
The OCC Jumps into the Sandbox

By Ann E. Lemmo, Thomas A. Brooks, Joann Needleman / May 03, 2019

On April 30, 2018, the Office of the Comptroller of the Currency (OCC) opened a 45-day public comment period on a proposed Innovation Pilot Program (the Program). The OCC, like the Consumer Financial Protection Bureau and the Securities and Exchange Commission (SEC), is opening its doors in an effort to partner with financial institutions in order to “foster constructive innovative ideas to improve the industry.” In a public statement, the OCC outlined the Program’s goals to (1) support innovation in the banking system; (2) foster communication between the OCC and entities regarding expectations and requirements; (3) further understand innovative activities and how to properly maintain them; and (4) promote the OCC’s objectives. Ideally, these goals would be achieved by creating a transparent framework for entities to engage with the OCC to test potential innovative products on a small scale and short term period. The Program is open only to OCC-supervised financial institutions. However, third parties working with a financial institution may become eligible to participate in the Program.

To participate in the Program, applicants would utilize the following procedure.

Preliminary Discussion. Before filing an application, the entities will engage in a conversation with the OCC about the proposed pilot. This allows the OCC to provide informal feedback and allows the entity a jumpstart on what type of information to provide in its application.

Expression of Intent (EOI). The entity will provide basic information about the company and the proposed pilot, how it meets the Program’s eligibility criteria, identify other regulators that may have supervisory power over the pilot, and submit due diligence materials. The entity would be required to detail reasonable controls to mitigate known risks and exit strategies for exceptional circumstances if the pilot program ultimately was found to be unsafe. The EOI must also include a method to measure the progress of the pilot.

OCC Program Evaluation. The OCC may decline any EOI for any reason. The OCC will focus on pilots in which the OCC can provide adequate resources, guidance, and oversight.

The pilot must demonstrate that (1) it fits within the OCC’s supervisory authority; (2) the issue is not clearly or substantially addressed by existing laws or regulations; (3) the appropriate and sound banking or risk management practices are unknown; and (4) it might result in new legal or policy implications.

Further, the proposed activity must (1) achieve the needs of consumers, business, and communities; (2) promote financial inclusion, fair access and fair treatment of consumers or small businesses; (3) improve the efficiency or effectiveness of bank processes, operations, or provision of financial services; (4) mitigate significant risks to individual banks or the overall banking system; or (5) advance risk management, security and regulatory compliance.

The OCC anticipates that the length of a pilot program may be between three and 24 months. In order to provide clarity while in the Program, the OCC has indicated that it may include tailored regulatory tools, such as “interpretative letters, supervisory feedback, and technical assistance from the [agency’s] subject matter experts.” However, the Program does not provide a statutory or regulatory waiver. Entities will not be absolved from complying with applicable laws and regulations while they participate in the Program. Entities also will be required to make periodic reports to the OCC during the term of the pilot in order to monitor progress. Results of the Program may become publically available.

The Trump Administration has made it a priority to incorporate the use of financial technology by financial institutions and fintech entities in order to provide innovative products and services to businesses and consumers. The U.S. Department of Treasury produced its report in July 2018, *A Financial System that Creates Economic Opportunities for Nonbank Financials, Fintech and Innovation*, that made specific recommendations including, but not limited to, developing a regulatory framework in order to adapt to changing technologies.

The OCC has been in the forefront of fintech innovation expansion. In July 2018, the OCC announced that it would begin accepting applications for special purpose national bank (SPNB) charters from non-depository fintech companies. This new Program opens the door for even more engagement with both depository and non-depository entities in order to continue on the path for better products while simultaneously developing a regulatory scheme that is palatable.

As noted in our [October 26, 2018 alert](#), engaging with financial regulators requires a well thought-out strategy with well-defined objectives. While partnering with a regulator can be beneficial and can assist in a “first to market strategy,” pulling back the curtain can have its pitfalls if not thoroughly vetted prior to engagement.

If you would like more information about engaging with regulators on innovation services and products, please contact [Joann Needleman](#) and [Tommy Brooks](#).

Clark Hill’s Financial Services Regulatory and Compliance Practice Group can help you navigate this rapidly evolving regulatory environment by providing technical guidance, policy advice and strategic outreach to relevant stakeholders as well as governmental agencies who oversee the financial services industry. Our exceptional team of lawyers and government and regulatory advisors has extensive experience in - and an in-depth understanding of - the laws and regulations governing financial products and services.