FINANCIAL TECHNOLOGY ASSOCIATION

August 5, 2022

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
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Attention: Comments RIN 3064–AF81
Federal Deposit Insurance Corporation
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Response to Request for Comment on Proposed Amendments to Regulations Implementing the Community Reinvestment Act of 1977 (CRA)
(Docket ID OCC–2022–0002; Docket No. R–1769 and RIN 7100–AG29; RIN 3064–AF81)

The Financial Technology Association (FTA) appreciates this opportunity to respond to this request for comment issued by the Board of Governors of the Federal Reserve System (Board), the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively the "banking regulators") on proposed amendments to implementing regulations of the Community Reinvestment Act (CRA). CRA requirements apply to chartered banking entities as part of a societal bargain that ensures that such entities invest in and give back to their communities in return for receiving important rights and privileges conferred by a banking charter. The CRA should therefore aim to incentivize banking activities that can most effectively and efficiently reach all of the members of a community, especially those who have been historically disadvantaged in accessing financial services.

The FTA accordingly applauds this comprehensive effort to modernize the CRA by taking into account technology-driven changes in the way financial institutions reach consumers, including in low-and-moderate income (LMI) neighborhoods. The FTA and its members share the banking regulators' goal of expanding financial access, inclusion, and opportunity through the CRA framework and offer feedback to advance this objective.

Financial Technology: Advancing Financial Access, Inclusion and Opportunity

The FTA champions the transformative role of financial technology for American consumers, businesses, and the economy. Representing industry leaders,[1] FTA elevates fintechs' power to increase competition and drive financial innovation through responsible products and services. As our members' voice in Washington, FTA advocates for the modernization of regulation to support greater access to financial services.

A core pillar of the FTA's effort to advance consumer-centric financial services development in the U.S. is ensuring modern regulatory frameworks that recognize and foster the benefits of financial technology-driven innovation and accommodate new models within the regulatory perimeter. Fintech innovators are leveraging internet and mobile technologies to offer consumers access to credit and new payment options that can significantly reduce costs, speed access to funds, improve transparency and convenience, and enhance financial inclusion.

Financial inclusion remains a pervasive issue for many Americans. Nearly 7.1 million households in America remain unbanked, with the majority of such households being Black and Hispanic - roughly 13.8% of Black households and 12.2% of Hispanic households were considered unbanked in 2020.[2] In addition, approximately 20% of U.S. households are considered underbanked, meaning that they use alternative financial products outside of the banking system.[3]

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[1] FIN. TECH. ASS'N, www.ftassociation.org (last visited July, 11, 2022). The FTA's members include Afterpay, Betterment, Block, BlueVine, Brex, Carta, Figure, Klarna, Marqeta, MoneyLion, MX, Nium, Plaid, Ribbit Capital, Sezzle, Stripe, Truework, Wise, Zest AI, Zilch, and Zip.
[2] Federal Deposit Insurance Corporation, *How America Banks: Household Use of Banking and Financial Services 2019*, Oct. 2020, https://www.fdic.gov/analysis/household-survey/2019execsum.pdf.
[3] Federal Deposit Insurance Corporation, 2017 FDIC National Survey of Unbanked and Underbanked Households, updated Dec. 2021, https://www.fdic.gov/analysis/household-survey/2017/index.html.

For the unbanked and underbanked, fintech innovators provide crucial services to ensure they can pay their bills on time, manage their finances and save for the future. Fintech can reach and ease other obstacles for unbanked and underbanked households, which often survive paycheck to paycheck.[4]

In the context of credit underwriting, advanced AI/ML models offer more transparent and inclusive access to historically disadvantaged populations. For example, FTA member, Zest AI, helped one lender reduce the approval gap between Black and white borrowers by 50 percent.[5] And in the context of main street small business lending, fintechs have been able to reach and provide credit to many merchants that otherwise would be unable to access capital needed to support or grow their businesses.[6]

Beyond bank-fintech lending programs, many fintech products and services, often offered in partnership with banks, require no or lower fees, offer smaller minimum loan amounts and free overdraft protection. Coupled with other user-forward features, like educational content that is directly integrated into an app, or saving and budgeting tools that automatically set aside income or alert the user before any fee is charged, fintech products can help lower-income consumers overcome many of the hurdles that keep them out of traditional financial products.

Also important to the goals of the CRA, fintechs support access and dissemination of services by providing unbanked or underbanked individuals with an on-ramp into the financial system. For example, digital finance presents a solution by allowing underserved populations to participate in the financial system using customer-friendly smart or mobile phones.

Fintech companies can reach historically underserved consumers in LMI neighborhoods either directly under state licensing laws, as chartered banking entities, or as partners to chartered banking entities. Pursuant to the CRA, the focus of our recommendations is the latter two methods of reaching underserved consumers, namely when fintechs are banks or partner with banks. We also offer a recommendation regarding the importance of placing high-value on banking activities, often involving fintech partners, aimed at providing consumers with

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[4] Charles Calomiris, Office of the Comptroller of Currency, *Chartering the Fintech Future*, Dec. 2020.
[5] Teddy Flo and Jay Budzik, *Four Ways We Can Inject Real Racial Equity In Mortgage Lending*, Zest AI Blog (Oct. 28, 2021), available at https://www.zest.ai/insights/four-ways-we-can-inject-real-racial-equity-in-mortgage-lending
[6] *See generally* Todd H. Baker, Kathryn Judge, and Aaron Klein, *Credit, crises, and infrastructure: The differing fates of large and small businesses*, Brookings Center on Regulation and Markets Working Paper #1 (Apr. 2022), available at https://www.brookings.edu/wp-content/uploads/2022/04/Credit-crises-and-infrastructure-1.pdf.

responsible and lower-cost alternatives to high-cost revolving credit, payday, and overdraft products.

A Modernized CRA Regime Should Explicitly Recognize and Address Small, Digital, Fintech Banks and Incentivize Bank Partnerships with Fintechs that Expand Access for LMI Consumers.

As noted above, financial technology is one of the key drivers for expanding consumer access to financial services. The combination of mobile and internet access with advanced, automated underwriting processes can solve for gaps created by legacy models and approaches. A modernized CRA regime should therefore focus on fostering banking models that incorporate such technologies, whether directly or by way of partnership, in order to promote fair and inclusive lending and financial services.

As a threshold matter, the FTA commends the banking regulators for explicitly addressing the increasing role of online and mobile banking models.[7] We recognize the proposed explicit reference to and consideration of digital-only banks, the reach and effect of digital distribution channels, and the proposed flexibility afforded to banking entities that pursue new banking models. Nevertheless, we believe that the proposed CRA amendments could be even more explicit and direct in addressing CRA application to small (and intermediate-sized), fintech banks and to incentivizing bank-fintech partnerships.

Addressing Small and Intermediate-Sized, Fintech Banks (*Question 48; Question 103)*

The proposed CRA amendments maintain compliance distinctions between small, intermediate, and large banks, and address the role of digital banking and distribution, especially in the context of large institutions. Many of these distinctions are reasonable and focused on providing compliance flexibility tailored to the attributes of the particular bank. We note, however, that there is little consideration of a favorable and likely increasingly prevalent scenario of a small (or intermediate-sized), chartered fintech banking entity. To the contrary, the assumption underlying the proposed amendments is that large banks are more likely to be digital and that small or intermediate banks are more likely to focus activity within geographies surrounding a physical bank or branches.

[7] *See, e.g.*, Community Reinvestment Act, 87 Fed. Reg. 33964 (June 3, 2022).

A specific example of this approach and these assumptions are the proposed amendments to consideration of community development activities. FTA commends the proposal for suggesting CRA consideration of all community development activities, including those outside of a facility-based assessment area, but notes that as proposed it would not be applicable to small banks.[8] The proposal recognizes that non-geography-based flexibility would "be especially beneficial for the community development activities that are conducted by banks that operate primarily or entirely without branches," but currently excludes small banks.[9]

While the CRA initially (and properly) framed distinct compliance requirements based on the size of the bank, these distinctions should not be maintained when it comes to application of the framework to digital banking models. To this end, and in response to Question 48, FTA believes that all banks, including "all intermediate banks, small banks, and banks that elect to be evaluated under a strategic plan," should "have the option to have community development activities outside of facility-based assessment areas considered."

The above example highlights the importance of explicitly considering the rise of small and intermediate-sized fintech banks through the CRA framework. It should not be assumed that only large banks will maintain robust mobile and online distribution channels given the rise of fintech competition. We therefore recommend that the CRA equitably apply the same principles regarding large bank digital activities for the benefit of small and intermediate-sized bank entities.

To this end, Question 103 asks whether all banks should mandatorily be evaluated for their digital and other delivery systems. While new requirements should not be imposed on small and intermediate-sized banks, FTA suggests that it will become increasingly archaic to believe that a bank can function in the 21st century without digital and mobile distribution. For this reason, the banking regulators might use CRA modernization as an opportunity to encourage small and intermediate-sized banks to incorporate digital distribution channels and capabilities – including through partnerships with fintech (see next section) – in order to better reach LMI consumers and small businesses.

[8] 87 Fed. Reg. 33922 (June 3, 2022).
[9] *Id.*

Promoting Bank-Fintech Partnerships

As noted above, modernizing the CRA provides an opportunity to incentivize and advance technology-adoption, including through bank-fintech partnerships that can reach and serve key underserved communities in LMI neighborhoods. To this end, FTA strongly encourages the banking regulators to explicitly note that integrated bank partnerships with fintechs fit within the framework, including with respect to the proposed development and maintenance of a list of activities confirmed to qualify as community development activities.[10] This explicit recognition, including for small and intermediate-sized banks, can incentivize fintechs to invest in community development capabilities as a competitive advantage when seeking bank partners and foster adoption of financial technologies that can reach broader populations.

The banking regulators can satisfy these objectives by pursuing a number of amendments to the CRA:

- First, the banking regulators can explicitly note that the bank activity of issuing and subsequently selling properly originated loans to a fintech partner as part of a lending program are recognized and considered under the CRA – this would incentivize lending programs aimed at consumers and small businesses who frequently lack access to capital and reinforce the "valid when made" doctrine. Additionally, the banking regulators could specify that bank purchases of fintech originated loans are fully considered under the retail lending test and deemed equivalent to a loan origination *(Question 64)*[11];

- Second, and related to the prior section's recommendation, the banking regulators can foster small and intermediate-sized bank-fintech partnerships by explicitly contemplating such relationships in the various CRA tests – this would encourage small and intermediate-sized banks to consider fintech partnerships capable of expanding their reach and helping them compete against larger banks;

- Third, the CRA proposal frequently notes the benefits of third-party bank partnerships with MDIs and CDFIs; while this is sound policy, the CRA should also include fintech partnerships when making such references to third-parties, as many mission-oriented fintechs would offer meaningful opportunities to reach LMI consumers at scale; and

[10] 87 Fed. Reg. 33911.
[11] 87 Fed. Reg. 33930.

- Finally, banking regulators should explicitly include fintech partnership activities focused on expanding financial access, inclusion, and opportunity amongst the listed activities that will be considered as a community development activity – this would incentivize fintechs to focus on solving community development challenges, foster related bank partnerships and help bring the best technology to underserved populations.

Incentivizing Small-Dollar Credit Programs that Solve for High-Cost Payday Products and Overdraft Fees. *(Question 69)*

The FTA is strongly supportive of a modernized CRA framework placing high-value on banking activities that offer consumers better alternatives to high-cost revolving credit, payday loans, and overdraft fees. The short-term, small-dollar credit space remains one of the bigger challenges for LMI consumers, who are often forced to turn to high-cost, predatory products in order to meet short-term and emergency funding needs. To this end, FTA supports explicit recognition of banking activities, including partnerships with fintechs, that offer consumers responsible alternatives.

One way to promote this type of banking activity is to emphasize total loans as compared to total loan values, as generally proposed by the banking regulators.[12] A system focused on total sums of issued credit will disincentive small-dollar, shorter-duration credit products and, therefore, undermine alternatives to high-cost, predatory products. With respect to whether non-mortgage and non-auto consumer lending products should be considered under the retail lending test or the retail services and products test, our primary concern is that moving a qualitative analysis outside of the retail lending test may be perceived as de-emphasizing the importance of this activity. To that end, FTA recommends emphasizing the importance of lending programs aimed at offering consumers alternatives to payday and overdraft products, including by explicitly focusing on the total number of loans instead of the total loan values.[13]

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[12] 87 Fed. Reg. 33931, 33934.

[13] 87 Fed. Reg. 33928 (noting that "some community group stakeholders have suggested that the retail lending threshold should be based on number of loans, rather than the dollar amount of loans, to emphasize the importance of smaller value loans to low- and moderate-income borrowers.").

The FTA appreciates this opportunity to provide comment on the banking regulators' proposed amendments to the CRA. We look forward to working with the banking regulators as digital and financial technologies play an increasing role in reaching all consumers, including those in LMI neighborhoods.

Sincerely,

[redacted]

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Financial Technology Association