



January 6, 2025

The Honorable Michelle Bowman
Vice Chair For Supervision
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

The Honorable Russell Vought
Acting Director
Consumer Financial Protection Bureau
1700 G Street NW
Washington, DC 20552

The Honorable Jonathan Gould
Comptroller of the Currency
Office of the Comptroller of the Currency
400 7th Street SW
Washington, DC 20219

The Honorable Andrew N. Ferguson
Chairman
Federal Trade Commission
600 Pennsylvania Avenue, NW
Washington DC 20580

The Honorable Travis Hill
Chairman
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Ensuring Clear Distinctions Between Banks and Non-Bank Fintech Companies

Dear Ms. Bowman, Mr. Gould, Mr. Hill, Mr. Vought, and Mr. Ferguson:

On behalf of the American Fintech Council (AFC) and its members,¹ I am writing to share our perspective and underscore a simple but foundational principle: banks are banks, and non-banks are non-banks. When non-bank companies market themselves as banks, or wantonly blur the line between insured depository institutions and other financial services providers, they undermine consumer trust, disadvantage responsible market participants, and complicate supervisory efforts for the very partnerships that are helping modernize the financial system.

As the premier trade association representing both innovative banks and fintech companies, we are uniquely positioned to discuss the issue of ensuring a clear distinction between banks and non-banks. AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by fostering responsible innovation in financial services and encouraging sound public policy. AFC members are at the forefront of fostering competition in consumer finance and pioneering ways to better serve underserved consumer segments and

¹ AFC's membership spans technology platforms, non-bank lenders, banks, payments providers, loan servicers, credit bureaus, and personal financial management companies.

geographies. Our members are also improving access to financial services and increasing overall competition in the financial services industry by supporting the responsible growth of lending and lowering the cost of financial transactions, allowing them to help meet demand for high-quality, affordable financial products.

Fintech companies arose out of the combination of a dearth of consumer trust in traditional financial institutions in the wake of the 2008 financial crisis and increasing demand for modern, digital-first banking services.² Through partnerships with innovative financial institutions, fintech companies have been able to increase access to historically underserved communities, expand offerings, and create a robust and competitive market that has the ability to mitigate certain types of contagion risks in the financial services industry. As noted in multiple reports by the U.S. Government Accountability Office (GAO), responsible fintech providers provide the opportunity for significant consumer and market benefits.³

As a standards-based association, AFC has consistently advocated for these responsible bank-fintech partnerships, including the need for clear delineation of roles, robust risk management, and accurate descriptions of deposit insurance and regulated status to consumers.⁴ These partnerships are not all alike and the facts and circumstances of a given partnership determine its risk profile and supervisory touch. However, one core principle is constant: the chartered, insured depository institution is the bank, and it retains ultimate responsibility for compliance with applicable banking laws and safety and soundness obligations. Non-bank entities, such as a fintech company, may provide technology, distribution, servicing, or other functions, and that are subject to their own regulatory regimes, including CFPB and state oversight.

At a time when the long-standing separation between banking and commerce is increasingly blurring, clear delineation of roles between chartered, insured depository institutions and non-bank fintech companies is essential to preserving consumer trust, the integrity of deposit insurance, and the effectiveness of prudential supervision. It is incumbent upon both financial institutions and their fintech partners to provide clear and conspicuous disclosures to consumers in order to provide them with a clear understanding of the terms of products and services being offered. When roles are clearly defined and communicated, consumers can better make informed choices about the risks they are taking, regulators can more easily identify and remediate issues, and banks can structure their partnerships in a way that aligns with their appropriate risk appetite and regulatory obligations.

In contrast, ambiguity around who is the bank and who is a third party or service provider obscures accountability, complicates supervisory oversight, and increases the risk of consumer harm. Allowing non-bank fintech companies to market themselves using “bank-like” branding and FDIC-related terminology without a charter, undermines this clarity and creates unfair

² U.S. Department of the Treasury, A Financial System That Creates Economic Opportunities: Nonbank Financials, Fintech, and Innovation, (July 2018), available at https://home.treasury.gov/system/files/136/A-Financial-System-that-Creates-Economic-Opportunities---Nonbank-Financials-Fintech-and-Innovation_0.pdf.

³ U.S. Government Accountability Office, Financial Technology: Additional Steps by Regulators Could Better Protect Consumers and Aid Regulatory Oversight, GAO-18-254, (Mar. 22, 2018), available at <https://www.gao.gov/products/gao-18-254>; and U.S. Government Accountability Office, Financial Technology: Products Have Benefits and Risks to Underserved Consumers, and Regulatory Clarity Is Needed, GAO-23-105536, (Mar. 08, 2023), available at <https://www.gao.gov/products/gao-23-105536>.

⁴ American Fintech Council, "Federal: Advocacy Letter on Interagency Bank-Fintech Arrangements RFI," October 30, 2024, available at <https://www.fintechcouncil.org/advocacy/federal-advocacy-letter-on-interagency-bank-fintech-arrangements-rfi>.

competitive dynamics. Third parties that suggest, explicitly or implicitly, that they are banks trade on the credibility of the banking system without bearing its obligations, including capital, liquidity, governance, and examination requirements. This not only confuses consumers, but also disadvantages responsible banks and fintech companies who seek to act in accordance with existing laws and regulations in this area, and therefore invest heavily in robust compliance frameworks, clear and accurate disclosures, and transparent models. Ensuring that banks remain clearly identified as banks, and non-banks accurately describe their roles as third parties or service providers, is critical therefore to maintaining a level playing field and supporting responsible innovation in financial services.

We appreciate your consideration of these views and would welcome the opportunity to discuss them further.

Sincerely,

A handwritten signature in black ink, appearing to read "Ian P. Moloney", with a stylized flourish at the end.

Ian P. Moloney
Chief Policy Officer
American Fintech Council