

**Before the
OFFICE OF THE COMPTROLLER OF THE CURRENCY**

Supporting Responsible Innovation in the
Federal Banking System: An OCC
Perspective

Submitted May 31, 2016

Comments of Financial Innovation Now

Financial Innovation Now (FIN) is an alliance of technology companies, including Amazon, Apple, Google, Intuit, and Paypal.¹ These industry leaders recognize the essential role that digital technology plays in the democratization of finance, and have brought to market some of the most innovative and secure financial technology products available to consumers today. FIN's members share the Office of the Comptroller of the Currency's interest in responsible technological innovation, as well as its belief that such innovation will benefit all parts of the economy. FIN submits these comments to share our experience and expertise as leading technology companies that offer financial technology services.

While the OCC does not regulate FIN's members, FIN's members regularly collaborate with traditional financial institutions. We therefore appreciate the opportunity to join the OCC's discussion of financial services, ecommerce, and related industry standards. In many cases, FIN's members rely on regulated institutions for essential parts of the financial services that they offer, and are keenly interested in sharing its members' expertise with those institutions and the OCC. As the OCC moves towards a framework for responsible innovation, we encourage you to adopt the view—and guide regulated institutions to the view—that innovation should not only be safe and secure, but also that innovation is an essential component of serving consumers and

¹ For more information regarding FIN's policy priorities and principles, please visit <https://www.financialinnovationnow.org>.

small businesses. Without new, innovative solutions to financial challenges, America’s financial sector will continue to lag behind other industry sectors and other countries where financial services have embraced innovation. Innovation helps to move the modern economy forward, and we hope to work with the OCC to oversee similar changes in the finance industry.

I. Financial Technology Innovation Has Provided Tremendous Value to Diverse Members of the Economy.

Recent innovation in financial technology has made financial services more efficient and more accessible for a wide range of market participants. While some of that innovation has come from traditional financial service entities such as banks, innovation has also come from non-traditional participants like technology companies, who strive to meet consumer demand for new services and solve for consumers’ challenges. The combined result has been an increase in access to financial services across a broad spectrum of society, lower costs to consumers and small businesses, and an increase in healthy competition among firms.

For example, the rise of non-traditional financial services has led to greater financial inclusion. The Federal Deposit Insurance Corporation (FDIC) found that in 2013 nearly 30 percent of Americans households were “unbanked” or “underbanked,”² with the highest rates among non-Asian minorities, low income households, and unemployed households.³ These “underbanked” individuals and businesses were often cut off from traditional financial services by language barriers, distance to banking facilities, and financial illiteracy—and generally were excluded as “high-risk” by many traditional institutions. But the FDIC also found that underbanked populations tended to have more access to smart phones than the general

² FEDERAL DEPOSIT INSURANCE CORPORATION: 2013 FDIC NATIONAL SURVEY OF UNBANKED AND UNDERBANKED HOUSEHOLDS: EXECUTIVE SUMMARY (2014), <https://www.fdic.gov/householdsurvey/2013execsumm.pdf> at 3.

³ *Id.* at 4.

population, and were more likely to manage and move their money using a mobile device.⁴ That rise of connectivity has set the stage for increased financial inclusion for these previously underserved (and often ignored) populations. Furthermore, companies like PayPal have made good on this opportunity by enabling users to add cash to their PayPal accounts using PayPal’s mobile app, making that money available for funding PayPal transactions.⁵ In a follow-on report released just last week, the FDIC in fact found that consumers agree that mobile banking services “help[] to address weaknesses in traditional banking,” particularly by helping consumers “reduce fees, better track their finances, and improve on-the-spot decision making.”⁶ Traditional banks, too, have moved toward using Internet technology to better serve these populations. There is much more work to be done, but the opportunity that innovation provides for these groups is great.

Financial innovation has also begun to solve similar problems for small businesses. The costs of payment systems, reputation building, and loans have often excluded small businesses from full participation in the financing market. But now, mobile payments technology like card readers allow small businesses (and micro-businesses) to take instant payments from customers without having to wait for checks to clear or having to handle large amounts of cash. Small businesses have similarly taken advantage of innovations in mobile payroll technology, inventory management, and rewards programs, all of which make basic elements of business

⁴ *Id.* at 9.

⁵ David Huen, *PayPal’s New Prepaid Card Upsells to the Underbanked*, AMERICAN BANKER (Feb. 12, 2014), http://www.americanbanker.com/issues/177_31/paypal-prepaid-unbanked-underbanked-1046670-1.html.

⁶ FEDERAL DEPOSIT INSURANCE CORPORATION: OPPORTUNITIES FOR MOBILE FINANCIAL SERVICES TO ENGAGE UNDERSERVED CONSUMERS (2016), https://www.fdic.gov/consumers/community/mobile/MFS_Qualitative_Research_Report.pdf at 3.

faster and less expensive. Moreover, applications like Amazon's Login and Pay and PayPal's core service help small businesses earn credibility, offload payment fraud risk to larger companies who can better manage that risk, and gain access to millions of existing customers who are already signed up for those services. As for small business lending, traditional lending practices require intensive manual review of business records for even very small loans, which means that it is often costly to undertake that review, even for creditworthy small business borrowers. But now, small business lending programs offered by or through companies like PayPal use automated systems to evaluate and authenticate a broad range of digitized information about a business's financial health. That dramatically reduces loan underwriting costs, so that creditworthy businesses that need access to small amounts of capital—say, only \$10,000—can now access the funds they need, when they need it. Additionally, products like QuickBooks Financing, offered by Intuit, enable small businesses to share financial information from their QuickBooks accounting software with financing partners so small businesses can easily and quickly apply for the financing they need to grow their businesses.

More broadly, many financial innovators have also offered other new mobile payment technologies that appeal to the underbanked and the traditionally banked alike. Companies like Apple, Google, and PayPal have each brought their own mobile payments technology to market in just the past few years. That technology—which generally involves using a smartphone to make payments rather than cash or credit cards—is not only convenient, but third parties have consistently found that it is also more secure than traditional credit card use.⁷ Similarly, consumers benefit from personal financial management applications, like Intuit's Mint

⁷ See, e.g, Danny Yadron, *Why Apple's Tap-to-Pay Beats Credit Cards*, THE WALL STREET JOURNAL (Sept. 10, 2014), <http://www.wsj.com/articles/whys-apples-tap-to-pay-beats-credit-cards-1410394757>.

application, that give consumers direct access to all of their financial information in one place, for free. Those kinds of services have helped millions of consumers create personal budgets, set savings goals, and otherwise participate in the kind of simplified financial management that was previously available only to those who could afford a personal accountant.

These technologies exist today and are serving to make financial services better, faster, and cheaper for consumers and small businesses. More developments are just around the corner.

II. Financial Technology Companies Have the Expertise to Pioneer Privacy and Security Practices, and Can Help to Facilitate Advancements Within Financial Institutions. (Question No. 9)

FIN's members share the OCC's deep concern for maximizing data security and protecting the privacy of consumer information. In fact, the primary areas where regulators worry about financial technology—the security and protection of digitized data—are the very areas in which technology companies have demonstrated the expertise to innovate most effectively.

As pioneers in the technology and ecommerce space, our members had to develop security capabilities in an era when few to none existed. Technology companies generally have no business *other* than their digital business, and any loss of consumer trust in their data security practices is usually devastating. The technology industry therefore has strong incentives to employ exceptional data security practices and, as a result, an excellent track record when it comes to handling consumer privacy and security—and has largely avoided the most serious data breaches in recent years.⁸

⁸ See Bill Hardekopf, *The Big Data Breaches of 2014*, FORBES (Jan. 13, 2015), <http://www.forbes.com/sites/moneybuilder/2015/01/13/the-big-data-breaches-of-2014/#309d083f3a48>; see also Lorenzo Ligato, *The 9 Biggest Data Breaches of All Time*, HUFFPOST TECH (Aug. 20, 2015), http://www.huffingtonpost.com/entry/biggest-worst-data-breaches-hacks_us_55d4b5a5e4b07addcb44fd9e.

The privacy and security practices of technology companies reflect not only strong incentives to protect data, but also the singular position the broader technology sector occupies when it comes to cybersecurity. Technology companies are *literally* in the business of developing cutting-edge technology, and as security threats have become more sophisticated and ubiquitous, technology companies have worked tirelessly to ensure they are sufficiently nimble and able to respond quickly to and neutralize new kinds of threats. Technology companies have also been the first to develop and adopt new and superior security practices, like tokenization of payment data (the practice by which sensitive data like credit card numbers are replaced for back-office purposes with randomized numbers), end-to-end encryption of data, and two-factor authentication (for example, requiring a one-time code sent by SMS in addition to a password). Indeed, traditional organizations—such as BestBuy, GE, Capitol One, Johnson and Johnson, Northrup Grumman, and the United States government⁹—who have serious security needs come *to* innovators like Google and Amazon for data and cloud security, and choose these kinds of companies because they are the best in the industry.¹⁰ As leaders in this arena, FIN’s members hope to be a valuable resource to the OCC as it focuses on this important issue.

Relatedly, as the OCC develops standards on privacy and security, we strongly encourage the OCC to adopt technology-neutral standards, and *not* to adopt standards that require one

⁹ See, e.g., <https://cloud.google.com/customers/>; <https://aws.amazon.com/solutions/case-studies/all/>.

¹⁰ In 2013 the Central Intelligence Agency selected Amazon Web Services to build and run a secure cloud to be used by 17 intelligence-related agencies. See Barb Darrow, *Intelligence community loves its new Amazon cloud*, FORTUNE (Jun. 29, 2015), <http://fortune.com/2015/06/29/intelligence-community-loves-its-new-amazon-cloud/>; Frank Konkel, *Daring Deal*, GOVERNMENT EXECUTIVE (Jul. 9, 2014), <http://www.govexec.com/magazine/features/2014/07/daring-deal/88207/>; see also www.fidoalliance.org (describing the Fast IDentity Online Alliance, an open standard for stronger, simpler online authentication, pioneered by technology companies).

specific technological solution for security. In recent years, security technology has advanced rapidly, at times changing dramatically in scope in short periods of time. Some of these changes might have been predicted, such as advancements in encryption algorithms and practices. But others would not have been, such as the use of two-factor authentication to add a human check on password theft, the rise of web-based APIs (secure interfaces for software to retrieve data from another source), or the advancement of smart email filters that minimize “social” or “phishing” attacks on data. And many changes have come as institutions migrate from traditional fortresses of data behind firewalls to more agile cloud-based systems. In all cases, technology-specific rules would minimize the benefit of these innovations. Moreover, single-technology security solutions are in fact antithetical to what today’s security experts view as best practice, because they lock data into a single system of protection that attackers are then at leisure to learn how to exploit. Simply put, specific technology requirements will not keep pace with innovation.

We encourage the OCC to therefore work with FIN and others to ensure that future guidance or regulation is principles-based and technology-neutral. Doing so will continue to allow innovation to thrive and parties to adapt in response to ever-changing security threats.

III. The OCC’s Regulatory Role Should Involve Collaboration and a Free Flow of Information Through Information Sharing Sessions. (Question Nos. 7, 8)

The OCC plays a key role in helping the institutions that it regulates balance risk against the need to innovate. We are encouraged that the OCC seeks to meet this challenge through increased responsiveness to emerging financial services technology. As a practical matter, we therefore respectfully recommend that the OCC consider the suggestions below.

First, the OCC should use FIN as a resource. As previously mentioned, FIN’s members have unparalleled insight into current and future trends in technology, and have extensive

expertise in ecommerce, data privacy, and security. This expertise will help as the OCC charts a path that encourages regulated institutions to collaborate with financial technology innovators—an issue that is of particular importance to us because financial technology companies often rely on traditional institutions as partners in new initiatives. To meet this important goal, the OCC and other financial sector regulators must have a deep understanding of emerging technology. FIN can serve as a resource to the OCC by providing background and information that it will need to ensure that institutions' partnerships with financial innovators are both beneficial and safe to customers.

To facilitate this information sharing, the OCC should consider hosting information sharing sessions in regions where technology companies are concentrated, like California or other technology hubs. FIN's members would be pleased to participate in these events. The OCC should also create a financial technology advisory group to facilitate the sharing of best practices, updates on new financial services technology, and regulatory concerns within the financial services industry.

Further, FIN believes that consumers and small businesses should be able to securely access their finances using the technology they wish. There are many applications that are helping consumers and small businesses better manage their finances, including improving financial literacy, meeting savings goals, and avoiding fees and penalties. Should incumbent institutions seek regulations that restrict customers' access to their financial information, the OCC should use the abovementioned financial technology advisory group to discuss those requests directly with financial innovators and FIN in addition to the traditional due diligence that it undertakes. While traditional financial institutions have often shown remarkable flexibility in cooperating with financial technology companies, some have at times cited

concerns about security and privacy as a pretext for additional regulation of the technology sector. An open flow of information about the realities of security and privacy practices will help ensure healthy competition and increase consumer choice.

We also encourage the OCC to share information and collaborate with other regulators in the space. Although not subject to the OCC's direct authority, financial technology companies nevertheless navigate a complex maze of regulations, both from federal bodies like FinCEN, the CFPB, and the FTC, and from individual states. This patchwork of regulation often hampers quick adaptation and problem solving. In the realm of online small-business lending, for example, Illinois, New York, and California each recently announced proposed legislation in the absence of a preemptive federal regime.¹¹ Given the concern for regulatory efficiency, we encourage the OCC, just as we encourage all regulatory bodies, to act carefully and in coordination with other regulators to minimize unnecessary regulatory burdens.

Conclusion

Innovation in all its forms—whether they be new technologies, new business models, or new ways of providing access to financial services—is dramatically changing the way consumers and small businesses approach their financial lives, and it is democratizing access to financial services. Now and in the future, financial technology will make it easier, faster, and more cost effective for individuals and small businesses to engage in commerce, gain access to financial resources, and manage their financial goals. As the OCC undertakes the task of helping financial institutions to participate in this change, we encourage it to recognize and embrace the valuable role that technology companies play, including their unique perspective on innovation. FIN and

¹¹ Kevin Wack, *States Seize Initiative on Oversight of Online Business Lenders*, AMERICAN BANKER (April 22, 2016), <http://www.americanbanker.com/news/marketplace-lending/states-seize-initiative-on-oversight-of-online-business-lenders-1080617-1.html>.

its members welcome the opportunity to serve as a resource to the OCC for any questions the agency may have about the technology industry and any regulatory initiatives it is interested in pursuing. FIN looks forward to working collaboratively with the OCC and appreciates the opportunity to file these comments for the OCC's consideration.

May 31, 2016

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