October 30, 2024

Chief Counsel's Office
Office of the Comptroller of the Currency
400 7th Street SW, Suite 3E-218,
Washington, DC 20219

Regulatory Counsel
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Legal Division
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Customers and Businesses (Docket ID OCC-2021-0011, Docket No. OP-1752, RIN 3064-ZA26)

To whom it may concern:

The American Financial Services Association ("AFSA")[1] appreciates the opportunity to answer questions laid out in the Request for Information (RFI) related to bank-fintech arrangements and further clarify the benefits provided to customers through these arrangements. In recent years, bank-fintech arrangements have gained a larger share of the customer, mortgage, and small business lending market; and AFSA appreciates the Comptroller of the Currency (OCC), the Federal Reserve System (the Fed), and the Federal Deposit Insurance Corporation's (FDIC) soliciting input on these arrangements.

These arrangements can be a way, particularly for underbanked customers with a thin credit profile, to obtain credit when other creditors may not directly offer credit to them or may not approve such customers for credit. AFSA member companies have shared examples of times that a customer has come to a bank-fintech program after being turned down elsewhere. For example, during one hurricane season, a customer went to purchase a generator but was refused credit by the primary lender for the merchant's customers. The customer then went to a bank-fintech program where the customer was offered competitive credit terms to allow the customer to purchase the generator and make it through the hurricane season with a reliable electricity source. Merchants appreciate these programs too, because as shown in the example above, the merchant does not lose customers due to limited financing options.

Bank-fintech arrangements open the door for the extension of credit to borrower populations that have time-sensitive needs that cannot (or will not) be met by other credit sources. These arrangements are beneficial to both parties and work because the bank and the finance company

[1]Founded in 1916, AFSA is the national trade association for the customer credit industry, protecting access to credit and customer choice. AFSA members provide customers with many kinds of credit, including traditional installment credits, mortgages, direct and indirect vehicle financing, payment cards, and retail sales finance.

are aligned in pursuit of success. As explained throughout the letter, managing risk to present competitive risks and generate a profit means that safety and soundness programs are integral to the arrangements. AFSA members welcome the opportunity to expand on the customer protection programs that are integral to these credit programs. AFSA has answered applicable questions in the RFI below and is happy to expand on these topics as needed.

I. Bank-Fintech Arrangement Descriptions

Do the descriptions and categorizations in this RFI adequately describe the types of bank-fintech arrangements in the industry and the companies involved? If not, why? Are the descriptions or categorizations overly broad or narrow, or are there any types of companies or categories of arrangements missing from the descriptions?

Bank-fintech arrangements in the credit space can have a simpler structure in terms of the number of players involved, but still reflect a diversity of approaches depending on the nature and scope of the arrangement. Some fintechs, for example, act like true "partners" with their bank and are prominently featured in customer-facing materials, while others are best described as mere vendors to the bank, appropriately assisting the bank in the background. Some of the risks highlighted in the preamble of the RFI stem from more complicated bank-fintech arrangements involving non-credit products and services.

Describe the range of practices regarding banks' use of data to monitor risk, ensure compliance with regulatory responsibilities and obligations, or otherwise manage bank-fintech arrangements.

The fintechs involved in bank-fintech arrangements for credit products often are extremely proactive in their engagement with banks to ensure that compliance programs are both complementary and comprehensive. Member companies report designating principal contacts to ensure effective ongoing communication between the parties, having frequent (sometimes at least weekly) meetings with banks and often daily correspondence with banks, participating in bank audits on a regular basis, and providing quarterly reports to banks to discuss material issues. These active arrangements are intended to ensure proper monitoring for risk and the protection of customers.

How do the parties to bank-fintech arrangements determine the end user's status as a customer of the bank, the fintech company, or both, including for purposes of compliance with applicable laws and regulations, and each party's responsibility in complying with contractual requirements? What disputes or uncertainties regarding the status of end users have the parties experienced, and how have they sought to resolve them? How does the type of arrangement impact such determinations?

During credit issuance, the bank is named as the originating creditor. On every communication to the customer, it is made clear that the bank is the originating and current account-creditor throughout the life of the loan, including through charge-off before selling the loan. The fintech is often merely a servicer for the bank, managing the bank's accounts on its behalf in the bank's name and solely under the bank's explicit direction. At every turn, customer communications

identify the borrower as a customer of the bank (unless the bank has chosen to sell or assign a credit contract to another creditor as part of its normal operations).

II. Risk and Risk Management

Describe the range of practices for maintaining safety and soundness, and compliance with applicable laws and regulations arising from bank-fintech arrangements. How do the practices differ as between different categories of arrangements? Does the RFI adequately identify and describe the potential risks of bank-fintech arrangements?

Because of the nature of the typical bank-fintech arrangement, the bank's loans are subject to *both* bank *and* fintech compliance programs and regulations. Fintechs who are creditors themselves are already subject to rigorous regulatory oversight and regulation such as the Truth in Lending Act (TILA), which ensures customers' rights and protections are considered in every transaction. When such a fintech is in a bank fintech arrangement, the fintech's comprehensive compliance programs are typically merged with the bank's compliance programs to ensure that credit transactions follow all relevant laws and regulations. These joined programs are a result of exhaustive meetings between the fintechs and banks and are regularly examined and re-examined. In some bank-fintech arrangements, a single program (belonging to the bank) is involved. In these programs, both bank and fintech compliance personnel participate in ensuring compliance with standard banking practices, service level standards and state and federal law according to the nature and location of the bank (as the originating creditor, account-creditor or master servicer for the accounts).

Bank-fintech arrangements can present unique or heightened customer protection risks, such as risks of discrimination, unfair or deceptive acts or practices under the Federal Trade Commission Act, or privacy concerns. Describe the range of practices for managing any heightened risks.

The RFI refers to "heightened consumer risk" without providing specific examples of where this risk would manifest in bank-fintech credit programs. These programs, described throughout the comment letter, are distinct from other products and services such as third party custodial arrangements.[2] The lack of specific examples seems to willfully ignore the fact that fintechs who are creditors are already subject to fair lending and privacy regulations and develop merged compliance management systems in conjunction with the bank partners, or that fintechs acting as bank vendors comply with the bank's policies and procedures in performing their duties, are subject to review by the bank's regulators and as such do not present any unique or heightened consumer protection risks.

[2] *See, e.g.,* FDIC Proposes Deposit Insurance Recordkeeping Rule for Banks' Third-Party Accounts | FDIC (proposing new 12 C.F.R. Part 375).

Describe the range of practices parties to a bank-fintech arrangement may use in contractually allocating functions among themselves, including the advantages and disadvantages of each such practice.

As stated in the answers above, the arrangement between banks and fintechs involved in credit programs is typically a very active and robust one, with each entity providing a check on the other. For example, if a fintech receives a dispute on behalf of the bank creditor, the bank must also review the response before the response can be sent. Additionally, member companies report required monthly quality control reviews by the bank and annual audits by third parties selected and approved by the bank.

How are risks resulting from these arrangements, including those concerning credit, liquidity, concentration, compliance, and operational risk, as well as concerns regarding negative end-user experience managed??

Again, banks and fintechs involved in credit programs are typically in constant communication with one another. Both parties run risk assessments and provide the results of such assessments to the other to best serve the interests of the customer and to ensure that credit programs are run in accordance with applicable state, federal and local laws and with bank safety and soundness principles.

Describe the range of practices regarding disclosures (e.g., initial, annual, or ongoing) to end users about the involvement of bank-fintech arrangements in the delivery of banking products and service.

As stated in an answer above, initial communication with the customer, presented to the customer only after approval from the bank, typically identifies the bank as creditor and, if appropriate, may also identify the fintech and specify each party's role in the arrangement. Following this, each communication with the customer reiterates the relevant details.

Describe the range of practices regarding planning for when a fintech company or intermediate platform provider exits an arrangement, faces a stress event, or experiences a significant operational disruption, such as a cyber-attack. Describe the range of practices regarding how arrangements are structured to minimize harm to end users, meet compliance requirements, and minimize liquidity risks and other risks in the event of such exits, stresses, or disruptions.

Program exit provisions are routinely contained within contractual documents between the bank and fintech that take into account what will happen with regard to outstanding accounts, applications, and customer relationships. Alternative scenarios are often addressed contractually in each instance and agreement.

III. Trends and Financial Stability

In what ways do or can bank-fintech arrangements support increased access to financial products and services? Alternatively, in what ways do or can these arrangements disadvantage end users?

Dr. Michael Turner, President and Senior Scholar at the Policy & Economic Research Council, examined in a report the effect of bank-fintech arrangements on customers and on credit cost and availability.[3] Dr. Turner found that *without* these arrangements, many borrowers would need to resort to higher cost credit financial services providers to have their credit needs met. Dr. Turner conducted his study in Colorado, where a bank-fintech partnership was the subject of litigation. During his study, Dr. Turner had a three-part conclusion:

- "That borrowers in the lending program challenged by the Colorado administrator were borrowers "whose risk profile generally warrants credit terms between 21% and 36% APR;"
- That these borrowers would not have qualified for credit at a lower interest rate; and
- If these borrowers had not had access to the credit provided through the bank-fintech partnership that was the subject of the litigation, they would have resorted to AFS providers, e.g., payday lenders and title lenders."[4]

To reach these conclusions, Dr. Turner studied a similar data sample in New York, as he did in Colorado. New York, a state that has imposed strict interest rate caps at 16%, and where a federal court has declined to uphold the enforceability of credits sold by banks to non-banks above a state rate cap, has forced relatively lower risk borrowers to have their real credit needs met by alternative financing sources. This decision restricts access to credit and increases the cost of credit for many borrowers. Dr. Turner posits that if Colorado follows a similar path to New York, it will cost "many subprime borrowers higher debt service obligations annually or worse, stripping them of assets (in the case of collateralized AFS loans) and catching them in a debt trap." This outcome would be detrimental to the borrower population, as there are safe and affordable credit products available.

In what ways might bank-fintech arrangements function as transmission mechanisms to amplify financial shocks (i.e., threaten financial stability)? Conversely, how could these arrangements help to contain shocks and reduce contagion?

Our financial system benefits customers most when there is healthy and safe competition. The introduction of bank-fintech arrangements has helped to increase that competition and create a more diverse and inclusive financial system in the credit space.

---

[3] Expert Report of Dr. Michael A. Turner, dated February 14, 2020. Dr. Turner is an expert retained by defendants Avant and WebBank in the Fulford litigation. He is currently the President and Chief Executive Officer at the Policy and Economic Research Council, an economic policy research organization focusing on issues of economic development.

[4] Expert Report of Dr. Michael A. Turner, dated February 14, 2020.

A working paper from the Federal Reserve Bank of Philadelphia, for example, states that banks in arrangements with fintechs are more likely to extend personal credits and credit offers to customers who would otherwise have difficulty accessing credit.[5] Further, the working paper explains that following the initial extension of credit, banks in arrangements with fintechs are more likely to provide larger credit-limits for below-prime customers as a result of banks' better understanding of the risk profiles of below-prime borrowers. The working paper uses recent data to show that bank-fintech arrangements have an important role to play in expanding credit access to underserved populations. Arrangements between traditional banks and fintechs have the potential to move us closer to a more inclusive financial system.

Conclusion

AFSA is grateful for the opportunity to address some of the questions raised in the RFI. It is important to note that bank-fintech partnerships do not only fall into one bucket, and often have already worked to mitigate many of the concerns that the OCC, the Fed, and the FDIC are raising. As discussed above, fintechs involved in arrangements for credit products have a different risk profile than other arrangements. These fintechs are extremely proactive in their engagement with the banks to ensure compliance programs provide proper and comprehensive monitoring for risk and the protection of the consumer. Credit products through these arrangements are subject to both bank and fintech compliance and regulations, including TILA. These arrangements provide access to consumers who might be turned away from other traditional credit products but deserve to have their needs met in a safe and affordable way. Please feel free to contact me at cwinslow@afsamail.org with any further questions.

Respectfully submitted,

Celia Winslow
Executive Vice President
American Financial Services Association

[5] The Role of Bank-Fintech Partnerships in Creating a More Inclusive Banking System, September 1 2023, https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2023/wp23-21.pdf.