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

James P. Sheesley
Assistant Executive Secretary
Attn: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Ann E. Misback
Secretary, Board of Governors of the Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

October 18, 2021

Response to Request for Comment on Proposed Interagency Guidance on Third-Party Relationships: Risk Management

(OCC: Docket ID OCC-2021-0011; Federal Reserve System: Docket No. OP-1752; FDIC: RIN 3064-ZA026)

The Financial Technology Association (FTA) appreciates the opportunity to respond to this multi-agency request for comment regarding proposed interagency guidance on managing risk associated with third-party relationships (the "RFC"). As outlined in the request, third-party partners, especially those centered on advanced technology, hold substantial promise in increasing banks' efficiency, reach, and capabilities across a range of important financial services and compliance functions and activities. The FTA supports the harmonizing of guidance between the regulators as proposed but believes that the guidance would benefit from offering more apparent examples of how banks can weigh the risks and benefits of various relationships and technologies.

Specifically, we believe that smaller institutions and community banks may face continued regulatory ambiguity and challenges in properly evaluating partnerships that would help them better serve their customers. Guidance, including through the FAQs, would be beneficial to offer greater specificity in how banks should assess particular partnerships and technologies. This would help modernize offerings and foster the adoption of promising financial technologies that

will ensure that the U.S. financial system remains dynamic, innovative, and capable of serving the ongoing needs of consumers and small businesses.

The FTA and Importance of Fintech/Bank Relationships

The FTA is a nonprofit trade organization that educates consumers, regulators, policymakers, and industry stakeholders on the value of technology-centered financial services and advocates for the modernization of financial regulation to support inclusion and innovation. The FTA is focused on informing tomorrow's regulations, policy frameworks, and public understanding to safeguard consumers and advance the development of trusted, digital financial markets and services.[1]

As the RFC notes, third-party providers, including financial technology (or "fintech") firms, offer procuring or partnering banks substantial benefits across a range of financial services activities, including with respect to compliance. The RFC correctly states that "[a] banking organization may [] establish third-party relationships to offer products and services to improve customers' access to and the functionality of banking services, such as mobile payments, credit-scoring systems, and customer point-of-sale payments."[2]

The importance of the RFC's recognition of the critical role fintech can play in ensuring that the U.S. banking system remains at the leading edge in terms of innovation and capacity to serve consumers and small businesses cannot be overstated. Fintech is driving positive change in financial services and markets, lowering costs, increasing efficiencies, and enhancing consumer and small business financial access and opportunities. To this end, forward-thinking financial institutions have recognized these benefits and are increasingly looking to partner with leading fintech firms or adopt and incorporate advanced technologies.

Even ahead of the COVID-19 pandemic, which accelerated an existing trend towards digital and mobile banking tools, banks were actively working to enhance their technological capabilities

[1] FIN. TECH. ASS'N, www.ftassociation.org (last visited Oct. 12, 2021). The FTA's members include Afterpay, Betterment, BlueVine, Brex, Carta, Figure, Klarna, Marqeta, MX, Nium, Plaid, Ribbit Capital, Sezzle, Stripe, Truework, Wise, Zest AI, and Zip.
[2] OCC, FDIC, and Fed, RFC, *Request for Comment on Proposed Interagency Guidance on Third-Party Relationships: Risk Management*, July 19, 2021, pg. 7, available at https://www.federalregister.gov/documents/2021/07/19/2021-15308/proposed-interagency-guidance-on-third-party-relationships-risk-management.

and service offerings either by way of partnership or procurement. In a partnership, fintechs and traditional institutions both bring different advantages. Fintechs typically bring innovative cultures, mobile-first approaches, technologies unencumbered by legacy systems, speed, and nimbleness. Traditional financial institutions may bring experience, scale, operational capacity, and the benefits of a direct supervisory relationship with banking regulators.

Regulators can and should actively encourage these partnerships between banks and fintechs, which can play to the unique strengths of both industries and consequently produce better products and services for consumers. Federal Reserve Governor Bowman recently discussed the critical symbiosis between fintechs and banks. She pointed out that community banks, in particular, have much to gain from fintech partners to "open new lines of business, help with customer acquisition, enhance customer service, and improve operational functions."[3] Recognizing that banks should view fintech as an opportunity, not a threat, she discussed a wide range of emerging partnership models and called for ongoing conversations amongst stakeholders to further enhance these arrangements.

Unfortunately, some financial institutions have been hesitant to partner with fintech companies due to insufficient regulatory guidance or concerns about regulatory risks. Both fintechs and banks require regulatory certainty and guidance, which would increase compliance and promote policy goals of financial inclusion, growth, and competition. Clear, principles-based guidance from regulators that provide actionable details and examples can help foster such partnerships while demonstrating that these partnerships are sound and safe and subject to rigorous oversight.

For these reasons, the FTA is supportive of the intent of the proposed interagency guidance on third-party relationships given its focus on providing uniform expectations across banking regulators. However, the proposed guidance should be updated to include more explicit examples to help financial institutions of all sizes benefit from the innovation that comes with fintech partnerships. The following suggestions begin with a discussion of the proposed guidance and then address topics that should be considered as related to the guidance and potential FAQs.

---

[3] Bowman Speech to ICBA, "*Technology and the Regulatory Agenda for Community Banking,"* Federal Reserve, (Last updated December 4, 2020), available at https://www.federalreserve.gov/newsevents/speech/bowman20201204a.htm.

Comment on the Proposed Guidance and Updates from the 2013 OCC Guidance

FTA supports predicating the proposed interagency guidance on the 2013 OCC guidance, consistency across the banking regulators, and shifting to a more principles-based approach. The 2013 OCC guidance is a good starting point for the interagency guidance, and the collaborative approach exhibited by the banking regulators here will increase consistency and certainty. Additionally, the principles-based approach emphasized in the proposal can help solve a longstanding industry concern that regulators expect regulated entities to perform all suggested activities offered in the guidance instead of basing such action on a reasonable risk assessment.

The FTA, however, suggests that the agencies incorporate more specificity and illustrative examples of the range of risk management activities that might be reasonable considering the nature of the particular technology and prospective partnership, including the maturity of the potential partner. The following are specific recommendations relating to the proposed guidance.

Focus on Principles and Avoid One-Size-Fits-All Supervisory Approaches

FTA recognizes and strongly supports the proposed guidance's adoption of less prescriptive language than the 2013 OCC guidance. For example, the move away from language stating that banks "should" perform certain actions to more permissive language that identifies what a bank "typically" might consider is a step in the right direction and more consistent with a risk-based set of principles. The proposed guidance should go even further by explicitly noting in the preamble that the guidance does not contemplate a "one-size-fits-all" approach to compliance and that the suggestion of proposed activities are not all indicated for all relationships, especially when the scale, scope, and focus of a third-party relationship are relatively narrow.

The guidance should also state that risk assessments should consider the potential benefits and risks to develop a fully-formed view of how the relationship aligns with all business and policy objectives for the financial institution. For example, suppose a given relationship helps improve service to a bank's existing customers or provides new financial access opportunities for underserved populations. In that case, these benefits should be strongly considered alongside any risks.

Explicitly Support Partnerships that Advance Key Regulatory Objectives

FTA further supports the explicit recognition of bank-fintech partnerships in the proposed guidance and recommends the inclusion of specific language indicating regulatory support for such relationships, especially when they can help solve critical public policy objectives, including enhanced financial inclusion, better financial outcomes for customers, improved regulatory compliance, or ensuring that the United States remains competitive relative to other global markets. Such a statement of support can have powerful signaling benefits and advance both consumer- and business-centric partnerships, and include advanced technologies in financial services. It can also serve as a call to action to ensure the ongoing modernization and competitiveness of the U.S. financial system.

Include Practical Examples to Better Prepare Banks and Their Partners for Effective Oversight

Smaller financial institutions and newer technology entrants should be encouraged to find mutually beneficial financial arrangements that foster long-term partnerships and allow smaller institutions to provide technologies competitive with many of the larger financial institutions. This is especially important given the well-documented decline in the number of community banks in America and the ongoing competitive threat of consolidation, including among larger banks.[4]

To this end, the FTA supports the inclusion of examples that guide both financial institutions and third-party partners as to what to expect during the various stages of the risk-management life cycle. The agencies' recent joint publication entitled *Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks*[5] (the "Community Bank Due Diligence Guide") provides a good example of the level of specificity that sets expectations for both smaller financial institutions and potential fintech partners. This balance helps promote such partnerships by allowing both parties to reasonably prepare for and facilitate effective oversight by the bank.[6]

---

[4] Matt Hanauer, Brent Lytle, Chris Summers, and Stephanie Ziadeh, *Community Banks' Ongoing Role in the U.S. Economy*, Federal Reserve Bank of Kansas City (June 24, 2021), available at https://www.kansascityfed.org/documents/8159/erv106n2hanauerlytlesummersziadeh.pdf.

[5] FDIC, OCC, and Federal Reserve Board of Governors, *Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks* (Aug. 2021), https://www.fdic.gov/news/press-releases/2021/pr21075a.pdf ("A Guide for Community Banks").

[6] *See also* Bowman Speech to ICBA, "*Technology and the Regulatory Agenda for Community Banking*"

Support Standards, but Avoid Encouraging Potentially Anticompetitive Behavior

With respect to the discussion of contract negotiations in Life Cycle Stage 3 (*see* RFC Questions 13 and 14), the RFC notes that "[c]ollaboration can also result in increased negotiating power and lower costs to banking organizations not only during contract negotiations but also for ongoing monitoring."[7] A footnote in the RFC further notes that any such collaboration must be consistent with antitrust laws.[8]

While FTA supports the notion of healthy collaboration, it urges caution in explicitly endorsing the leverage of such collaboration to increase negotiating power vis-a-vis third-party partners. There is a potential risk of anticompetitive behavior when it comes to pricing under such a scenario. Put simply, banking entities should not be encouraged to collaborate on sensitive pricing aspects of contract negotiations.

As discussed in greater detail below, FTA instead urges that collaboration be more transparently channeled through a broader interagency framework that supports the development of public/private standards-setting organizations and related independent certification processes, as previously proposed by the FDIC and discussed in more detail in the following section.[9]

Support for Interagency Standards Setting Framework

FTA believes that the proposed interagency guidance is an incremental improvement in providing clarity and certainty to banks looking to partner with third-party firms, including fintechs. Notwithstanding this improvement, FTA suggests that ongoing ambiguity regarding regulator expectations and a lack of clear standards aimed at mitigating risks will remain as

---

(Last updated December 4, 2020), available at https://www.federalreserve.gov/newsevents/speech/bowman20201204a.htm.

[7] RFC, pg. 14.

[8] RFC, pg. 14, footnote 7 - Federal Trade Commission and U.S. Department of Justice's *"Antitrust Guidelines for Collaborations Among Competitors,"* available at https://www.ftc.gov/sites/default/files/documents/public_events/joint-venture-hearings-antitrust-guidelines-collaboration-among-competitors/ftcdojguidelines-2.pdf (April 2000).

[9] FDIC, *Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services* (July 24, 2020), available at https://www.federalregister.gov/documents/2020/07/24/2020-16058/request-for-information-on-standard-setting-and-voluntary-certification-for-models-and-third-party.

technology evolves. Smaller banks, in particular, will be harmed by outstanding ambiguity as they seek to remain competitive by partnering with fintechs.

To this end, FTA strongly encourages the banking regulators to jointly pursue the development of voluntary public-private standards-setting organizations (SSOs), along with related independent certification processes, as previously proposed by the FDIC.[10] This approach can best advance safety, certainty, and market-enhancing partnerships.

We have seen real success with this approach in areas including application programming interface (API) development by the Financial Data Exchange (FDX) and through security standards like Payment Card Industry Data Security Standards developed by card networks. The Cyber Risk Institute Cybersecurity Profile effort is another good example of an industry-led set of standards that can enhance clarity and drive safer and more secure financial activity.[11] This effort has received regulatory recognition,[12] increasing certainty regarding compliance and raising the overall industry standard of care. FTA also highlights the FCA's "Confirmed Industry Guidance" model as a potential template for the U.S., whereby well-crafted industry standards receive recognition by the regulator and serve as evidence of regulatory compliance.[13]

In all of these instances, inclusive industry-led groups of various sizes enabled the development of robust standards designed to comply with and be responsive to regulatory requirements while furthering market-enhancing innovation. FTA further recommends including more specific language in the proposed guidance that clarifies that the future development of such standards and independent certification processes would provide a strong indicator (or safe harbor) of compliance with the guidance for participating entities.

---

[10] FDIC, *Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services* (July 24, 2020), available at https://www.federalregister.gov/documents/2020/07/24/2020-16058/request-for-information-on-standard-setting-and-voluntary-certification-for-models-and-third-party.

[11] Cyber Risk Institute, *The Profile: benchmark for cyber risk assessment*, last visited Oct. 12, 2021, available at https://cyberriskinstitute.org/the-profile/.

[12] *See,* Cyber Risk Institute, *CFTC Issues Support for Standardizing Cybersecurity Preparedness Using Cyber Risk Institute's Profile* (July 16, 2020), available at https://cyberriskinstitute.org/cftc-issues-support-for-standardizing-cybersecurity-preparedness-using-cyber-risk-institutes-profile/ (noting that the "CFTC joins a growing list of U.S. and global regulators that have recognized the benefits of the Profile").

[13] UK Financial Conduct Authority (FCA), *Confirmed industry guidance*, last visited Oct. 12, 2021, available at https://www.fca.org.uk/about/rules-and-guidance/confirmed-industry-guidance.

To this end and consistent with the SSO concept, the RFC notes that "[c]ollaboration may facilitate banking organizations' due diligence of particular third-party relationships by sharing expertise and resources. Third-party assessment service companies have been formed to help banking organizations with third-party risk management, including due diligence."[14]

FTA suggests that this type of collaboration can most transparently and effectively occur through the structure previously indicated by the FDIC, including the development of public/private standard-setting organizations (SSOs) and related independent certification mechanisms. Such a framework would allow for the development or clear adoption of existing standards in key areas, including cybersecurity, application of AI/ML to underwriting or compliance functions, open banking, and perhaps even white-labeling scenarios. Independent third-party assessment services would then be able to certify compliance with these clearly defined and transparent standards.

Additionally, this approach would allow for multi-stakeholder collaboration and the inclusion of a broad cross-section of expertise that can better respond to evolving technologies. Regulators would have real-time visibility into how the industry was constructing risk management frameworks to address novel issues. Banks would also have greater clarity regarding industry standards for managing risk in a dynamic financial and technical ecosystem.

FTA further believes that it would be prudent to consider different levels of review by potential SSOs, as previously suggested by the American Bankers Association.[15] Given that different business models and relationships pose various risks assessing relationships with associated risks makes sense. An SSO and certification framework may provide more flexibility than rigid requirements influenced by risk adversity. The potential benefits of such a model in increasing certainty and fostering partnerships, especially for smaller banks and fintechs, are significant.

In implementing an SSO mechanism, however, it is important to guard against unintended risks and outcomes. First, such a framework must remain voluntary and avoid locking in incumbent providers and technologies. Second, as a threshold matter, a SSO should determine whether a particular technology or form of partnership is ripe for standards development. And, finally, it is

---

[14] RFC pp. 13-14.

[15] American Bankers Association, "*RE: Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services*; *RIN 3064–ZA18,"* (September 22, 2020), pg. 2 available at https://www.aba.com/-/media/documents/comment-letter/cl-thirdparty-20200922.pdf?rev=b29d5ba67fde4e24bbb143bcf2069604.

important to underscore that the benefits of an SSO and certification framework would only be realized if reliance on such standards and certification served as a safe harbor or prima facie evidence of compliance with regulatory requirements and guidance.

FAQs and Avoiding a One-Size-Fits-All Approach to Particular Relationships

The RFC asks whether the content of the 2020 OCC FAQ should be expressly incorporated or appended to the final interagency guidance. FTA believes that the proposed FAQs clarify that different substantive partnership areas will each have unique and nuanced considerations that render it inappropriate to apply the proposed guidance in a one-size-fits-all manner. It would be helpful if the proposed guidance framed the FAQs by making this point explicit.

FTA further suggests that the agencies consider adding more detailed substantive guidance through the FAQs to banks and partnering fintechs as certain types of partnerships or technologies become more widely adopted. In other words, the FAQs could serve as a living document that can incrementally provide further guidance as regulators and industry understanding of potential risks and best practices evolve. The FAQs could further be informed by (or effectively delegated to) a public/private SSO that develops standards for specific types of substantive partnership areas or new technologies.

Notwithstanding the above, FTA offers the following comments that may help inform broader policy and the existing FAQs related to common areas for partnership between banks and fintechs.

Open Finance & Data Aggregators

As the agencies consider guidance related to bank and data aggregator partnerships, it will be critical to consider the forthcoming Dodd-Frank Section 1033 rulemaking. Regulators should work to encourage the free flow of financial data and consider the implications of related guidance on broader access to -- and incorporation of -- alternative data that impacts a consumer's financial life, including payroll data, telecom, and utility data and government data, including Social Security.

By enabling the efficient flow of information, subject to privacy and security guardrails, and consumer-directed data sharing among financial and fintech entities, open finance can give

consumers total ownership of their financial data -- including transaction history, real-time account balances, and loan payment history -- so that they can access the services best suited towards their individual needs. Consumers can then rely on their ability to authorize third-party access to their financial information in order to unlock fintech products and services that help them conduct their financial lives.

Open finance has the potential to transform products and services across financial services. It is critical that guidance pertaining to bank and aggregator interactions is not viewed by examiners as a one-size-fits-all “check the box” relationship.

Indeed, aggregators have a very different relationship with financial institutions. A consumer directs them to share the consumer’s data on behalf of a financial provider selected by this consumer. As such, when a consumer directs an aggregator to send information with an app (including a bank app), the financial institution is not onboarding a new vendor but rather merely fulfilling a shared customer request. Therefore, the data recipients in this scenario have no business relationship with the bank. As a result, the guidance should be clarified to delineate that, while a financial institution may have third party or vendor compliance obligations for aggregators with which they have a business relationship, the financial institution has no third--or fourth--party obligations for the aggregator's customer with whom the consumer has chosen to share their data.

This delineation is consistent with FTA’s Dodd-Frank 1033 implementation recommendations that the Consumer Financial Protection Bureau supervises data aggregators, including their compliance program for onboarding and monitoring customers who receive consumer-permissioned data via the aggregator. This delineation is also consistent with the adoption of a public/private SSO and certification framework.

Additionally, the OCCs 2020 FAQs (FAQ 4) suggest a higher standard of diligence applies between a bank and an aggregator depending on “the level of formality of any arrangements” for sharing consumer-permissioned data. The FAQs refer to bilateral agreements entered into between data aggregators and banks as a business arrangement, potentially creating the perception of more due diligence requirements than a screen scraping-based relationship. This may have the unintended effect of creating a disincentive to enter into a bilateral agreement. The OCC should clarify that a bank’s diligence obligations resulting from a data access agreement are distinct--and lower--than diligence obligations for a vendor or other business arrangement

where the third party is providing a service to the bank and that those obligations should be tailored to include the benefits provided by data access agreements and APIs.

To this end, initiatives in the UK and EU, which have already created new regulatory frameworks for data-centric fintech innovation and given people and businesses power over their data, have also provided valuable lessons on the limitations of a prescriptive regulatory regime. Under these regulatory frameworks, banks have a legal obligation to only allow supervised data aggregators access to open banking APIs. Prior to the bank giving the data aggregator access, they must check with the relevant regulator to ensure the data aggregator is supervised. A supervised firm will appear on the regulator's register, for example, Plaid Financial Limited. This is the only check the banks need to complete before granting access, as banks understand the process to become supervised is thorough and includes a detailed review of the business. In the U.S., the Bureau could exercise its 1033 authority to similarly include aggregator supervision and reduce ecosystem uncertainty.

Fostering open finance is a critical area for continued market and regulatory development. In implementing Section 1033 and related regulatory guidance, regulators should support consumers' ability to benefit from innovation and competition in financial services by establishing a broad data right that is consistent across direct and authorized access and ensure that Section 1033 rulemaking does not generate an unlevel playing field for consumers, where consumers' access differs depending on where they bank. Regulators should establish strong guidelines for consumer transparency and control. Consumers should be aware of all parties involved in data sharing and control which data they are sharing, with whom, and for what duration.

Greater regulatory guidance on the next wave of open finance can mitigate risks, encourage bank partnerships with data aggregators, and encourage the ecosystem to continue developing better products and services to accommodate the diverse financial needs of consumers and small businesses.

Lending Partnerships

Lending is another critical area where bank and fintech partnerships can significantly expand needed access to capital. As a threshold matter, fintech lending partners are subject to existing regulations and guidance related to bank-fintech partnerships. However, specific legal questions

have long been a sticking point for these types of partnerships. They have created regulatory ambiguity for models seeking to expand capital access for underserved consumers and small businesses.[16]

Through the FAQs or other guidance, banking regulators have an opportunity to express what they may look for in a partnership to robustly support the validity of such partnerships in the face of legal challenges. Regulators can help drive broader consensus on permissible models and partnership standards. Indeed, ongoing legal challenges and lawsuits continue to cause confusion and instability for banks and fintech companies attempting to collaborate in a compliant manner. Regulatory ambiguity and discord ultimately hurt consumers and businesses by stifling innovative models and capital access. The failure to provide clarity and uphold contract validity introduces secondary market risk, reduces liquidity, including in times of economic stress, and restricts credit availability.

To create a stable environment for bank-fintech partnerships, regulators must craft a forward-leaning consensus on how banks and fintechs can structure and operate lending partnerships. A recent settlement in Colorado between the State Attorney General and bank-fintech partners, which created an effective, safe harbor for such partnerships, might serve as a baseline for harmonizing a consistent, national approach that includes consumer protections.[17] Ultimately, clear regulatory standards around such partnerships, which uphold the validity of these models, will benefit consumers and small businesses with greater choice and capital access.

Artificial Intelligence in Financial Services

Another critical area for fintech in financial services is with respect to the use of artificial intelligence and machine learning (AI/ML) in a range of activities, ranging from underwriting to financial crime compliance. FTA provided comment in response to the multi-agency request for information and commentary on “Financial Institutions’ Use of Artificial Intelligence, Including

[16] FTA, “*Shaping the Future of Finance*,” (March 10, 2021), Pg. 28, available at https://www.ftassociation.org/wp-content/uploads/2021/03/fta-launch-paper_shaping-the-future-of-finance.pdf.
[17] Ballard Spahr LLP, *“Colorado Settlement Provides a Possible Path Forward for Certain Bank-Fintech Online Lending Partnerships,”* (August 24, 2020), available at https://www.consumerfinancemonitor.com/2020/08/24/colorado-settlement-provides-a-possible-path-forward-for-certain-bank-fintech-online-lending-partnerships/.

Machine Learning," and refers to that response for views on how regulators can foster responsible adoption of such technologies.[18]

Concerning third-party vendor risk management in the context of AI/ML, we emphasize here the importance of the topic of "explainability." FTA believes that firms must have the ability to monitor, understand, and explain the operations of an AI/ML model. However, the type or depth of explainability required may vary based on the application of the AI/ML model, the related regulatory requirements, safety and soundness considerations, and the sensitivity of outcomes.[19]

More specifically, in the context of consumer lending, concerns around explainability may be at their height given the risk of discrimination or amplification of bias embedded within the data. Additionally, regulatory requirements impose an obligation on a lender to understand and report to a borrower the reason for a denial of credit or an "adverse action."

Fortunately, there are many methodologies and techniques that should meet any reasonable explainability standard. For example, AI/ML solutions quantify the relative weighting of underwriting model inputs and reduce reliance on those known to correlate with protected class characteristics while improving or holding accuracy constant.[20] These AI/ML models may also be designed to discover less discriminatory alternatives to an original model and fully explain the rationale underpinning a scoring decision through quantitative outputs.

In the context of financial crime detection, fraud prevention, and trade monitoring and surveillance, the degree and type of explainability required may differ.[21] Here, subsequent investigation of alerts (sometimes manually) can help train and calibrate a model, and a number of explainability techniques can give both firms and regulators sufficient comfort in the valid

---

[18] FTA, *Response to Request for Information and Comment on Financial Institutions' Use of Artificial Intelligence, Including Machine Learning* (July 1, 2021), available at https://www.ftassociation.org/wp-content/uploads/2021/07/FTA_Response-to-AI_ML-RFI-1.pdf.

[19] Lael Brainard, Governor, Bd. of Governors of the Fed. Reserve Sys., Address at the AI Academic Symposium: *"Supporting Responsible Use of AI and Equitable Outcomes in Financial Services"* (Jan. 12, 2021), available at https://www.federalreserve.gov/newsevents/speech/brainard20210112a.htm ("Not all contexts require the same level of understanding of how machine learning models work.").

[20] Ken Garcia, "*Automating the Search for the Fairest Model*," ZEST AI (Feb. 8, 2021), available at https://www.zest.ai/insights/automating-the-search-for-the-fairest-model.

[21] INST. OF INT'L FIN. (IIF), EXPLAINABILITY IN PREDICTIVE MODELING (2018), available at https://www.iif.com/portals/0/Files/private/32370132_machine_learning_explainability_nov_2018.pdf.

operation of the model.

FTA encourages the banking regulators to engage with the industry to develop guidance and provide enhanced certainty regarding explainability expectations for the application of AI/ML to particular use-cases.[22] For example, regulators could work with technical and industry experts to develop guidelines for evaluating whether Shapley, LIME, drop-one, or an alternative explainability approach is appropriate for a given use of AI/ML models.

Use of Regulatory Tools to Provide Further Clarity and Certainty

FTA is encouraged by this interagency proposed guidance, the further development of FAQs, and the recently published Community Bank Diligence Guide, as they all seek to harmonize regulatory expectations and provide market participants with greater clarity and certainty. FTA encourages further use of such regulatory tools, including guidance that can help especially smaller firms (both banks and fintechs) navigate partnerships. For example, regulators might consider publishing subsequent guides that address key substantive partnership areas, including those discussed above. Regulators might also consider developing examples of bank-fintech partnerships or sample agreements to help outline (and streamline) the partnership negotiation process.

It is key, however, that regulatory guidance not be interpreted or applied, including at the examiner level, as a one-size-fits-all requirement given the diversity of circumstances and the rapidly changing technology landscape. Instead, regulators must be consistent at all levels of oversight in maintaining a risk-based approach to assessing the appropriate levels of diligence and risk monitoring for a particular relationship. Nevertheless, FTA views additional guidance and related communications to help inform banks and fintechs of regulatory expectations.

Conclusion

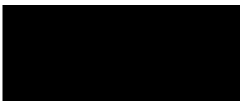
The FTA welcomes the opportunity to share feedback and recommendations on this interagency RFC. As the proposed guidance clearly indicates, the U.S. banking system, consumers, and businesses stand to benefit from further bank-fintech partnerships. FTA views the proposed

[22] See *id.*, *A Guide for Community Banks*.

guidance as an expression of the agencies' support and confidence in such partnerships, as well as an opportunity to clarify regulatory expectations regarding the mitigation of risk.

We look forward to further engaging in related regulatory efforts.

Sincerely,



Penny Lee
CEO
Financial Technology Association