take questions, it is imperative that such an office not become an additional layer of bureaucracy adding even more complexity or delay to an already complicated process.

We appreciate that the OCC has a mandate to ensure the safety and soundness of the banking system. In that context, the openness with which the OCC has introduced this framework is a laudable first step. We encourage the OCC to take further steps in opening its doors to more informal dialogue with the industry. Innovators – both regulated banks and nonbanks – need space to discuss work-in-progress ideas and to get input from the OCC that can help inform product design at early stages without concern that this dialogue could lead to negative actions. Discussions should go beyond just how not to get into trouble and focus on best practices and how financial institutions can achieve positive financial health outcomes for their customers.

Collaborate broadly and deeply.

Collaboration on multiple levels is as important as having a clear front door. This is an excellent opportunity for agencies to embrace inclusion and build trust within each agency, among each other, and with outside stakeholders. We encourage the OCC to make clear both internally and externally how to navigate the agency, and to break down the organization charts and silos that aren't relevant or don't make sense for some of the new innovations and business models in the marketplace.

While improving communication and understanding within the OCC itself is important, we also recognize that it is not enough. Receiving permission and encouragement to innovate from one agency is not enough to provide innovators the safety-net they need to be creative. A true framework cannot be developed by one agency alone. Other agencies, including the Fed, the

Treasury Department, and the CFPB have all indicated interest and/or taken proactive steps towards engaging with new innovations. We also recognize that there are a number of other federal agencies whose work touches the financial services arena. The VA, FTC, FCC, DoD, Education, HHS, HUD, USDA and DoJ all touch elements of fintech and innovation as well as consumers in different and influential ways. Without coordination, important elements of the consumer experience will be missed.

Collaboration among these agencies and the OCC has the potential to greatly increase the effectiveness of their efforts while giving banks and innovators confidence and clarity about what they are and are not allowed to do. One possible approach to this might be an innovation advisory board with inter-agency participation as well as representation from banks and the fintech and innovation community. In practice, this could look something like the Financial Literacy and Education Commission with added participation from industry.

Coordination needs to extend into the field. Field staff needs to be able to handle questions and concerns regarding new products, new strategies, and new business models and practices. Field examiners need to have the confidence and flexibility to engage with new products and new ways of doing things and to have a clear path of where to take certain questions to get an answer if they don't have one. Furthermore, they need a mechanism for reporting back on questions and trends they are seeing in the field to broaden the agency's understanding of what is happening in the market. This may require a dedicated team that focuses on the intersection of regulatory functions, innovation, and supervision.

Collaboration also needs to include an element of engagement. It is important to recognize that the OCC is not well understood among some of the constituencies who are outside of the banking industry. Fintech providers and entrepreneurs are not always aware of the role OCC plays, and there is a need for creative outreach strategies. Outreach elements including "office hours" in the field, conferences, and web meetings could go a long way toward getting the OCC's messages out to stakeholders. This will not only enable the OCC to reach a broader audience but it also will help encourage feedback to the OCC directly from the industry. Another approach would be to establish a consumer advisory board to both generate input and communicate feedback through stakeholder groups. In addition, the OCC could consider ways to engage regionally - particularly outside of Washington, D.C. and the east coast. Due to CFSI's broad network of partnerships across the U.S., we are well positioned to contribute to such an effort if helpful.

Support sandboxes and a chance to experiment.

Innovators – whether banks or fintech – need a place to innovate. They need opportunities to test out minimally viable products, to try out a proof of concept, to field beta-test pilots, to "test and learn," and to iterate product changes without necessarily being in full compliance with every nuance of every regulation. We are certain you are aware of the regulatory sandbox that the Financial Conduct Authority is implementing as a part of the United Kingdom's Project Innovate. The goal of the sandbox is to enable testing of pro-consumer innovation, while ensuring that customers are still well-protected.

In the U.S., it is necessary to consider how innovators can be allowed to fail without facing insurmountable repercussions or irreparably damaging consumers. We believe that if the OCC can collaborate with other relevant agencies to create a safe space for innovators to test products within certain boundaries, the benefit will be clear. Such an interagency effort has rarely been done in the U.S., so there is room to be creative in working with other agencies and stakeholders to develop a system that could be completely transformative to the financial services industry and enable the creation of products which greatly benefit consumers' financial health.

Banks are clearly on the front lines of interacting with American consumers' financial needs. They need to be able to partner with non-bank innovators, or innovate themselves, to create better products to meet their customer's' needs. We have heard from businesses within CFSI's network that the current regulatory environment discourages banks from trying new products for fear of supervisory repercussions. As we mentioned previously, there should be room for banks and non-banks to ask questions and have dialogue with regulators without triggering any alarms. But beyond this, there needs to be a mechanism for firms to test out new products, business models, and practices in a similar manner to drug trials conducted by the FDA.

Understanding that some failure is inevitable, we recognize that there needs to be a mechanism in place to minimize harm or compensate consumers for losses. The OCC and other participating agencies can set thresholds and guidelines regarding the number of consumers participating or the dollar volume involved. Another possibility would be to set up an insurance mechanism to protect those who are harmed (see the discussion below in our Blue Sky section).

An added benefit of any sandbox program is that financial service providers may not know about any disparate impacts until products and services are brought into the marketplace and tested. Through small-scale pilots, firms could determine whether there were potential problems under the Unfair, Deceptive, or Abusive Acts and Practices rules; regulators may be able to respond via a system of warnings leading to a penalty, rather than starting with the penalty first.

The OCC could even take this sandbox program further by framing it as a regulatory incubator, along the lines of Bell Labs, DARPA, NIH, or other federal research and development programs. There are a number of financial services challenges that U.S. consumers face that could be addressed through such an incubator program.

We would like to see a U.S. sandbox program that is expansive. Beyond testing new products, we would like to see the OCC encourage partnerships among banks and financial service providers to test out new ways of doing things. For example, many banks are wary of stepping outside some safe harbor provisions, especially in the area of innovations in underwriting, for fear of fair lending violations. Any sandbox could allow banks to partner with innovators to test out new techniques for developing and delivering products and services in new ways.

Establish principles versus rules *per se.*

The financial services industry could benefit from principles that allow for changes alongside technology and innovation, rather than traditional regulations that are challenging to update over time. We recognize that a regime based on principles can seem more ambiguous to both providers and consumers. However, outdated regulations restrict innovation that could expand high quality services and improve consumer financial health. For example, with the advent of new cash payments systems, the definition of what is a bank branch may be changing, but the regulations have not. Banks are not able to accept cash deposits through some of these alternative channels due to branch licensing requirements. A broader guideline might allow for this innovation to take place and more quickly allow banks to serve a broader range of customers and provide them with a more convenient means of depositing cash.

Thinking beyond the particularities of rules to a framework of principles would also accommodate the rapid pace of change around innovative technologies. This is particularly important in the current environment where time and timing matter – six months to this market is a snail's pace. Broader guidelines could also include new metrics for success. For example, CFSI proposes that clear and measurable consumer outcome metrics be included in any guiding principles to focus on the financial health benefits brought by any particular innovation.

Additionally, to accommodate the variations within the financial services industry, under a given principle, guidelines could be applied with a tiered approach that adjusts for scale, size, and scope of transactions. Principles that provide some reasonable tiered treatment of BSA, AML, and terrorist financing rules may be more effective and better received. For example, the requirements around what customer identification protocols are needed and what documentation needs to be collected when opening an account may be necessary, but for youth accounts (especially summer jobs programs), the current requirements also make partnerships less attractive for financial institutions. A tiered structure here would be especially helpful. Flexibility within guidelines, consistent with relevant principles, will allow financial services to collaborate across the industry and to innovate more effectively. A tiered approach would also eliminate some of the problems and burden that may arise under a system of "one-size-fits-all" regulations.

Promote meaningful risk management.

We recognize that different types of innovations have very different benefits and risks – cloud computing may not pose the same type of risks as digital currencies and distributed ledger products and services. Understanding the underlying risks within any new innovation is clearly essential when developing principles and guidelines. Similar to the way the Consumer Product Safety Commission assesses consumer safety risk, it may be possible to think along the lines of product recalls, with refunds, repairs, or replacements as recourse options**.**

With clear access to data through technology there is the potential to provide more inclusive financial products and services. To enable consumers to access data about their finances, we need to provide open and secure technologies and practices, such as open and secure APIs. This is an area where risk management comes into play and regulators need to better understand where data sits, the need to access data, and what security measures around data are already in place.

Earlier we discussed the different layers within the financial services market, including the distribution layer, the consumer experience/user interface layer, the product layer with tweaks and combinations of existing products versus fundamentally new products, and the infrastructure layer. New products or services within some of these levels may pose more or less risk than others. For example, new ways of distributing existing products can be valuable for consumers and may be unlikely to introduce systemic risk. The converse also seems true: innovation that replaces existing infrastructure or introduces fundamentally new financial products may pose greater systemic risks. It is tempting to interpret this logic to mean that we should accept innovations in distribution and user experience as responsible and consistent with safety and soundness principles, while rejecting that fundamentally new products or shifts in financial infrastructure can be responsible, especially in light of the industry's experience with the recent financial crisis. We caution you against this approach. We believe that innovations in the fundamental design of financial products can improve consumer financial health, while staying consistent with safety and soundness principles.

One issue we hear from our network members and grant recipients concerns an innovation that stems from outside the industry but has steeped into all parts of technology: the use of cloud computing. We realize that many regulators are still exploring the details, risk elements, and features of major industry cloud computing providers (e.g., Amazon Web Services). It's important to note that many innovators who want to work with banks use cloud computing. Regulators will have to develop a consistent set of risk management principles for what many other industries and organizations, including several branches of federal government, consider a safe and secure cloud computing system. As one bank employee recently told us, there is an industry-wide concern about inconsistent examiner views on these types of technologies and innovations, which raises concerns and pushes banks to view innovation with a high degree of trepidation, even when an innovation suggests clear consumer benefit.

Blue Sky Ideas

Industry and regulators will focus on objectives and outcomes for consumer as key metrics for success.

As we look forward, we encourage the OCC to recognize the potential upside of responsible innovation, rather than just weighing downside risk. The rapid pace of technology improvements means that the industry is constantly coming across new ways to improve consumer financial health in this country. We believe innovation can best be leveraged when providers align business outcomes with customer outcomes. Thus, we are hopeful that the industry and the regulatory community will adopt the view that improving consumer financial health should be a success metric for the financial services industry. CFSI's recently released Eight Ways to Measure Financial Health gives providers a way to gauge how their consumers are doing and whether products and services are improving consumer outcomes. We recommend that the OCC also leverage this framework in helping determine which innovations are positive for consumers.

CRA will become part of the innovation discussion and framework.

Along with consumer-centric outcome measures, we see a role for community-outcome metrics. Technology and innovation – most especially online financial services – have exacerbated ongoing concerns about the relevance of the Community Reinvestment Act (CRA) in its current form. There is no doubt that meeting the financial services needs of low-to-moderate income families and communities – in terms of access, consumer lending, and small business lending – is critical to the financial health of consumers and their communities.

And thanks to the internet and mobile financial services, more people have more access to a wider array of products and services than perhaps at any other time in history. We believe it is time for the federal regulators to elevate their review and update of the CRA to bring in additional guidance and clarity as to what qualifies as community reinvestment in this online and mobile environment. And we believe that the OCC is in an ideal position to lead this review and update as part of its innovation framework.

Federal non-bank charters will become options.

Innovators are struggling to meet requirements in fifty individual states. If regulators cannot coordinate at the Federal level there is little chance innovators can succeed without a tremendous amount of capital behind them. They need to see as much coordination as possible. The complex state and federal regulatory scheme is a major challenge for innovators and start-ups in financial services, especially in an era when many, if not most, innovators rely on the internet and online web services and state boundaries are permeable. Access to a federal non-bank charter would be especially helpful to facilitate responsible innovation. The OCC, in conjunction with key stakeholders, should take a leadership role in efforts to develop a federal non-bank charter.

Alternatively, the OCC could lead a national discussion with the Conference of State Bank Supervisors and other key regulators to help determine a system of "passporting" charters for financial technology innovators. Much as drivers' licenses are recognized across state lines, it would be helpful if business licenses could be recognized across state lines in order to make innovations available to consumers nationwide.

Innovation will extend to consumer recourse strategies.

We believe the OCC should structure sandboxes in a way that allows firms to make consumers whole if there are any adverse effects. Establishing a "Federal Innovation Insurance Fund," akin to FDIC insurance, would be one mechanism for providing compensation to consumers. Or the OCC could require that firms obtain the equivalent of "innovation flood insurance" or bonding if they are approved for a sandbox project. By limiting the size and scope of sandbox pilots and setting thresholds and guidelines regarding the number of consumers participating or the dollar volume involved, the OCC and other regulators can be innovative in structuring recourse alternatives for consumers involved in sandbox pilots.

Conclusion

We appreciate the OCC's initiative in engaging with the innovation community, and we strongly encourage you to continue to stay engaged broadly across the agency. We hope that the entire OCC staff – from the Controller himself through to the examination teams in the field – will have opportunities to get to know more about the innovators working in this arena.

Further, we would encourage the OCC to consider a variety of ways to engage members of the innovation and fintech communities. Certainly having an "innovation advisory council" would be one way. Another would be to recruit examiners outside of traditional banking circles – including innovation and fintech firms themselves.

We believe that consumers will be better able to achieve financial health if they have access to high-quality financial services that are innovative – evolving and growing as the consumers themselves evolve and grow in their financial journey. Innovations can help consumers spend, save, borrow, and plan safely and effectively, enabling them to manage their day-to-day finances, weather financial shocks, and providing them with longer-run financial opportunities.

We believe that the marketplace will benefit from a range of banks and fintech companies, start-ups and incumbents, direct-service providers and partners all playing important roles in developing and delivering innovations that are consumer-centric. We recognize that regulators play an important role in keeping the market fair for both providers and consumers.

Innovation is not going away – if anything, the pace of change will only increase. Both regulators and the market need to grapple with how they will respond. We are glad that the OCC is tackling the issues not only of how to respond to innovation but also of how to structure the agency to move forward in an era of financial innovation writ broadly. We look forward to working with you as this effort moves ahead.

Sincerely,

/s/

Jennifer Tescher
President & CEO
Center for Financial Services Innovation

/s/

Jeanne M. Hogarth
Vice President
Center for Financial Services Innovation