October 30, 2024

Chief Counsel's Office Attn: Comment Processing Office of the Comptroller of the Currency 400 7th Street SW Suite 3E-218 Washington, DC 20219	Federal Reserve Board of Governors Attn: Ann E. Misback Secretary of the Board Mailstop M-4775 2001 C St. NW Washington, DC 20551	James P. Sheesley Assistant Executive Secretary Attn: RFI on Bank-Fintech Arr. Federal Deposit Insurance Corporation 550 17th Street NW Washington, DC 20429

FTA Comment Letter re: Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses (Docket ID OCC-2024-0014; Docket No. OP-1836; RIN 3064-ZA43)

The Financial Technology Association ("FTA") appreciates the opportunity to respond to the federal banking agencies' ("FBAs") request for information on bank-fintech arrangements (the "RFI"). FTA is a trade association representing industry leaders shaping the future of finance. We champion the power of technology-centered financial services and advocate for the modernization of financial regulation to support inclusion and responsible innovation. FTA's members are committed to supporting the safety and soundness of the U.S. financial system and work closely with bank partners to best serve consumers, entrepreneurs, small businesses, and the broader economy.

For decades, banks have leveraged the benefits of financial technology to improve services, whether through in-house development, acquisition, or partnership.[1] Indeed, as the RFI states, partnerships are not new, with bank-fintech lending, deposit, and payments programs providing critically needed access, innovation, and competition.[2] In fact, bank-fintech partnerships are a significant reason why eight in ten Americans can use a fintech app to send, manage, save, and invest their money with confidence.[3] They also power tens of millions of small businesses that depend on fintech to access capital and the financial tools for success. Such partnerships are responsible for filling gaps in credit markets for underserved consumers and small businesses,

[1] *See* Chernoff, A. and Jagtiani, J. (2023) "The Role of Bank-Fintech Partnerships in Creating a More Inclusive Banking System," *Federal Reserve Bank of Philadelphia*, WP 23-21. Available at: https://www.philadelphiafed.org/-/media/frbp/assets/working-papers/2023/wp23-21.pdf. *See also* Buckley, R., Arner, D. and Barberis, J. (2016) "The Evolution of Fintech: A New Post-Crisis Paradigm?," *Georgetown Journal of International Law*, 47(1271–1319). Available at: https://doi.org/10.2139/ssrn.2676553.

[2] Barth, C. (2012) *Discover and PayPal join forces in the war against paper money, banks, Forbes*. Available at: https://www.forbes.com/sites/chrisbarth/2012/08/22/discover-and-paypal-join-forces-in-the-war-against-paper-money-banks/ (Accessed: October 4, 2024).

[3] Plaid (2023) *The Fintech Effect 2023: Consumer insights reveal growth opportunities ahead*. Available at: https://plaid.com/blog/consumer-insights-reshaping-finance/ (Accessed: October 4, 2024).

reducing or eliminating overdraft fees through greater competition, and reducing friction, time, and cost—while enhancing access—to payments services. Given their longstanding oversight of bank partners and partnership programs, the FBAs are familiar with such bank-fintech relationships and are well-positioned to recognize the essential role they play in the U.S. economy.

Against this backdrop, FTA notes that banking and fintech companies have been confronted with a number of complex proposals and rulemakings in recent months, namely the FDIC's brokered deposit and custodial deposit accounts rulemakings, that will have a significant impact on bank-fintech partnerships and financial services. The burden of these proposals and rulemakings will impact smaller and community banks the most. We accordingly urge the FBAs—and the FDIC specifically—to consider the proper ordering of these requests in order to better inform the basis for these two additional proposals. More specifically, the FBAs should begin with this current RFI on bank-fintech partnerships and use information collected here to reconsider the basis and direction of the two proposed rules. In this way the FBAs can better ascertain where risk needs to be addressed and avoid unintended consequences, including wide-ranging and significant business and consumer, without any benefit to safety and soundness.

Within this context, FTA welcomes this RFI as a proper starting point for holistically considering bank-fintech partnerships and details below the following recommendations:

- The FBAs should recognize and support the important role bank-fintech partnerships play in serving consumers, entrepreneurs, small businesses, small banks and credit unions, and the broader economy, including through advancing innovation, enhancing financial access and inclusion, and filling gaps in traditional offerings;
- The FBAs should take a balanced approach regarding bank-fintech partnerships, recognizing that they are subject to robust state and federal regulatory oversight; and
- The FBAs should recognize that the vast majority of fintech companies are responsible and compliant, and avoid taking actions that might jeopardize vital financial services for consumers, entrepreneurs, and small businesses. The FBAs should take steps to enhance guidance and information-sharing to facilitate responsible bank-fintech partnerships.

I. Bank-Fintech Partnerships are Critical to the Health of the U.S. Economy, and Provide Essential Financial Services to Consumers, Entrepreneurs, and Small Businesses.

Technology-driven innovation is transforming the way we offer, access, and benefit from financial services in the United States. By using internet and mobile platforms, machine learning, automation, and other modern technologies to deliver financial products and services, fintech companies are improving efficiency and transparency, broadening equity, access and inclusion, reducing costs, confronting fraud and financial crime, and increasing choice and opportunities for consumers and businesses. For these reasons, banks—especially small and community banks—have long sought to leverage the benefits of fintech, including through partnerships. Smaller banks rely on partnerships in order to remain competitive with larger banks by closing the technology gap that may otherwise persist or widen.[4]

As detailed below, bank-fintech partnerships have developed under the regulatory oversight of the FBAs and state bank regulators, and have improved service offerings for millions of consumers and small businesses. The following are key categories of bank-fintech partnerships, and the role they play in providing essential financial services to end-users.

A. Bank-Fintech Lending Partnerships Solve Critical Credit Access and Product Gaps.

Traditional lending solutions historically relied on brick-and-mortar storefronts, manual processes, and legacy technology systems to provide credit to consumers and small businesses—all of which can undermine key financial access and inclusion goals. For instance, reliance on physical branches means that cities and regions lacking such storefronts will fail to reach many consumers and small businesses—this is the problem of "banking deserts." These deserts, characterized by limited access to conventional financial institutions, particularly affect individuals from low-income census tracts.[5] In 2023, 4% of census tracts were banking deserts, and 4% could become a desert if a branch closes.[6] Legacy models also often disfavored individuals with low traditional credit scores and young small businesses that lack a track record of historical performance.

In addition, legacy approaches to consumer underwriting have resulted in a lack of fairness and limited access to capital. These outdated approaches create significant barriers to financial access and inclusion and increase the cost of financial services, particularly impacting lower-income and historically disadvantaged customers. A study conducted by the Federal Reserve Bank of St. Louis revealed that the "[c]redit score has not acted as a predictor of either true risk of default of subprime mortgage loans or of the subprime mortgage crisis."[7] Moreover, traditional credit scores and the data utilized by credit reporting bureaus exhibit significant correlations with race, gender, and

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[4] Board of Governors of the Federal Reserve System (2021) *Community Bank Access to Innovation through Partnerships, Board of Governors of the Federal Reserve System*. Available at: https://www.federalreserve.gov/publications/community-bank-access-to-innovation-through-partnerships.htm.

[5] Morgan, D. P., Pinkovskiy, M. L. and Yang, B. (2016) "Banking Deserts, Branch Closings, and Soft Information," *Federal Reserve Bank of New York's Liberty Street Economics Blog*, March. Available at: https://libertystreeteconomics.newyorkfed.org/2016/03/banking-deserts-branch-closings-and-soft-information/.

[6] Fed Communities (2023) *Banking Deserts Dashboard.* Available at: https://fedcommunities.org/data/banking-deserts-dashboard (Accessed: February 7, 2024).

[7] Demyanyk, Y. (2008) "Did Credit Scores Predict the Subprime Crisis?," *Federal Reserve Bank of St. Louis*, October. Available at: https://www.stlouisfed.org/publications/regional-economist/october-2008/did-credit-scores-predict-the-subprime-crisis.

other protected classes, reflecting historical disparities. White homebuyers, often older and more affluent, have an average credit score 57 points higher than Black homebuyers and 33 points higher than Hispanic homebuyers.[8] This credit score disparity affects loan accessibility and interest rates, thereby impacting various financial aspects beyond homebuying.[9]

Finally, similar challenges exist for Main Street small businesses, as legacy approaches rendered it uneconomical or impossible to serve them, particularly in small or rural communities. This issue is exacerbated for younger small businesses lacking a track record and by the consolidation of smaller banks into larger institutions that prioritize larger loans.[10] Minority-owned businesses, in particular, encounter higher denial rates and significantly elevated interest rates compared to their non-minority counterparts.[11] While bank closures are primarily driven by profitability and market dynamics, other factors may also contribute to this trend, with their significance varying across different markets. In some regions of the U.S., rural communities have become less attractive to local banks due to economic challenges that have negatively affected business activity and restricted the formation of new businesses.[12]

Fortunately, responsible fintechs and banks have long pursued compliant credit related program partnerships that have helped to solve the above discussed credit gaps and better serve a broad range of underserved consumers and small businesses, including those newly launched. Fintech competition has accordingly helped to uplevel the entire lending industry and is a major reason why most traditional lenders today offer digital access and services. In many cases, small and community banks seek fintech partners to help upgrade their credit offerings, including through programs better able to serve previously underserved populations. Importantly, well-regulated and supervised lending partnerships ensure that banks maintain a proper economic interest in the financing, and are able to expand access, improve underwriting—including based on cash flow analysis, increase speed to funding, improve efficiency, and tailor products to fit end-user needs. Such partnerships can further reduce bank balance sheet risk, while ensuring the flow of needed credit to borrowers.

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[8] Klein, A. (2020) "Reducing Bias in AI-based Financial Services," *Brookings Institution*. Available at: https://www.brookings.edu/articles/reducing-bias-in-ai-based-financial-services/.

[9] Lee, J. (2022) "How Structural Racism Plays a Role in Lowering Credit Scores," *CNBC*, October. Available at: https://www.cnbc.com/2022/10/11/how-structural-racism-plays-a-role-in-lowering-credit-scores.html.

[10] Simon, R. and Jones, C. (2017) "Goodbye, George Bailey: Decline of Rural Lending Crimps Small-Town Business," *The Wall Street Journal*, December. Available at: https://www.wsj.com/articles/goodbye-george-bailey-decline-of-rural-lending-crimps-small-town-business-1514219515.

[11] Office of Advocacy U.S. Small Business Administration (2020) *Minority-Owned Employer Businesses and their Credit Market Experiences in 2017*. Available at: https://advocacy.sba.gov/wp-content/uploads/2020/07/Minority-Owned-Employer-Businesses-and-their-Credit-Market-Experiences-in-2017.pdf; *See also* Baker, T. H., Judge, K. and Klein, A. (2022) "Credit, crises, and infrastructure: The differing fates of large and small businesses," *Brookings Center on Regulation and Markets Working Paper.*

[12] Simon, R. and Jones, C., 2017

The importance of bank-fintech lending partnerships to consumers, entrepreneurs and small businesses is well documented. A 2023 Philadelphia Federal Reserve Working Paper noted that "[o]ur results indicate that [partnering] banks are more likely to offer credit cards and personal loans to the credit invisible and below-prime consumers—and are also more likely to grant larger credit limits to those consumers—after the partnership period . . . Overall, we find that these partnerships could help to move us toward a more inclusive financial system."[13] Additionally, when the Second Circuit *Madden v. Midland* decision resulted in significant restrictions to bank-fintech lending programs, a study published by law professors from Stanford, Columbia, and Fordham noted that "loans to the highest-risk borrowers in Connecticut and New York disappeared entirely from our sample—even though similar borrowers in other states continued to receive funding."[14]

Notably, in the commercial lending context, bank-fintech partnerships can often provide financing earlier in a startup's life cycle, which can be particularly meaningful for small business owners from underrepresented backgrounds who have historically lacked access to VC financing or traditional bank loans. Fintech companies better serve small businesses by leveraging cutting-edge technology to streamline the loan application process, allowing applicants to securely share their cash flow data and facilitating real-time insights into their financial standing. Fintech small business lenders have also demonstrated their ability to reach a broader cross-section of small business in America: during the Covid-19 pandemic, researchers from the Federal Reserve determined that fintech lenders participating in the Paycheck Protection Program (PPP) "provide[d] important support to minority business owners, who have in the past been underserved by the traditional banking industry."[15] The report further noted that "[c]ompared to banks, fintech lenders may be more efficient in processing applications . . . and more likely to lend to underserved businesses that are unable to borrow from banks."[16]

Given the substantial role that bank-fintech lending partnerships play in closing gaps and serving consumers, entrepreneurs, and small businesses in America, it is critical that the FBAs avoid taking actions that may result in harmful restrictions to such activities.

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[13] Chernoff, A. and Jagtiani, J., 2023.

[14] Colleen Honigsberg, Robert J. Jackson, Jr., and Richard Squire (2017) 'How Does Legal Enforceability Affect Consumer Lending? Evidence from a Natural Experiment', *The Journal of Law and Economics*, 60(4). Available at: https://law.stanford.edu/wp-content/uploads/2017/08/Honigsberg__Jackson__Squire__2017_-1.pdf (Accessed: October 4, 2024).

[15] Battisto, J. *et al.* (2021) "Who Received PPP Loans by Fintech Lenders?," *Federal Reserve Bank of New York's Liberty Street Economics Blog*. Available at: https://libertystreeteconomics.newyorkfed.org/2021/05/who-received-ppp-loans-by-fintech-lenders/.

[16] *Id.*

B. Bank-Fintech Deposit Partnerships Expand Access to Digital Financial Services and Help Eliminate Harmful Fees.

Leading bank-fintech deposit partnerships have dramatically expanded consumer and small business access to digital financial services that can reduce fees, speed payments services, and offer financial health and wellness tools. Absent such partnerships, legacy technology, infrastructure, and processes have led to excessive costs and fees in the banking system, often targeted at lower-income, historically disadvantaged, and smaller customers.[17] Outdated processes, often characterized by manual and/or expensive back-office operations, have driven traditional providers to seek profits from lower-income customers through overdraft charges and insufficient funds fees.[18] The increase in access and usage of transaction accounts has been accompanied by an increase in the cost of these products.[19] For instance, the average financially vulnerable household spent an estimated 14% of their income on interest and fees alone,[20] contributing to a substantial $7.7 billion collected by banks in overdraft and NSF fees in 2022.[21] This figure further underscores why simply being "banked" cannot and should not be the litmus test for financial inclusion, nor financial health and well-being.

Fortunately, user-friendly partnerships have enabled many banks to outcompete their peers and improve the services available to consumers and small businesses. Fintech innovation focuses on reducing or eliminating harmful costs through more efficient operations, speedier delivery of payments or wages, accounts that do not charge overdraft fees if balances temporarily dip, services that help consumers build and improve credit scores, and financial tools that help manage cash flows.[22] A recent note published by a visiting scholar at the St. Louis Federal Reserve reiterated

[17] Bank of International Settlements (2021) *Fintech and the Digital Transformation of Financial Services: Implications for Market Structure and Public Policy*. Available at: https://www.bis.org/publ/bppdf/bispap117.pdf.
[18] *See* Acting Comptroller of the Currency Michael J. Hsu (2023) "Remarks at the NCRC's 2023 Just Economy Conference 'Elevating Fairness,'" 30 March.
[19] Office of the Comptroller of the Currency (2023) "Overdraft Protection Programs: Risk Management Practices," *OCC Bulletin*, 2023–12.
[20] Greene, M. *et al.* (2023) "FinHealth Spend Report 2023," *Financial Health Network*, June. Available at: https://finhealthnetwork.org/research/finhealth-spend-report-2023/.
[21] CFPB Offices of Consumer Populations and Markets (2023) *Data Spotlight: Overdraft/NSF Revenue Down Nearly 50% Versus Pre-Pandemic Levels, Consumer Financial Protection Bureau*. Available at: https://www.consumerfinance.gov/data-research/research-reports/data-spotlight-overdraft-nsf-revenue-in-q4-2022-down-nearly-50-versus-pre-pandemic-levels/full-report/; Consumer Financial Protection Bureau (2021a) "CFPB Research Shows Banks' Deep Dependence on Overdraft Fees," December. Available at: https://www.consumerfinance.gov/about-us/newsroom/cfpb-research-shows-banks-deep-dependence-on-overdraft-fees/; Klein, A. (2022) "Getting Over Overdraft," *Brookings Institution*, November. Available at: https://www.brookings.edu/articles/getting-over-overdraft/.
[22] *See* FTA, *Shaping the Future of Finance* (2021), https://www.ftassociation.org/wp-content/uploads/2021/03/fta-launch-paper_shaping-the-future-of-finance.pdf

these dynamics and stated that "[c]ompetition—from other banks and nonbank providers such as fintech firms—arguably has affected overdraft practices more than anything else."[23]

As noted, beyond clear end-user benefits, deposit partnerships have also helped smaller banks remain competitive with larger national banks. Ultimately, partnering with a fintech company can help smaller banks replace costly legacy technologies and develop a broader customer base, which can enhance the financial condition of the bank. These partnerships help banks create stable and sticky customer relationships—especially when they are providing differentiated services that reduce costs and fees and improve financial wellness.

C. Bank-Fintech Payments Partnerships Help Modernize Services, Support E-commerce, and Reduce Costs for Consumers and Small Businesses.

Legacy payment services in the United States can be slow, opaque, and costly, resulting in charges, fees, and other payment delays. Payments services also demonstrate over-concentration with just two banks generating nearly half of all ACH payments.[24] In the cross-border context, prior to the growth of digital providers, users would face high costs and had little ability to track payments, which could take many days to reach the recipient. And, in the context of e-commerce, many merchants and small businesses were unable to secure payments services in order to participate in a rapidly growing digital economy.

Fortunately, by leveraging internet and mobile technologies, fintech innovators offer consumers new payment and money transfer options that significantly reduce costs, speed access to funds, improve transparency and convenience, and enhance financial inclusion. Fintech payments innovation dramatically reduces the cost consumers and small business merchants pay for a range of payment services, and those same small businesses have the ability to receive payment in a digital environment. This capability proved critically important during the global pandemic, where digital commerce kept the economy and so many businesses afloat. New payment models further speed access to funds, improve cash flow, reduce reliance on overdraft protection, and offer easy mobile access and onramps into the financial system for previously un- and under-banked individuals.

Payments innovators frequently partner with banks and consumer-facing businesses to advance "embedded finance" or "banking as a service" payments models that leverage API-based

[23] Neely, M.C. (2023) *Is the Era of Overdraft Fees Over?, Federal Reserve Bank of St. Louis*. Available at: https://www.stlouisfed.org/publications/regional-economist/2023/mar/is-era-overdraft-fees-over#authorbox (Accessed: October 4, 2024).
[24] Nacha (2024) *Nacha Unveils Top 50 ACH Originating and Receiving Financial Institutions for 2023*. Available at: https://www.nacha.org/news/nacha-unveils-top-50-ach-originating-and-receiving-financial-institutions-2023.

connectivity and open banking frameworks; these solutions provide consumers with low-cost and compliant financial services products without the business partner bearing the cost or complexity of building unique payments infrastructure.

Consumers also utilize fintech payments services to send peer-to-peer money transfers at no cost, buy goods and services, make investments, and send money to individuals in foreign countries at low cost (typically much less than the cost of sending a wire). In fact, fintech competition has helped to drive down the average costs of remittances for consumers, from a global average of nearly 9% in 2011 to approximately 6% today,[25] with digital providers serving as the lowest cost category. Small businesses rely on fintech payments solutions to offer e-commerce payment capabilities, receive and send funds globally, track and manage company spend, and analyze business performance. As noted above, many small businesses are also able to access capital by sharing their payment transaction data with lenders to help demonstrate creditworthiness.

All together, the breadth and centrality of bank-fintech payment offerings underscores the importance of maintaining the health and viability of these partnerships. It is accordingly critical for the FBAs to avoid inadvertently restricting or chilling these activities.

D. Fintechs Must Maintain Viable Regulatory Paths to Provide Services to Consumers, Entrepreneurs and Small Businesses.

As the above sections detail, fintechs are working with banks to provide customers with critical lending, deposit, and payments services that are part of the core fabric of financial services in America. Given their importance, we encourage the FBAs and policymakers to ensure a dynamic and competitive financial services landscape by providing fintechs viable paths to developing and offering their services. More specifically, as this comment letter argues, it is critical that banks be supported and encouraged to partner with fintechs in order to expand and improve offerings.

It is also critical that policymakers provide fintechs with direct paths to offering such services, including through the FBAs exercising their broad bank chartering authority and through the development of new charters, including a federal payments charter.[26] As Under Secretary Liang

[25] The World Bank Group (2024) *Remittance Prices Worldwide - Issue 49*, p.7. Available at: https://remittanceprices.worldbank.org/sites/default/files/rpw_main_report_and_annex_q124_final.pdf (Accessed: October 4, 2024).

[26] Whether through OCC special purpose national bank charters, Fed master account approval for non-depository state-chartered banks, or FDIC approval of Industrial Loan Company (ILC) charters, the federal banking agencies have substantial authority to accommodate and incorporate the ever-evolving business of banking. *See also* Financial Technology Association (FTA) (2024a) *Response to Request for Information on Financial Inclusion (Docket No. TREAS-DO-2023-0014).* Available at: https://www.ftassociation.org/wp-content/uploads/2024/02/FTA-Response-to-Treasury-Financial-Inclusion-RFI.pdf.

recently noted, granting payments firms risk-based direct access to Federal Reserve payments systems can promote innovation and competition by providing an alternative for such firms that currently must rely on banks for payments system access.[27] Additionally, consistent with the dual banking system in America, it is both proper and prudent for businesses to have multiple viable regulatory paths depending on the particularities of their business activities. Such frameworks can foster competition, innovation, and resiliency.

Just as important as offering viable paths to fintechs, it is critical that the FBAs and policymakers not inadvertently choke off the ability of fintechs to work with banks or unnecessarily drive up costs in a way that makes innovative consumer products nonviable. This can happen if scrutiny of bank-fintech partnerships chills activity or reduces the number of willing bank partners simultaneously with efforts to prevent fintechs from acquiring existing or novel bank charters. Policies that squeeze fintechs on both sides will result in significant harm to financial services in the country and undermine consumers, entrepreneurs, and small businesses. It is accordingly appropriate for the FBAs and policymakers to develop forward-leaning policy approaches that recognize the critical role fintechs play and offer viable pathways for such fintechs to operate.

II. Bank-Fintech Partnerships are Subject to Robust Regulatory Authority and Oversight with Many Fintech Firms Regulated at the State and Federal Level.

As the RFI notes, bank-fintech partnerships are subject to a broad array of laws, regulations, and FBA guidance, "including but not limited to, consumer protection requirements (such as fair lending laws and prohibitions against unfair, deceptive, or abusive acts or practices) and those addressing financial crimes (such as fraud and money laundering)."[28] Additionally, given the FBA's robust regulatory authority, bank-fintech partnerships are subject to oversight and supervision. More specifically, the FDIC, Federal Reserve, and OCC have direct visibility into lending, deposit, and payments partnerships through supervision of the chartered banking entity.[29]

[27] U.S. Department of the Treasury (2024) *Remarks by Under Secretary for Domestic Finance Nellie Liang "Modernizing the Regulatory Framework for Domestic Payments" at the Chicago Payments Symposium, hosted by the Federal Reserve Bank of Chicago, U.S. Department of the Treasury*. Available at: https://home.treasury.gov/news/press-releases/jy2639.

[28] Department of the Treasury, Office of the Comptroller of the Currency, Federal Reserve System, and Federal Deposit Insurance Corporation (2024) *Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses*, Federal Register, 89(61577), pp. 61577-61584. Available at: https://www.federalregister.gov/d/2024-16838/p-31.

[29] White, C. (2021) "Regulating Fintech: One Size Does Not Fit All," *Federal Reserve Bank of St. Louis Blog*. Available at: https://www.stlouisfed.org/on-the-economy/2021/february/regulating-fintech-one-size-does-not-fit-all. (noting that "[f]intech firms that partner with banks need to meet the required licensing requirements and submit to supervision from state regulatory authorities; their bank partners are still supervised by federal and state banking agencies, depending on charter type.").

To this end, the bank remains fully accountable and responsible for satisfying consumer protection laws and regulatory expectations. That said, beyond independent licensing and legal requirements (discussed below), the fintech partner is typically required to develop strong internal controls and governance in order to satisfy the same consumer protection laws that govern the banks. In many instances, the fintech partner is further responsible for performing a range of risk and compliance-related functions to support and enhance their bank partner's satisfaction of regulatory obligations.

In exercising oversight of a partner bank, the bank regulator typically takes a holistic approach to assessing partnership programs, whether in lending, deposits, or payments. Regulators will assess service offering terms, costs, and performance. They will also adhere to third-party and model risk management guidance to ensure the bank has performed proper diligence on the fintech partner and maintains appropriate ongoing governance, monitoring, and controls around the partnership. Additionally, the FDIC complex bank supervision program provides increased supervision on institutions that "employ complex business models, offer nontraditional product and services, and/or rely heavily on third-party relationships,"[30] while the Fed and OCC each maintain similar novel activities and fintech-related supervisory programs.[31]

As indicated above, in exercising their oversight, the FBAs have issued numerous guidance documents to help banks manage relationships with fintech partners, including guidance that the RFI cites dating back to 1996.[32] In more recent years, the FBAs have issued harmonized guidance on managing third-party relationships,[33] and advisories related to inaccurate representations regarding partnership programs.[34] These efforts can provide enhanced regulatory clarity to banks, fintech partners, and FBA examiners, alike.

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[30] Federal Deposit Insurance Corporation (FDIC) (2022) *FDIC Compliance Examination Manual (II - 15.1)*, *Federal Deposit Insurance Corporation (FDIC)*. Available at: https://www.fdic.gov/resources/supervision-and-examinations/consumer-compliance-examination-manual/documents/2/ii-15-1.pdf (Accessed: October 4, 2024).

[31] *See* Board of Governors of the Federal Reserve System (2024) Novel activities supervision program, Board of Governors of the Federal Reserve System. Available at: https://www.federalreserve.gov/supervisionreg/novel-activities-supervision-program.htm (Accessed: October 4, 2024). See also Office of the Comptroller of the Currency (OCC) (2023) *Financial technology Page*, *Office of the Comptroller of the Currency (OCC)*. Available at: https://www.occ.gov/topics/supervision-and-examination/financial-technology/index-financial-technology.html (Accessed: October 4, 2024).

[32] *See* Department of the Treasury, Office of the Comptroller of the Currency, Federal Reserve System, and Federal Deposit Insurance Corporation (2024), *Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses, Federal Register*, 89(61577), pp. 61577-61584, footnote 3. Available at: https://www.federalregister.gov/d/2024-16838/p-34.

[33] Federal Reserve System, FDIC and OCC, *Interagency Guidance on Third-Party Relationships: Risk Management*, 88 Fed. Reg. 37920 (June 6, 2023), available at https://www.occ.gov/news-issuances/federal-register/2023/88fr37920.pdf.

[34] *See*, Federal Deposit Insurance Corporation (FDIC) (2024) *Advisory to FDIC-Insured Institutions Regarding FDIC Deposit Insurance and Dealings with Crypto Companies*, *Federal Deposit Insurance Corporation (FDIC)*. Available at: https://www.fdic.gov/sites/default/files/2024-03/fil22035b.pdf (Accessed: October 4, 2024).

Beyond FBA oversight of fintech programs, it is important to underscore that fintechs themselves are subject to the same activities-based and entity-based regulatory frameworks that govern the entire U.S. financial services industry and have done so for many decades. These applicable regulations and frameworks reduce operational, liquidity, investment, systemic, financial crime, and consumer protection risks.

For example, in the context of payments and lending activities, nonbank fintechs are subject to state-based licensure and federal and state laws and regulations, including those directed at anti-money laundering, fair lending, unfair and deceptive trade practices, permissible investments, credit reporting, debt collection, privacy, fair treatment of customers, cybersecurity, liquidity, minimum equity capital, and electronic fund transfers. These laws and regulations promote consumer protection and operational stability. They are further tailored to the specific risks posed by the particular financial activity. Fintechs that directly provide certain financial services to consumers and small businesses are subject to examinations to ensure their compliance with federal and state consumer financial protection laws. Generally, these licensed fintech firms are also subject to the same consumer protection laws as banks, and indeed must comply with numerous state consumer protection laws that may be preempted with respect to nationally-chartered banks.

Given existing regulatory frameworks that apply to banks, fintechs, and their partnerships, regulators have demonstrated over the years a deep understanding of the nature of bank-fintech programs—a point underscored by FBA guidance applicable to these relationships. The FBAs have further demonstrated that existing regulations are clear and capable of helping them identify potential infractions, as evidenced by enforcement actions. FTA encourages the FBAs to reinforce their recognition of robust existing regulatory frameworks, and the reality that the vast majority of bank-fintech relationships operate in a compliant fashion. This recognition can help avoid the significant risk that negative pronouncements regarding such relationships might chill bank-fintech partnerships and limit the number of willing partner banks, all to the detriment of consumers, entrepreneurs, and small businesses.

The RFI further poses questions regarding stability and financial crime risks related to fintechs and their bank partnerships. Notably, these bank-fintech partnerships have not been transmission mechanisms that threaten financial stability or exacerbate financial crime. To the contrary, as detailed above, existing and robust federal and state-level regulation of fintechs (and their bank partnerships) have helped to guard against large-scale failures or related harms to consumers and small businesses.[35] Additionally, state-regulated fintechs are commonly subject to FinCEN registration and must comply with key financial crime requirements.

While there are opportunities to improve and further streamline state-based frameworks—as underscored by proactive initiatives led by the Conference of State Bank Supervisors (CSBS)[36]—they have proven fit-for-purpose in the lending and money transmission context, tailored to identify and mitigate risks, and capable of adapting to a rapidly changing technology-driven marketplace.[37] The success of state-based frameworks is likely tied to a number of factors, including sound regulatory oversight and requirements governing lending products or payments activities, permissible investments, safeguarding of customer assets, and the regulated entities' business activity. Because of these frameworks, bank-fintech partnerships enhance diversification of services, promote liquidity, and are not sources of "hot" money.

To the extent that we have observed systemic issues in the banking system in recent years, these have derived from traditional insured depository institutions that engage in maturity and liquidity transformation. Additionally, while real-time payments systems can increase the speed that money moves—including from challenged financial institutions—such advancements are in the best interest of end-users and the broader economy, and apply to all economic actors, including banks. Fintech partnerships with banks, on the other hand, help to create sticky and stable consumer relationships distinct from brokering activity a few decades ago that served as the predicate for the brokered deposit rules. More specifically, given the nature of bank-fintech partnerships, which are typically focused on providing demanded services at lower costs, customers have little incentive or reason to frequently move their funds.

To that end, as argued in our joint trades extension request regarding the FDIC's proposed brokered deposit rulemaking, FTA urges the FBAs not to destabilize deposits and bank-fintech partnerships with ill-advised updates to the brokered deposit rules.[38] The proposed rule would restrict banks

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[35] Based on our research, we could not identify any large-scale or contagion-inducing failures of state-regulated money transmitters in the United States over the prior decades; the failures we did identify were unique, well contained, and involved highly differentiating and distinguishing features, often including involvement of foreign entities and fraud.
[36] *See* Conference of State Bank Supervisors (CSBS) (2020) *State Regulators Roll Out One Company, One Exam for Nationwide Payments Firms, Conference of State Bank Supervisors (CSBS).* Available at: https://www.csbs.org/regulators-announce-one-company-one-exam-for-payments-companies. *See also* Conference of State Bank Supervisors (CSBS) (2024) "Networked Supervision 'Makes Us All Better,'" *Conference of State Bank Supervisors (CSBS)*, 23 May. Available at: https://www.csbs.org/networked-supervision-makes-us-all-better.
[37] Similar to the dual banking system in the U.S., FTA further encourages development of optional federal frameworks, including a potential federal payments charter as recently suggested by Under Secretary for Domestic Finance Nellie Liang. *See* U.S. Department of the Treasury, 2024.
[38] Financial Technology Association (FTA) (2024b) *Joint trades express significant concerns regarding FDIC's brokered deposits proposed rulemaking, Financial Technology Association*. Financial Technology Association.

and their fintech partners from continuing to serve a broad range of customers, increase costs of such partnerships, undermine small and community banks seeking fintech partnerships to remain competitive, and threaten overall consumer and small business access to critically needed financial services. The proposed rule would do little to address the FDIC's hot money concerns and instead could trigger financial instability by undermining existing business relationships; the proposal would further destabilize bank deposits in times of stress if IDIs look to shift their deposit base and relationships. These dynamics would accordingly undermine community bank competitiveness and viability, as well as restrict critically needed access to financial services.

III. The FBAs Should Promote Responsible Bank-Fintech Partnerships and Provide Greater Regulatory Clarity to Avoid Limiting Access to Critical Financial Services.

As noted at the outset of this letter, FTA's members share the FBAs goal of promoting safety and soundness in the banking system and ensuring responsible bank-fintech partnerships. If banks or fintechs fail to comply with clear rules of the road, or harm consumers, we believe it is fully appropriate for regulators to take necessary action. We are concerned, however, that a failure to emphasize that the vast majority of bank-fintech partnerships are compliant and a welcome part of the financial services landscape will inadvertently result in the chilling of responsible partnerships.

This chilling effect can be driven by a few factors. First, FBA examiners may extrapolate from a few instances involving infractions or misconduct that all bank-fintech partnerships, no matter the products or services they provide, should be subject to heightened scrutiny. Such heightened scrutiny would unfairly target certain partnerships, raise costs, and impose greater burdens than necessary.

The second factor that could result in problematic chilling of bank-fintech partnerships is if potential bank partners withdraw from such relationships given fear of heightened scrutiny or a perception that the FBAs discourage such activity. This outcome would harm the many small banks looking to remain competitive through partnerships, and would restrict their ability to serve customers. It would also reduce the availability of willing bank partners, thereby limiting overall partnerships and potentially resulting in the cessation of key service or product offerings. This would undermine broader competition and drive further concentration in the banking sector. Given the critical role of bank-fintech partnerships outlined above, this outcome would be severely harmful to the economy and consumers, entrepreneurs, and small businesses.

Available at: https://www.ftassociation.org/joint-trades-express-significant-concerns-regarding-fdics-brokered-deposits-proposed-rulemaking/ (Accessed: October 7, 2024).

Given the risks of inadvertently chilling partnerships, we urge the FBAs to instead pursue a number of initiatives that can promote responsible bank-fintech relationships, including through enhanced information sharing and clear communication of regulator expectations:

- *Reiterate and Reinforce the Value of Responsible Partnerships*. The FBAs should take a balanced approach to assessing bank-fintech partnerships, including through recognizing specific and nuanced distinctions in models that inform overall risk assessments (discussed further below). Such assessments should appropriately express support for compliant partnerships through official communications and speeches in order to remove any perception that regulators disfavor such relationships. This effort can help clarify that despite a few instances of noncompliance or misconduct, along with sensational headlines, the FBAs are not seeking to chill partnership activities.

- *Increase Staff Training and Capabilities with a Focus on Generating Nuanced Understanding of Specific Risks Related to Differentiated Models in order to Avoid Overbroad Categorizations.* While the RFI attempts to cover a broad range of bank-fintech partnerships, its discussion frequently fails to differentiate risks across various models. In other words, it commonly paints broad categories of partnerships with the same brush despite significant differences and nuances that impact an overall risk assessment. For example, the RFI does not differentiate or recognize nuance between different types of deposit taking models, instead stating that "deposit-taking models and middleware" pose heightened risks. Such overbroad generalizations and categorizations undermine proper risk assessment and the development of tailored policies and procedures that can mitigate specific risks.

  For this reason, we urge the FBAs to develop training programs for staff involved in examinations and work to define risks related to various models with clarity and specificity. We further encourage additional recruiting of staff with technology backgrounds, including through short-term fellowship programs.[39] Increased technical understanding and capabilities are critical to generating nuanced guidance and regulatory interventions related to bank-fintech partnerships and integrations.

- *Publish Supervisory Highlights, Advisories, Statements and Guidance to Clarify Expectations*. FTA commends the FBAs for recent efforts to enhance regulatory clarity through the publication of advisories and guidance, including with respect to third-party

[39] Chavkin, L., Danon, E. and Mandelker, S. (2024) "Econographics: How to improve the technical skill of the US national security workforce," *Atlantic Council*, 1 May. Available at: https://www.atlanticcouncil.org/blogs/econographics/how-to-improve-the-technical-skill-of-the-us-national-security-workforce/.

relationships. The RFI nevertheless indicates that concerns remain that bank-fintech partnerships may not be satisfying regulatory expectations. To the extent that the FBAs have areas of concern, we encourage them to communicate specifics and clarify those expectations, including through interagency statements that reduce ambiguity and enhance compliance uniformity. Absent such clarity, mere reference to generalized areas of concern creates ambiguity and perceptions that regulators disfavor partnerships.

- *Provide Specific Guidance Related to Intermediate Platforms that Can Enhance Clarity and Compliance.* The RFI also identifies particular partnerships where risks may be heightened, specifically with respect to "intermediate platform provider(s) . . . where the fintech or intermediate platform provider performs key functions, such as handling end-user complaints, performing customer identification and due diligence, developing and transmitting disclosures, monitoring transactions, maintaining end-user ledgers, performing certain lending-related activities, developing and deploying." Given the RFI focus on intermediate platform providers, we encourage the FBAs to be explicit regarding expectations, including through more granular guidance.

  Such guidance should be sure to distinguish intermediate platforms used in the context of bank-fintech partnerships from those providing certain core services to banks or facilitating open banking permissioned data sharing (see below for specific discussion). We recognize that recent events have showcased how middleware models can be flawed if not well-structured. We believe that the FBAs should recognize that not all middleware models are the same and that many are set up to support compliant business activities. We encourage the FBAs to be open-minded to the potential for middleware models to add value in the overall bank partnership ecosystem, including with respect to enhancing regulatory compliance. This approach can help avoid unintentionally chilling further development of these services and partnerships, which done right, can be of benefit to the banking system.

- *Revisit Policies Regarding Confidential Supervisory Information (CSI)*. While FTA recognizes the rationale for FBA policies surrounding CSI between a bank and its regulator, we encourage the FBAs to consider further updating, harmonizing and clarifying rules related to the sharing of CSI with a fintech partner in appropriate circumstances. Fintech partners often operate in the dark regarding concerns a bank regulator may have about a particular bank-fintech partnership program and accordingly cannot take direct steps to help mitigate such concerns or risks. While such CSI should be protected from broader disclosure, limited sharing would enhance understanding of regulatory expectations and benefit overall partnership compliance.

To this end, the Board of Governors of the Federal Reserve System updated its CSI rules in 2020 and permitted limited sharing with service providers without written permission "necessary to the service provider's provision of services."[40] The other FBAs do not provide such authority to banks,[41] and none of the FBAs have provided guidance to banks detailing the process for securing a written approval and the circumstances where such approval is likely.

Given the importance of improved communication between banks and their fintech partners, there is significant opportunity for the FBAs to update and harmonize rules around the sharing of CSI and improve clarity through an interagency statement regarding the treatment of requests to share CSI and the nature of related confidentiality. The fact that other federal and state regulators, including the Consumer Financial Protection Bureau (CFPB) and New York Department of Financial Services (NYDFS), have more permissive CSI sharing regimes demonstrates that such sharing between banks and their service partners can be done safely, securely and responsibly. And, such sharing would help improve overall compliance and risk mitigation.

To this end, we further urge the FBAs to look for opportunities to work with partner banks when deficiencies are identified in order to help such banks attain compliance rather than call for the bank to cease a partnership. The proper sharing of CSI with a fintech partner can help to uplevel overall partnership compliance, thereby ensuring that consumer or small business customers do not instead face a cessation of services that they depend upon. The goal of bank partners, fintechs, and regulators should accordingly be to continue and enhance access to responsible and compliant products and services.

As a final point, and as discussed above, the FBAs should also communicate, aggregate, or summarize concerns that frequently arise in the course of supervision through advisories, alerts and guidance. These regulatory tools can improve overall communication and help channel bank and partner compliance resources into areas identified as priorities by the FBAs.

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[40] Federal Reserve System (2024) *12 CFR 261.21 – Confidential Information Made Available to Supervised Institutions, Government Agencies, and Others*, eCFR. Available at: https://www.ecfr.gov/current/title-12/part-261/section-261.21 (Accessed: 7 October 2024).

[41] *See* Comptroller of the Currency, Department of the Treasury (2024) *12 CFR 4.37(b)(2) – Availability of Information Under the Freedom of Information Act*, eCFR. Available at: https://www.ecfr.gov/current/title-12/part-4/section-4.37#p-4.37(b)(2) (Accessed: 7 October 2024). *See also* Federal Deposit Insurance Corporation (2024) *12 CFR 309.6(b)(7)(i) – Disclosure of Information Under the Freedom of Information Act, eCFR*. Available at: https://www.ecfr.gov/current/title-12/part-309/section-309.6#p-3 (Accessed: 7 October 2024); Federal Deposit Insurance Corporation (2024) *12 CFR 309.6(b)(7)(iv).*

- *Foster Greater Information-Sharing Between Banks, Fintechs, and the FBAs*. As many of our recommendations indicate, clear communication is central to ensuring that all stakeholders understand regulatory expectations and can take steps to mitigate identifiable risks. To this end, FTA encourages the FBAs to explore further opportunities to foster frank and open dialogue.

  One model that can foster this environment is the Bank Secrecy Act Advisory Group (BSAAG), which requires that all discussions and materials are kept confidential. This would be particularly appropriate for bank-fintech regulatory discussions centering on sensitive topics, including financial crime compliance, security, and efforts to combat fraud. To the extent that discussions cover less sensitive topics, the Federal Advisory Committee Act (FACA) gives agencies the authority to create advisory committees that can help advise and inform the agency. Bank-fintech partnership compliance practices and regulatory expectations would be suitable topics for such committees.

- *Clarify that Certain Bank-Fintech Relationships Subject to Tailored Rules or Expectations Should Not be Subsumed by Generic Considerations Raised in the RFI.* While FTA appreciates this opportunity to provide generalized feedback on bank-fintech partnerships, we believe it is important for the FBAs to clarify that certain generic considerations here are not applicable to relationships subject to clear, separate regulatory requirements or expectations. For example, the FBAs should confirm that core processors that work with banks under well-settled expectations are not subsumed by the generic considerations raised in this RFI.

  Additionally, the CFPB has finalized its implementation of the Dodd Frank Act Section 1033 open banking rulemaking, which governs covered data sharing relationships, often between banks and fintechs. Open banking is focused on enabling consumers to get the benefit of a seamless, interoperable ecosystem where they control the use of their own financial data and services can be accessed across different platforms and institutions. The aim is to provide end users with a holistic view of their financial information and services, often enhancing customer experience and empowering them with more control over their financial data.

  In a bank-fintech partnership, however, the primary aim is leveraging fintech capabilities to enhance the bank's services or operations. In such a case the fintech typically serves the bank's needs, providing solutions to improve the bank's efficiency, compliance, customer reach, or product offerings. In the context of open banking, however, the intermediate platform providers act as independent facilitators, connecting multiple banks and fintech companies to allow the distribution and integration of financial products and services. This is distinct from the role of many intermediate platforms with respect to bank-fintech partnerships, where the platform typically serves to fulfill the specific requirements of the bank.

It is therefore important to underscore that broader considerations and concerns expressed in the RFI should not serve as a basis for stakeholders to impede or alter compliance with the Section 1033 rulemaking, which already covers necessary risk mitigation for the specific context of permissioned data sharing. Specifically, the CFPB stated in issuing the final rule that "acting on the authorization of a consumer to access their personal financial data pursuant to this final rule does not, in any way, make a third party a service provider to a data provider; and the same holds true for an aggregator with respect to its use by that third party . . . This context differs from other contexts in which data providers are choosing third party business partners or service providers, or are providing data outside the safe, secure, and reliable framework that the final rule is intended to establish."[42]

Put differently, per the Section 1033 final rule, risks and accountability are distributed across multiple entities, including banks, fintech companies, and intermediate platforms, and the FBAs should accordingly not interfere by solving with the same solution used in the bank-fintech partnership scenario. In the former, the bank has a conflict of interest in connection with the fintechs. In the latter, the bank typically retains more control and oversight over the fintech's activities, with defined contractual obligations.

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We appreciate the opportunity to provide comment on the many ways bank-fintech partnerships support our economy and consumers, entrepreneurs, small businesses, and small and community banks. As noted above, we believe that this RFI should serve as a baseline for discussion between the industry and FBAs, and that the FDIC should accordingly revisit the basis for its two ongoing rulemakings that appear to be premature given this effort. We further believe that constructive communication between the FBAs and banks and fintechs regarding regulatory expectations can ensure the ongoing health and compliance of critically needed bank-fintech partnerships.

[42] U.S. Consumer Financial Protection Bureau, *Final Rule re: Required Rulemaking on Personal Financial Data Right* (Oct. 22, 2024). Available at https://files.consumerfinance.gov/f/documents/cfpb_personal-financial-data-rights-final-rule_2024-10.pdf.

We look forward to continuing to partner on these efforts and serving as a resource representing leaders in the financial technology industry.

Sincerely,

Penny Lee
President and Chief Executive Officer
Financial Technology Association