

Remarks by  
Thomas J. Curry  
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Before  
the Marketplace Lending Policy Summit 2016  
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Good afternoon. I see many familiar names on the agenda, and clearly Con—Professor Hurley—you and your team have assembled a great group for this important conversation. I am very happy to join you today at this wonderful event to discuss the policy implications surrounding marketplace lending. Thank you for inviting me to be part of it. I have known Con for many years and appreciate his work and all of the efforts of the Center for Finance, Law and Policy, at Boston University. I'm sure that this conference will facilitate an open and constructive dialogue between the public and private sectors regarding responsible innovation. Going forward, the Online Lenders Policy Institute that you helped create will promote continued conversation about this important topic.

Today, I want to share my perspective on the opportunities and challenges facing the industry, the related policy and regulatory concerns, and the OCC's work to develop a framework for evaluating innovation that affects the federal banking system.

Regarding my perspective, I begin by admitting the obvious—it's a perspective shaped by time. I've been fortunate to oversee financial services, banks, and savings associations of all shapes and sizes for more than 30 years, at the federal and state levels. Since 2012, I've been honored to serve as Comptroller of the Currency, supervising more than 1,400 national banks

and federal savings associations. That number includes the largest banks in the country as well as more than 1,200 community banks and thrifts meeting the financial services needs of customers, businesses, and communities across the country. All of that is just one way of saying, “I’ve been around,” and a perspective tempered by time can be helpful when assessing the latest innovation, such as the developments in marketplace lending.

Marketplace lending may use new technology or techniques, but it’s still about extending credit to borrowers—something that’s been done for more than 3,000 years. Technology has been part of banking since the beginning. Let’s not forget that the Sumerian’s invention of coinage and cuneiform writing were revolutionary technological feats.

As entrepreneurs, you recognized an opportunity to deliver greater value by improving how credit is provided, making it faster, cheaper, and more convenient. As business people, you understand that how well you deliver on those attributes differentiates you from your competitors. You also see the potential public value of marketplace lending, as it allows lenders to use the speed and power of new technology and the greater availability of data to promote financial inclusion and satisfy needs that too often go unmet.

The rapid growth in marketplace lending over the past few years suggests that, as a group, you are on to something. By 2015, marketplace lenders in the United States had originated nearly \$29 billion in consumer loans, a nearly six-fold increase from less than \$5 billion in 2013.<sup>1</sup> While still a small portion of the \$3.6 trillion consumer lending market, the rapid growth suggests even greater opportunity for marketplace lending as technologies mature.

The surging demand for this type of service has gotten investors’ attention. Whole loan sales to institutional investors have been increasing as a source of cost-effective funding, and

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<sup>1</sup> See the OCC’s *Semiannual Risk Perspective*, Spring 2016, page 18 (<http://www.occ.gov/publications/publications-by-type/other-publications-reports/semiannual-risk-perspective/semiannual-risk-perspective-spring-2016.pdf>).

asset-backed securities have provided an additional source of funding. In 2015, institutions originated about \$6.6 billion in securities backed by marketplace loans—that’s three-fourths of the \$8.2 billion in such securities originated to date.<sup>2</sup> Maintaining strong, stable funding sources is critical to sustaining the sort of growth we’ve seen in marketplace lending.

However, the growth that we’ve witnessed has occurred under relatively positive conditions. The past few years have been marked by very low interest rates, declining unemployment, and strong overall credit conditions. New underwriting and business models used in the marketplace lending space have not gone through a complete credit cycle.<sup>3</sup> A less favorable credit cycle will test this business in ways it hasn’t yet experienced, and how sources of funding will hold up under stress remains to be seen.

Long-term performance is just one thing to watch. The expansion of marketplace lending raises four other important policy and regulatory questions.

First, do new techniques, technologies, and products raise concerns about compliance with *existing* laws and regulations? Let’s take the example of the new algorithms for determining the creditworthiness of a consumer. While they have the potential to make credit available to more people who may not have otherwise qualified, do they raise issues of illegal bias? Does an underwriting model create a disparate impact on a particular protected class? New companies and companies deploying new technology should understand and ensure their products and services comply with existing laws, such as the Equal Credit Opportunity Act, that apply to all creditors—even those that are not banks. Lenders who operate without considering these questions may be accruing underappreciated financial risks and reputational liabilities.

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<sup>2</sup> See the OCC’s *Semiannual Risk Perspective*, Spring 2016, page 19 (<http://www.occ.gov/publications/publications-by-type/other-publications-reports/semiannual-risk-perspective/semiannual-risk-perspective-spring-2016.pdf>).

<sup>3</sup> See “Opportunities and Challenges in Online Marketplace Lending,” May 10, 2016 (<https://www.treasury.gov/connect/blog/Pages/Opportunities-and-Challenges-in-Online-Marketplace-Lending.aspx>).

Second, are *existing* laws and regulations adequate? I understand that earlier today, you heard from Congressman McHenry, who has been a real thought leader on these issues, about his views on the adequacy of the current statutory framework. Do our laws need to be amended radically? Do they need to extend consumer protections to new types of companies and innovative service delivery channels? We heard examples of this type of question during the OCC's Forum on Responsible Innovation in June.<sup>4</sup> Bankers and community groups alike discussed the impact and value of the Community Reinvestment Act (CRA) in the context of fintech and marketplace lenders. But, the CRA applies only to insured depository institutions and evaluates activity through a geographic lens. Many attendees asked whether the CRA should apply to other types of lenders, and how the 40-year-old law could be adapted to incent the kind of community reinvestment needed—and in some places, is occurring—today. Some attendees also noted the need to take care not to weaken CRA and other consumer protection laws inadvertently in any effort to extend or modernize them.

Third, do innovative activities, products, or services present a need for entirely new regulation or law to protect the public's interest or prevent risk to the broader financial system? For example, does marketplace lending or other fintech innovations, such as digital currencies for example, present unique risks that require new guidelines to protect consumers or the federal banking system? Are existing rules and regulations robust enough to prevent the new technology from being abused in some manner to conduct illegal activities, cyber crime, or money laundering? These difficult questions require regulators to adopt a forward-looking perspective, and to engage developers of these new products, services, and processes as well as those customers and communities affected.

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<sup>4</sup> See <http://www.occ.gov/topics/bank-operations/innovation/innovation-forum-videos.html>

The fourth type of policy question regarding innovation involves answering should innovation be regulated and, if so, “who” should be responsible for regulating an organization or activity. To some extent, the conversation about whether there should be a national substantive law or a federal license or charter for marketplace lenders and fintech firms is part of answering the question of “who” should regulate the activity. If a firm merited a federal bank charter, the question would be resolved as it would be squarely under the primary federal supervision of the OCC.

We have heard voices on both sides of whether to grant federal banking charters to fintechs. Some have suggested that federal charters could ensure that fintechs engaging in banking activity receive rigorous, bank-like federal regulation and ongoing supervision. This may also provide a more level playing field for financial services offered on a national scale. Others have suggested that federal charters could help fintechs better navigate the existing regulatory landscape by consolidating oversight, reducing licensing burden, and applying a single uniform set of rules.

On the other side, some have expressed concerns that, if granted a limited charter, companies might face lighter supervision or fewer consumer protections would apply. Others expressed concern that fintechs may seek federal charters to avoid consumer protections granted by state laws. The agency faced similar questions when it granted the first charter for Internet-based banks in the late 1990s.<sup>5</sup>

If we at the OCC do decide to grant limited-purpose charters in this area, the institutions who receive the charters will be held to the same strict standards of safety, soundness, and fairness that other federally chartered institutions must meet. At the OCC, we have increased our

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<sup>5</sup> For more on Internet banking, see <http://www.occ.gov/topics/bank-operations/bit/opinions-and-letters.html#internet>.

focus on issues of compliance, and I personally have worked to raise the visibility of this important aspect of bank supervision, which is why we coined the phrase *responsible* innovation. As we work through these questions and think about what a federal banking system needs to be in five, 10, or 15 years; we need to ask whether there is a place within the federal system for financial companies that focus on certain aspects of banking services. If so, we need to have the regulatory framework and supervision structure in place to make sure that these companies operate in a safe and sound manner *and* comply with all applicable laws and regulation—regardless of *who* the primary regulator is.

These four types of policy questions are among the many that our Innovation Framework Development Team is considering in their work to create a framework to enable the OCC to assess responsible innovation. We want a framework that encourages and promotes advances in products, services, and processes that serve consumers, communities, and businesses better and more fairly. That is a bank’s public purpose, that’s why national banks and federal thrifts exist.

That work is well underway, and we will complete that framework this fall. While it’s premature to share details, it’s useful to restate the principles guiding our efforts. Whatever the final form of that framework, it will be consistent with these eight principles.<sup>6</sup>

One. The framework will support *responsible* innovation. By responsible, we mean the innovation meets the evolving needs of consumers, communities, and businesses in a manner consistent with safety and soundness and fair treatment of bank customers.

Two. The framework will foster a culture within the OCC that is receptive. We heard that we needed to temper the regulatory reflex to say “no” with a more open and thoughtful consideration of the *opportunities* as well as the risks.

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<sup>6</sup> See <http://www.occ.gov/topics/bank-operations/innovation/index-innovation.html>.

Three. We have to ensure that the framework capitalizes on the deep expertise that OCC employees bring. We need to ensure that our supervision and the federal banking system benefit from that experience.

Four. Innovation can't be responsible if it abuses customers. Our framework must ensure fair access and treatment of customers of the federal banking system, and seek to expand access beyond existing customers. That's how we supervise *all* federally chartered banks and thrifts.

Five. Effective risk management and good corporate governance are fundamental for banks to develop new products, services, and processes successfully. They are also essential for fintechs seeking to deepen their relationships with regulated institutions.

Six. Our framework will encourage banks of all sizes to consider responsible innovation in their strategic planning. A bank's decision to offer an innovative service or begin a partnership should be consistent with the bank's long-term business plan rather than a snap decision to embrace the latest fad.

Seven. The framework will help us look ahead through ongoing dialogue with all of the stakeholders of the financial services community. Hearing regularly from banks, nonbanks, community groups, academia, consumers, and our employees makes the OCC a better regulator.

Eight. In applying the framework, we will collaborate with other regulators. We recognize that regulation is as interconnected as the financial industry itself, and discussing innovation with other regulators promotes a common understanding and consistent application of laws, regulations, and guidance.

These principles are not trivial. The positive reactions to our white paper that expressed these principles demonstrates that they have struck a chord that resonates across the industry.

And, I think everyone in the room can appreciate the thoughtfulness and time we are taking to make certain our framework is consistent with these principles.

With that I want to make sure we have time for my favorite part of any appearance—the dialogue with you. Thank you for your attention and your work, and I am happy to take a few questions.