Online Lenders Alliance

October 30, 2024

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

Ms. Ann E. Misback
Secretary of the Board,
Federal Reserve Board of Governors
2001 C St.. NW
Washington, DC 205

Mr. Ted Dowd
Acting Senior Deputy Comptroller and Chief Counsel
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street, SW
Suite 3E-218
Washington, DC 20219

Re: Request for Information on Bank-Fintech Arrangements Involving Banking Products and Services Distributed to Consumers and Businesses (Docket ID OCC-2024-0014/ RIN 3064-ZA43)

Dear Mr. Sheesley, Ms. Misback and Mr. Dowd:

The Online Lenders Alliance (OLA) welcomes the opportunity to respond to the Request for Information (RFI) on Bank-Fintech Arrangements Involving Banking Products, and Services Distributed to Consumers.

OLA represents the growing industry of innovative companies that develop and deploy pioneering financial technology, including proprietary underwriting methods, sophisticated data analytics and non-traditional delivery channels, to offer online consumer loans and related products and services. OLA's members include online lenders, vendors and service providers to lenders (including banks), consumer reporting agencies, payment processors and online marketing firms.

Fintech companies are at the vanguard of innovative online tools that reach new customers, prevent and mitigate fraud, manage credit risk and service loans. Online, technology driven lending provide benefits to consumers, particularly those in underserved communities, with fast, safe, and convenient options that simply are not available through traditional lending markets.

Much of the innovation undertaken by OLA members has given consumers greater control over their financial future. This is especially the case when it comes to access to credit. Whether purchasing a home, starting a business, financing an education, or even paying for an unexpected emergency, the ability to find and secure credit is often a determining factor in a consumer's financial well-being.

OLA advocates that regulators adopt a flexible policy framework that is data-driven and fact-based, and which encourages collaboration and capacity building. Such an approach will foster an environment that gives consumers the ability to find the products and services that best fit their needs.

OLA would like to provide some additional information for the record regarding the objectives and benefits of these relationships to consumers.

Bank-Fintech Relationships

Consumers' use of the Internet and mobile technology for financial services and products has grown and accelerated over the last decade, requiring financial institutions to leverage evolving technologies. Banks routinely rely on relationships with third parties to deliver financial services more broadly, more efficiently, and with less risk to consumers and the banks themselves. Banks that lack the technical know-how to market, service, and collect loans electronically can bridge these challenges by working with a financial technology (fintech) company. Many fintech firms have spent years developing innovative technologies and analytics for these specific tasks, enabling banks to deploy their own capital more efficiently, thereby providing broader access to credit for consumers and small businesses.

The ability to leverage fintech relationships to reach new customers and obtain greater portfolio risk diversification is especially beneficial to smaller, community banks. Nonbank technology providers offer expertise in an array of services that many smaller banks may not possess, including, loan marketing, innovative underwriting, credit risk assessment techniques, online banking, and loan servicing. These relationships enable community banks to make greater use of the Internet and mobile technology to originate loans, creating opportunities for borrowers outside of the bank's traditional footprint. Borrowers of lesser credit quality, including thin-file or no-file consumers, can benefit from the banks' greater use of non-traditional credit information successfully utilized by fintech firms.

According to a Morning Consult Survey, a large plurality of consumers who had borrowed from a fintech company saw their credit scores increase 12 months after taking out their loan.

In the same survey, lower- and middle-income groups saw the largest net improvements, while Black and Hispanic consumers reported the highest gains in credit scores.

In a comment letter to the Federal Deposit Insurance Corporation the Center for Financial Services Innovation, characterized the improvement to credit scores through bank-fintech collaborations as a "win-win-win" for all involved, including consumers. Banks win because they can originate credit to a broader and deeper segment of the consumer market than they otherwise could. Third-party fintech service providers win by helping banks provide products and services to consumers that they would not otherwise reach. Consumers win because they "get access to high-quality credit that they otherwise would not." In addition, these relationships can allow "smaller and more rural banks to broaden the set of products and services they can offer to their communities."[1]

The FDIC echoed these settlements in proposed examination guidance for third-party lending programs, stating:

> *"Third-party lending arrangements may provide institutions with the ability to supplement, enhance, or expedite lending services for their customers. Engaging in third-party lending arrangements may also enable institutions to lower costs of delivering credit products and to achieve strategic or profitability goals"*[2]

By working with fintech companies through third-party vendor arrangements, banks can deliver safer, more transparent, lower-cost and more convenient financial products and services to consumers. For this to continue, federal regulators should ensure that banks, particularly community banks, can continue to work with third-party fintech providers to offer innovative products and services.

Regulations and Oversight of Bank-Fintech Third-Party Vendor Arrangements

Fintech providers are subject to an array of federal statutes and regulations, along with various state and local laws. In addition, the growing use of third-party-fintech service providers has led to the establishment of a robust regime of third-party supervision by the federal banking agencies.

This regulatory regime ensures that activities that occur outside of the bank are examined and supervised to the same extent as if they were being conducted by the bank itself. OLA's members support this regulatory foundation because it protects both consumers and the financial system. Bank-sponsored lending programs with fintech firms are no exception, and both the Office of the Comptroller of the Currency (OCC) and the FDIC have published detailed guidance

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[1] CFSI Comment Letter on Proposed Guidance for Third-Party Lending (Oct. 27, 2016), https://cfsinnovation.org/research/cfsi-comment-letter-on-proposed-guidance-for-third-party-lending/.
[2] FDIC, Proposed Guidance: Examination Guidance for Third-Party Lending (July 29, 2016), https://www.fdic.gov/news/news/financial/2016/fil16050a.pdf. To date, this proposed guidance has not been finalized.

as to how these relationships should be managed and supervised. The guidance clearly states that any loans issued by a bank that benefits from the technology of a fintech partner are subject to the same high level of scrutiny and regulation as any other loan issued by the bank. This regime ensures borrowers are protected, supervision is appropriate, and consumers are able to work with a federally supervised lender, giving them greater confidence and security.

Consumer protection will be more important than ever as technology evolves, and consumer usage of online financial transactions grows. OLA is leading the way to improving consumer protections, with a set of consumer protection standards for all of our members to ultimately ensure that borrowers are fully informed, fairly treated, and use lending products responsibly. OLA members voluntarily agree to hold themselves to a set of Best Practices, rigorous standards above and beyond the current legal and regulatory requirements. OLA members, the industry, and any partners with whom OLA members work use these standards to stay current on the emerging legal and regulatory landscape. OLA Best Practices cover all facets of the industry, including advertising and marketing, privacy, payments, and mobile devices. Most importantly, OLA Best Practices are designed to help consumers make educated financial decisions by ensuring that the industry fully discloses all loan terms in a transparent, easy-to-understand manner.[3]

Companies with the OLA Seal on their websites are demonstrating to customers and regulators alike that they abide by OLA's Best Practices, a sign of their commitment to the highest standards of conduct, including having procedures for handling complaints. The Seal's growing visibility gives consumers the peace of mind that they are being treated fairly and are fully informed about loan options and features.

To further aid consumers, OLA has developed the OLA Consumer Hotline, enabling callers to speak to a live operator to obtain help with their loan, resolve a dispute or to report fraud. Hotline operators are available to help online loan customers having difficulty reaching their loan company or dealing with repayment issues. The operators can be effective intermediaries in helping customers connect with the right person at the loan company so that their concerns can be addressed. Many times, these issues are resolved within 72 hours. The information collected during these calls is used to investigate their issues, including fraudulent efforts to collect a debt. When appropriate, the OLA Consumer Hotline brings the matter to regulators' attention.

OLA and its members' efforts on behalf of borrowers is achieving results: the Consumer Financial Protection Bureau's (CFPB) complaint database reports a very low number of consumer complaints from online lending. In fact, over the past three years, such loans have made up less than one percent of the complaint volume.

[3] Online Lenders Alliance Best Practices https://onlinelendersalliance.org/best-practices/

Impact of Bank-Third Party Vendor Agreements on the Growth of AI/ML

The growth and widespread use of Artificial Intelligence (AI) and Machine Learning (ML) in the credit market would not have been possible without the formation of new working relationships between banks and fintech companies. This has led to innovative offerings that provide more choices to consumers with a wide range of credit profiles and histories.

For financial institutions that aim to serve consumers who lack access to traditional financial services, these new tools offer an unprecedented opportunity. AI and ML provides the ability to capture and analyze vast amounts of information in real time, use in-depth analytics to improve credit models, identify new customers, evaluate the products they need at the right time, and create seamless customer experiences.

Much of this growth has occurred due to the OCC's efforts to encourage greater bank use of third-party service providers to foster innovation in the banking system and promote inclusivity for underserved consumers and communities. OLA applauds the OCC's work on several policy initiatives that encourage banks to utilize the resources that non-banks can offer.

The dynamic growth in AI/ML holds the potential to improve efficiencies in banking procedures, allowing financial institutions to better understand customer needs, transform credit options and help the underbanked gain more access to traditional financial services. Historically, banks have routinely relied on relationships with third parties to deliver financial services more broadly and efficiently, and with less risk to consumers than the banks themselves. Today, working with a technology company that employs appropriate AI/ML services can bridge many of the challenges banks face in supporting consumers.

Many fintech firms have spent years developing innovative and proprietary technologies and analytics. Using fintech expertise enhances banks' ability to serve more nonprime consumers. These connections allow the bank to effectively deploy its capital to make new loans, thereby providing broader access to credit for consumers and small businesses.

Cyber Security and Fraud

Shopping for financial products online has rapidly accelerated over the past decade as virtual experiences have replaced traditional face-to-face interactions. Although the increase in digital transactions gives consumers more options and greater flexibility, it has also created an element of uncertainty for the bank. Gone are the days when prospective borrowers had to go to their bank for a loan. Such interactions served many purposes, including allowing the institution to determine a certain level of proof that the individual was who they said they were.

Recently, prudential regulators have raised concerns about AML and KYC due diligence and compliance. Bank-fintech arrangements can *help* institutions determine the validity of potential borrowers through modeling that compares ID elements used across applications; examines transaction details, such as the type of device used and time of day; and checks Social Security numbers against birth dates, addresses, and death records. The enhanced capabilities brought through relationships with technology companies should be encouraged to help meet compliance goals in this time when more transactions are conducted remotely. Compliance objectives and expectations should be clearly defined for banks and for the service providers working with them.

Depository institutions often cite security concerns and potential liability exposure as reasons they are hesitant to work with fintech providers. This reluctance hampers banks' ability to take full advantage of the benefits that bank-fintech arrangements can offer.

OLA and its members take data security very seriously, which is why OLA has established Best Practices that include consumer data protections[4]. In fact, the very technology that has allowed fintech firms to develop new products has been central in the advancement of strong security protocols. Additionally, many fintech firms must also comply with provisions of the Gramm-Leach-Bliley Act to the extent that they obtain personally identifiable financial information from banks. Lenders, fintech companies, and other providers similarly need to comply with industry standards such as the PCI DSS (Payment Card Industry Data Security Standard) if they accept card transactions or support a card-based product. These requirements are on top of state data breach notifications and state laws (such as the California Consumer Privacy Act, CCPA), that put in place consumer-focused data privacy protections. Further, these companies may be subject to supervision by financial regulators, such as Federal Financial Institutions Examination Council (FFIEC) members.

Fintech tools for cybersecurity have emerged to help information security teams reduce breach risk and improve their security posture efficiently and effectively. Cybersecurity/fraud prevention tactics used by the fintech industry are as varied as the companies themselves, allowing for the quick analysis of millions of events and identifying different types of threats, from malware exploiting zero-day vulnerabilities to risky behavior that might lead to a phishing attack or the download of malicious code. These technologies learn over time, drawing from past actions to identify new types of attacks. Behavior histories help build profiles on users, assets, and networks, allowing the detection and response to deviations from established norms.

There simply is no "one size fits all" solution that works in all instances. Rather fintech companies and their partners tailor tactics and strategies, to develop protocols based on specific and unique security challenges. While necessary, this presents additional barriers to product development and access to new customers, particularly for niche products or companies looking to enter smaller markets.

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[4] OLA Best Practices https://onlinelendersalliance.org/best-practices/

Fair Lending

As financial institutions increasingly opt to work with fintech companies, lenders must continue to guard against the same biases that have plagued credit decision-making in the past. Fintech companies can help financial institutions foster a more inclusive economy. The key lies in building systems predicated less on historic trends and more focused on providing greater equity through the use of relevant data. That requires training and testing regimens that are cognizant of past biases and prioritize fair lending principles.

Responsible fintech companies routinely test their models for compliance with fair lending laws, including the use of the CFPB's report on fair lending analysis to test potential discriminatory impacts. In addition, companies regularly use model risk management guidance from federal banking regulators to review their models for unintended bias, and many companies employ third parties, including consulting and law firms specializing in fair lending, to test their systems for compliance with fair lending laws. These steps help mitigate any potential for unintentional biases creeping into the modeling.

To successfully guard against bias, the use of Fair Credit Reporting Act (FCRA)-compliant inputs ensures that systems make sound credit decisions. This also ensures that, even with more advanced modeling techniques, the variables used will allow for the explanation of their directionality and weight. Additionally, fintech companies can utilize credit decision models predicated on more explainable techniques, such as binned trees and linear or logistic regression, and utilize other model types in non-credit related decisions like fraud detection.

One key is successful model management that utilizes oversight practices and risk management principles that apply variable choice, model selection, and stability monitoring to ensure that fair lending laws are observed. One particular challenge for online lending is the fact that a financial institution does not know the gender, race, or other demographic factors of a prospective borrower, making bias testing difficult. Still, lenders that employ strong fair lending compliance oversight that utilizes FCRA-compliant data and employs explainable modeling methodologies offer important safeguards to ensure fair and equitable lending.

Challenges and Barriers to Bank-Fintech Relationships

Despite their substantial promise, bank-fintech arrangements face potential obstacles. Regulators have at times been overly cautious about innovation, and have communicated the rules of engagement inconsistently. This has led to uncertainty that discourages institutions from engaging in new and creative uses of these techniques, ultimately limiting the availability of credit to consumers.

These challenges are exacerbated by an antiquated regulatory patchwork structure that is ill-suited to today's rapidly changing digital landscape. The current rules are better suited to an age when information was stored in file cabinets and customers had to travel to physical location to conduct business. Such standards are obsolete in today's environment, where massive amounts of information and transactions are moved seamlessly and instantaneously around the globe.

The regulatory framework has a sizable influence over innovations that will be critical to the success of fintech, such as AI/ML, digital ID and cloud-based systems. Policymakers need to ensure the rules are technology-neutral to prevent impeding innovations that otherwise could meet the financial needs of consumers.

To maximize the potential of bank-fintech arrangements, regulators should keep in mind that many of these technological developments are exponentially more powerful and effective when they have access to larger pools of information. The harmonization of definitions, requirements, and expectations for data protection through a national standard would provide a level of legal certainty that would facilitate the continued growth of these new technologies while protecting consumers from unwanted access and use of their data.

Standards should recognize today's technology needs by offering the flexibility and space to innovate. This will provide companies of all sizes the ability to take a risk-based approach to innovation, tailoring what best works for their own business models, practices, and customer needs. This is particularly critical for startup companies, enabling them to devote limited resources to expanding their products and services instead of focusing on compliance with prescriptive rules unfit for their risk profiles. This also makes it easier for firms to operate securely across various jurisdictions and enter new markets.

As with any new product or service, important questions remain around appropriate uses and oversight for bank-fintech arrangements. It will be important to monitor the evolution of these relationships to track adherence to safety and soundness protocols, particularly in the areas of cybersecurity and data privacy. It is also incumbent upon the industry to provide proper training and monitor the development of new products and services. However, these concerns should not be blocking the smart use of bank-fintech arrangements. Seemingly, this would be best achieved with clearly defined expectations and standards without overly prescriptive measures that stifle innovation and technology.

Prudential regulators should do more to monitor and understand the advancements (and potential advancements) being brought to banks through collaboration with technology companies. The FDIC's decision to diminish the role of the FDITech Office was a move *away* from the direction regulators should be going. Bank-fintech arrangements have revolutionized the financial services sector, altering business models, risk mitigation strategies, and systems performance. As this technology continues to evolve, consumers increasingly expect more accessible products and services in real-time, which will change the way both individuals and companies engage in financial activities. That is the ultimate promise of fintech: delivering safer, more transparent, lower cost, and more convenient financial products and services to consumers.
Through these efforts, fintech companies working as third-party vendors for banks can play an important role in building a more inclusive financial system for consumers.

OLA encourages federal regulators to continue considering a policy framework that enables innovators to interact with each other through the use of bank-fintech third-party vendor relationships

OLA appreciates this opportunity to offer input on these key issues. If you have questions or need additional information, please feel free to contact me at mday@OLADC.org.

Sincerely,

Michael Day
Policy Director
Online Lenders Alliance