Innovative Lending Platform Association

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Thomas J. Curry
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street S.W., #3E
Washington, D.C. 20024

Re: Comments on Supporting Responsible Innovation In The Federal Banking System: An OCC Perspective

Dear Mr. Curry:

The Innovative Lending Platform Association ("ILPA") hereby respectfully submits its comments in response to the Office of the Comptroller of the Currency's ("OCC") white paper on Supporting Responsible Innovation in the Federal Banking System. ILPA was formed to advance small business online lending education, advocacy, and best practices. Our founding members have partnered with leading financial institutions, community development organizations, and non-profits to provide access to over $12 billion in growth capital to small businesses across the nation.

We agree that the financial services industry in the United States is undergoing rapid technological change aimed at meeting the evolving expectations and needs of consumers and businesses alike, and that many of these innovations are originating outside of the traditional banking industry.[1] Lending models are changing and enhancing the way small businesses approach, access, and use capital. We are proud that our members are among those leading the way.

We also support efforts that facilitate innovation benefiting small businesses and fostering partnerships between banks and non-banks. Accordingly, we welcome the OCC's leadership in identifying and understanding trends in the financial services industry. We are hopeful that this effort will advance a thoughtful and ongoing discussion around how best to support the responsible development of innovative online lending platforms.

As part of our commitment to advancing best practices in our industry, we are proud to have launched -- in partnership with the Association for Enterprise Opportunity ("AEO"), the leading advocate for microbusiness in the United States -- an initiative to promote common

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[1] Office of the Comptroller of the Currency, "*Supporting Responsible Innovation in the Federal Banking System: An OCC Perspective*," at 3 (March 2016) ("OCC Innovation White Paper").

verbiage and standardization through creation of a model small business lending disclosure tool called the SMART (Straightforward Metrics Around Rate and Total cost) Box. The SMART Box will present a small business with a chart containing standardized disclosures and explanations, including various total dollar cost metrics and an APR. The SMART Box will be open for a 90-day national engagement period over the summer to inform the final disclosure, and will ultimately aid small businesses in navigating their lending options. The SMART Box initiative builds upon an in-depth analysis of the small business marketplace that began in 2015 and is informed by small business organization survey data, including recent findings from an industry study underscoring small business customer preferences and priorities.[2]

Small businesses are critical to economic and job growth in the United States. The OCC should encourage the use of new and innovative technology platforms to meet the needs of small businesses. With this goal in mind, ILPA provides responses to the following OCC questions.

2. How can the OCC facilitate responsible innovation by institutions of all sizes?

The OCC can (a) promote open data access and exchange standards that ensure efficiency and security, (b) work with appropriate stakeholders to explore a rationalized, national FinTech framework that enhances efficiency, competitiveness, and legal certainty (c) foster innovation through regulatory flexibility and constructive guidance, (d) promote greater bank participation in innovative lending partnerships through regulatory incentives, and (e) increase legal certainty through the promulgation of additional guidance on bank/non-bank partnerships.

- **Open Data Initiatives.** The OCC can promote secure and increased access to essential data and more efficient data exchange by working with banks, innovative non-banks, and relevant stakeholders to develop standards around open application programming interfaces (APIs). These standards could enable interoperability and facilitate the programmatic transfer of information between institutions. The Open Banking Standard[3] provides a potential model for implementing open APIs in banking.

  The OCC can also foster greater access to essential data and more efficient data exchange by encouraging similar access to government databases. For example, the US Treasury Department recently encouraged exploration of creating open data APIs through the IRS in order to enhance access to critical tax data.

- **National Framework.** The OCC can support initiatives that create a harmonized and rationalized policy framework and that foster competition. For example,

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[2] Electronic Transactions Association Survey, "*Online Lending Drives Main Street Small Business Growth and Satisfaction*", *available at* http://www.electran.org/wp-content/uploads/ETA_Infographic6.pdf (April 2016)("96% of Online Borrowers say the loan they secured enabled or drove business growth. 91% of Online Borrowers are likely to take out another loan from an online lending company").

[3] Open Data Institute, The Open Banking Standard, *available at* https://theodi.org/open-banking-standard.

state law harmonization efforts or the creation of a federal licensing regime would permit more uniform application of policy and potentially provide customers with a single point of contact as demonstrated by the OCC's Helpwithmybank.gov website. This approach would prevent application of an inefficient and duplicative patchwork of state and federal laws that increasingly drive friction in a modern, internet-based economy, and fail to accomplish regulatory objectives.

- **Regulatory Sandbox and a 21st Century Regulatory Toolkit.** The OCC can foster innovation through regulatory flexibility and constructive guidance in the development of new products, partnerships between banks and non-banks, and refinement of traditional products. The UK Financial Conduct Authority's Project Innovate, with its Innovation Hub and Regulatory Sandbox, are instructive of the kinds of initiatives that can promote innovation at banks, non-banks, and between the two.[4] Additionally, regulatory tools promoting engagement rather than enforcement including published guidance, no action letters, tests and pilots, sunset provisions, safe harbors, and an inter-agency working group can help encourage regulatory cooperation and provide regulators with increased flexibility to promote responsible innovation and legal certainty for banks and non-banks, alike.[5]

  The OCC currently offers various workshops for bank management and directors on regulatory compliance, expectations, and best practices. In certain instances, these workshops could be opened up to the management of non-banks partnering with OCC-chartered banks to facilitate an opportunity for consistent understanding of OCC rules, regulations, and guidance. Allowing this type of participation in the workshops could also be useful for the OCC as a source of more comprehensive industry-specific insights.

- **Regulatory Incentives.** The OCC can promote greater participation in innovation and positive policy outcomes through regulatory incentives. Although the Community Reinvestment Act requires that banks serve their communities, substantial underserved communities continue to exist. Innovative lending platforms can frequently reach these underserved communities without establishing a physical presence. By expanding bank access to and the scope of Community Reinvestment Act credit, the OCC could create further incentives for banks to participate, for example, in innovative small business lending programs in underserved communities. From a policy standpoint, expanding access to working capital so business owners, particularly in underserved communities, rely on business rather than personal credit enabling them to improve their personal credit quality and lower their cost of personal borrowing is an outcome that

[4] Financial Conduct Authority, Innovator businesses: Project Innovate, *available at* https://innovate.fca.org.uk/innovation-hub/eligibility-innovation-hub and https://innovate.fca.org.uk/innovation-hub/regulatory-sandbox.

[5] Chris Brummer and Daniel Gorfine, "*FinTech Building a 21st-Century Regulator's Toolkit*." Milken Institute Center for Financial Markets (2014), *available at* http://www.milkeninstitute.org/publications/view/665.

should be encouraged.

- **Partnership Guidance.** To the extent that banks, particularly community banks, are looking to incorporate technology into their models, bank/non-bank partnerships present a flexible and effective way to do so. Such partnerships can develop in a number of different ways to align with a bank's business strategy, appetite for risk, and sophistication. For example, a bank can act directly as the loan originator, buy technology and supporting services, license (white label) the technology platform, provide referrals, or invest through securitizations, whole loan purchases, participations, or equity holdings. Clear guidance to banks from the OCC on bank/non-bank partnerships in online lending, particularly with respect to regulatory expectations and the supervisory environment, will foster uniform nationwide operations and encourage willing banks to develop, expand and appropriately manage relationships with technology providers in a thoughtful and responsible way to meet customer needs.

  As the OCC recognizes, banks and financial technology companies have different advantages and bring different perspectives to financial services and innovation that can benefit small business borrowers. In the context of online small business lending, non-bank technology providers can create numerous advantages for their banking partners, particularly in the areas of real-time analysis, user experience, identity authentication, credit risk analysis, fraud prevention, automated underwriting, speed-to-funding, and overall access to credit. By driving the cost of operations for community banks lower through technological innovation, community banks can also effectively compete and afford to reach undeserved segments of the market.

3. How can the OCC enhance its process for monitoring and assessing innovation within the federal banking system?

The development of a central point of contact, communication, and engagement within the OCC, and potentially across all other relevant agencies, to share ideas, assess proposals, develop more uniform guidance would benefit the responsible development of financial innovation. Again, the FCA's Project Innovate is instructive and outlines a number of useful tools. The FCA actively seeks dialogue not only with institutions subject to its jurisdiction but also with technology companies and others interested in emerging technologies and financial innovation. We believe that having dialogue with all stakeholders can speed innovation and improve the quality of discussion to the benefit of all parties but especially the end users of financial services.

4. How would establishing a centralized office of innovation within the OCC facilitate more open, timely, and ongoing dialogue regarding opportunities for responsible innovation?

Centralizing agency expertise will allow for quicker, more thorough, and more thoughtful formulation of rationalized and streamlined policy. Established regulatory innovation teams working in unison on similar time frames would speed the processing of written submissions and enable frequent meetings with the industry on a multi-disciplinary basis. Input and engagement from all levels of the agency still should be encouraged and sought out. Additionally, in order to create incentives for early and open dialogue and cooperation, the focus and mission of any inter-agency innovation working group should be on engagement with industry rather than enforcement. This approach would be consistent with that of FCA's Project Innovate and would advance a nimbler and more informed regulatory process.

5. How could the OCC provide guidance to nonbank innovators regarding its expectations for banks' interactions and partnerships with such companies?

The OCC chould publish public guidance encouraging smart and responsible bank partnerships consistent with safe and sound operations and consider making informal guidance through interpretive letters also available to the public. Informal guidance could, of course, be redacted with regard to commercially sensitive and personally identifying information. A central innovation authority would promote consistency and reliability. Relevant guidance regarding third party risk management, cybersecurity and other relevant issues could be issued.

8. What forms of outreach and information sharing venues are the most effective?

Workshops in different locations (e.g., Atlanta, Chicago, D.C., New York, San Francisco, etc.), seminars, and webinars to gather and convey information consistently to a wide audience of interested bank and non-bank parties, including investors, along with a question and answer sessions would be very helpful. Again, published guidance would promote reliability and nationwide consistency.

9. What should the OCC consider with respect to innovation?

With respect to innovation in the lending space, OCC should (i) carefully study and understand the benefits and impact of the online lending market, (ii) measure observable data to inform policy formation and guidance, and (iii) refrain from prematurely restricting new business models or products.

As traditional lenders have responded to market conditions and increased regulation by tightening lending standards and the availability of credit to small businesses, loans to small businesses on the "balance sheets of banks are down about 20 percent since the financial crisis."[6] Over half of small businesses with revenues under $1 million received less than 50 percent of the credit for which they applied in the first half of 2014, which limited their ability to expand and hire new employees. However, new and innovative technology platforms are expanding access to credit for small businesses, offering attractive alternatives to traditional loans, and filling a need for technology-based credit solutions. An updated study conducted by the Analysis Group in 2015 estimated that the first $3 billion in loans made by one of the largest online small business lenders generated $11 billion in economic impact and the creation of 74,000 jobs as a

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[6] Federal Reserve Banks of New York, Atlanta, Cleveland and Philadelphia, *Joint Small Business Credit Survey Report, 2014* at 4 (released February 2015) (*Joint Small Business Credit Survey Report)*.

result of small businesses having capital to grow their businesses.[7] These platforms also serve as attractive strategic partners for banks seeking to efficiently expand and leverage their customer portfolio, enhance customer experience, improve product offerings, and incorporate alternative underwriting and risk management capabilities.

Online lending models vary based on the nature of the borrower (e.g. consumer versus business), use cases (e.g., purchase of consumable good versus use of working capital for cash flow management and growth), and sources of funds (e.g., marketplace versus balance sheet). There are very clear and important differences between consumer and commercial lending markets that have consistently been reflected in existing regulation and should be carefully considered. Unlike consumers seeking loans, small businesses seek access to capital to pursue growth opportunities (e.g., to purchase inventory, upgrade or expand facilities, or develop new products and services), to hire new workers, or to secure stable working capital funding. The types of credit options that serve and fit these needs or use-cases will have certain characteristics distinct from traditional consumer loans.

Moreover, with respect to funding models, U.S. peer-to-peer lending – which we would define as the matching of retail investors with individual borrowers through the SEC registration of a security – has primarily developed within the consumer lending space. In contrast, most small business lending platforms operate largely on a balance sheet basis by retaining the risk of loans on their books.

Ultimately, the varied and evolving marketplace of lending models creates a rich diversity of platforms and products that offer new credit opportunities to consumers and small businesses – a positive and promising outcome of innovation. It would be detrimental to limit the flexibility and responsible growth of particular models, product structures, or loan types at this relatively early phase of development. Instead, we are encouraged by the OCC's demonstrated thoughtful approach to this space and interest in encouraging further innovation.

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The ILPA appreciates this opportunity, and its members stand ready to work with our bank partners and the OCC to promote responsible innovation and expand access to financial products and services that help small businesses grow.

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[7] See Analysis Group, *The Economic Impact of OnDeck's Lending* (Nov. 17, 2015), *available at* https://www.ondeck.com/wp-content/uploads/2015/11/Impact-Report.pdf.

Respectfully submitted,

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