1. Background/Introduction
    a. Agencies
        - Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; and Federal Deposit Insurance Corporation
    b. Issue
        - Fintechs partner directly with banks (or intermediately act as "middleware" which is fintech <-> fintech <-> bank) to provide consumers and businesses access to banking products. These relationships may pose risks, including risks to:
            - safe and sound banking practices
            - consumer protection requirements (such as fair lending laws and prohibitions against unfair, deceptive, or abusive acts or practices)
            - those addressing financial crimes (such as fraud and money laundering)
        - Although this RFI relates to fintechs, some similar issues apply to crypto companies
    c. Reason for such partnerships
        - leverage newer technology and offer innovative products or services to further their digitalization efforts and to meet evolving customer demands and expectations
        - quickly and more cost effectively deploy products or services into the market through
        - new or expanded markets, revenue sources, and customers
2. Description and examples of specific types of arrangements (brief overview)
    a. Deposit products (checking or savings accounts, prepaid debit cards)
        - Fintechs cannot hold deposits, they must partner with a bank to offer deposit products
        - FDIC insurance must be clearly and carefully disclosed, and records must be kept to ensure pass-through deposit insurance is available
        - Often deposits are held in omnibus FBO accounts established by the fintech, not individual accounts. This also requires careful recordkeeping
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    b. Payments (digital wallets, peer-to-peer, contactless, ACH, and wire)
    c. Lending (unsecured, consumer, or small business loans)
    d. Intermediate platform providers (e.g., Plaid)
3. Risks in these type of relationships
    a. accountability for the end-user relationship
        - "banks remain responsible for compliance with applicable law" especially when the end user may "qualify as a customer of the bank"
            - While the fintech brings the customer to the table by marketing its payment solution that it is delivering to the end user, the bank is providing account services to the end user, which can cause the end user to also be a customer of the bank
            - Banks should be reviewing all marketing materials, customer-facing mobile apps and websites, end user agreements, disclosures and on-boarding policies and procedures, customer service scripts, error resolution procedures, as well as any other consumer-facing materials. This extends to social media ads and posts as well.

- banks should ensure their fintechs are complying with FDIC insurance disclosures
    - Misleading FDIC insurance disclosures will not be tolerated
    - Some misleading examples arose in connection with crypto-related products where the disclosure incorrectly led users to believe that FDIC insurance applied in the event the fintech failed
    - FDIC insurance can only apply in the event of a failure of the bank that is holding end users' funds
    - As a result, banks must monitor FDIC disclosures in connection with their fintech programs to ensure such disclosures are compliance with FDIC guidance and requirements

b. end-user confusion under marketing and disclosure requirements
    - fintech consumers may not know whether they are customer of bank
        - When banking services are involved, the fintech must clearly disclose that they are not a bank and that the banking services are provided by the banking partner
        - In most instances, the fintech consumer will not interact directly with the bank and will rely on the fintech to provide mobile app access and customer service
    - fintechs may not timely communicate consumer complaints to the bank
        - Since the banks are ultimately responsible for the program, the bank needs to know about complaints that are received by the fintech
        - There should be a complaint log that is maintained by the fintech and is shared with the bank
        - There should be established policies and procedures for addressing complaints (including timeframes, escalation procedures, policies to ensure compliance with Regulation E and Regulation Z, as applicable)
        - The policies should also take into account the source of the complaint which could be the end user, a consumer that is not a current customer, the Better Business Bureau, the CFPB or some other regulatory authority
        - If there is a rise in complaints, whether as to a specific component of the service, or generally, this needs to be communicated to the bank so issues can be resolved in a timely manner and the bank needs the ability to require changes to the program

c. rapid growth in bank activity increasing operational complexity
    - introduces scaling and operational complexity risks
        - Banks should consider building governance teams, including legal, compliance, risk management, IT, and business lines, to understand risks presented by implementing new technologies.
        - Governance teams should consider, for example, detailing nature of risks presented by significant expansion of market share; securing and storing data on a much larger scale; and guaranteeing access to the data for meeting regulatory and litigation obligations.
    - requires bank's increased investment in resources and training
        - Governance teams should consider, for example, vendor management practices, including warranting vendors have been and will continue complying with applicable laws, strengthening contractual provisions

requiring testing and disclosure of results of third-party products and services and providing access to data housed by third parties.
        - Governance teams should consider implementing training aimed at, for example, ensuring compliance with fair lending laws and credit reporting obligations.
    - fintech-facilitated payments increase the bank's transaction monitoring needs
        - Governance teams should consider implementing policies and procedures that, for example, strengthen fraud detection and prevention systems, fair lending monitoring systems, and credit reporting dispute response systems.

d. concentration of reliance on the arrangement and resulting liquidity management risks in the event of the fintech's or bank's failure
    - Amplifies previous risks
    - reliance on fintech-facilitated lending can increase bank's credit risk
        - Importance of understanding fintech underwriting models, particularly if the underwriting model relies on alternative credit scoring factors or an AI model
        - Credit exposure depends on whether the bank holds the loan
        - Fintech should be aware of true lender risk
            - Multiple states have enacted true lender statutes to bring fintech lending products within state interest rate caps
    - Liquidity risks when the fintech faces a stress event or terminates the arrangement
        - Deposits sourced from fintechs can lead to rapid balance sheet growth for the partner bank
            - Bank must manage its balance sheet
            - Bank may be challenged to grow asset-side of its balance sheet other than with short-term securities
        - Deposits from fintech partnerships may be viewed as more sensitive to interest rates or less "sticky"
        - Fintech partnerships can result in a concentration of funding from the fintech partner, which presents challenges in managing liquidity and balancing fund with longer-term assets
        - Recent proposed changes to the brokered deposit rule would result in many fintech deposit partnerships being treated as brokered deposits

e. the use and ownership of data and customer information
    - new alternative data in credit decisions may increase bias
        - CFPB has stated that banks must understanding and explain during supervisory examinations how vendor algorithms work, including the types of data inputs used by those algorithms and the results of the algorithms.
        - CFPB has stated that it will consider third-party vendors who are functioning an outsourced part of a regulated business to be entities within the CFPB's purview.
        - Businesses may consider using industry platforms to seek rulemaking where all participants in the ecosystem have a duty to share information such that each can meet obligations to regulators.

        - Business, whether a bank or a fintech provider, should have policies and procedures for conducting regular fair lending testing for disparate impact on protected groups of individuals.
    - banks may be required to collect consumer information from the fintech "even where the bank lacks a direct relationship with end users"
        - Government regulators have indicated that the use of certain types of consumer data may have a correlation with groups of individuals based on protected characteristics; businesses will need to understand whether an algorithm uses such data and whether such data have a disparate impact on consumers.
        - The CFPB's open banking regulations may help facilitate the exchange of information.

4. RFI Questions
    a. Grant
        - Bank-fintech arrangements can involve significant up-front and ongoing costs and resources for the bank involved and may take some time to recoup these costs and resources. What type of up-front and ongoing costs and resources are associated with establishing bank-fintech arrangements? Describe the range of practices regarding how a bank factors such upfront costs and resources into its overall strategy and risk management strategy. Describe the range of practices regarding how revenues and costs resulting from these arrangements are allocated between the bank and fintech company.
            - Banks must conduct through due diligence on fintech partners as part of the onboarding process, as laid out in regulatory guidance such as the Interagency Guidance on Third-Party Relationships: Risk Management.
            - In assessing a partnership, the Bank must view the product as though it is its own product
            - Due diligence review will cover the product design and features, the financial condition of the fintech partner, its risk and compliance function, marketing, operational issues and cybersecurity issues.
            - This is resource intensive for both parties.
            - There are also costs in drafting and negotiating the partnership agreement.
            - Increased regulatory scrutiny and expectations of fintech partnerships has resulted in increases costs for onboarding.
            - Each party typically bears these upfront costs.
            - There are a variety of economic models for partnerships, which vary depending on the type of arrangement. The bank may earn fee income or may also participate in the economics, for example sharing the credit exposure and returns of a loan.
        - Describe the range of practices for maintaining safety and soundness, and compliance with applicable laws and regulations arising from bank-fintech arrangements. How do the practices differ as between different categories of arrangements?
            - A bank must view fintech products as its own. Therefore, ensuring compliance is becoming more hands on.

- Different products present different risks related to AML compliance, fair lending, etc.
- Safety and soundness risks differ depending on the product type and how the bank's balance sheet is utilized, for example:
    - Deposits present the risks discussed above
    - Is the Bank holding loans on its balance sheet, and for how long
- Certain risks such as cybersecurity risk are a constant across different partnership types.

▪ In what ways might bank-fintech arrangements function as transmission mechanisms to amplify financial shocks (*i.e.,* threaten financial stability)? Conversely, how could these arrangements help to contain shocks and reduce contagion?

- As seen in the SVB and Signature failures, technology has exponentially increased the pace of bank runs
- Impacts the trend of traditional banks products moving out of the banking sector, for example with respect to mortgages
- Fintech partnerships have been are a means for community banks to grow and increase earnings, helping maintain a stronger community banking sector as a counterweight to the increased concentration of deposits and loans in a small number of large, systemically important banks.

b. Andrew/Greg

▪ Describe the range of practices regarding banks' use of data to monitor risk, ensure compliance with regulatory responsibilities and obligations, or otherwise manage bank-fintech arrangements. What data and information do banks typically receive in bank-fintech arrangements, including in those involving intermediate platform providers? To what extent is this information different from the information banks would receive when interacting with end users independent of fintech companies? What challenges have banks experienced in bank-fintech arrangements—including those involving intermediate platform providers—related to the timely access to customer information, and what steps have the parties to bank-fintech arrangements taken to assess potential compliance issues.

- Banks may receive data types beyond the credit histories on which banks have traditionally relied in underwriting credit decisions, such as data that tracks consumers' ability to meet non-credit financial obligations but also could include data relating to consumer behaviors in the marketplace – such as where consumers shop – or in the social media sphere .
- Banks should consider strategies for ensuring testing of the impact of data on protected groups of individuals, the ability to conduct independent testing, and for ensuring access to data to meet regulatory and litigation requirements.
- Typically smaller-market-share entities have faced challenges in bargaining for contractual rights to test and obtain necessary data. Nonetheless, contractual reps and warranties of compliance with the law, with conducting testing, and with data storage obligations are necessary terms to bargain for.

- Bank-fintech arrangements can present unique or heightened consumer protection risks, such as risks of discrimination, unfair or deceptive acts or practices under the Federal Trade Commission Act, or privacy concerns. Describe the range of practices for managing any heightened risks.New potential fair lending, UDAP, credit reporting, and privacy concerns exist when implementing new products and services.
- Governance teams should consider, for example, detailing nature of risks presented by significant expansion of market share; securing and storing data on a much larger scale; and guaranteeing access to the data for meeting regulatory and litigation obligations.
- Governance teams should consider, for example, vendor management practices, including warranting vendors have been and will continue complying with applicable laws, strengthening contractual provisions requiring testing and disclosure of results of third-party products and services and providing access to data housed by third parties.
- Governance teams should consider implementing training aimed at, for example, ensuring compliance with fair lending laws and credit reporting obligations.
- Governance teams should consider implementing policies and procedures that, for example, strengthen fraud detection and prevention systems, fair lending monitoring systems, and credit reporting dispute response systems.

▪ In what ways do or can bank-fintech arrangements support increased access to financial products and services? Alternatively, in what ways do or can these arrangements disadvantage end users?

- Algorithms that are able to assess different types of data beyond consumers' credit history may be a tool for expanding the extension of credit to markets that have thin credit profiles.
- The analysis of certain types of credit of alternative data resemble credit history; these include meeting regular rent, telecom, and utilities obligations.
- Other types of data that are beyond the control of individual consumers, such as activities of social media groups with which consumers may associated, or that are attenuated from a consumer's ability to meet financial obligations, such as where they shop, may have a disparate impact on consumers based on protected characteristics.
- The CFPB's open banking regulations may help facilitate the exchange of information.

c. Jennifer

▪ How do the parties to bank-fintech arrangements determine the end user's status as a customer of the bank, the fintech company, or both, including for purposes of compliance with applicable laws and regulations, and each party's responsibility in complying with contractual requirements? What disputes or uncertainties regarding the status of end users have the parties experienced, and how have they sought to resolve them? How does the type of arrangement impact such determinations?

- The parties will need to determine and document in writing the end user's status as a customer of the bank, the fintech company, and, if applicable, as a customer of both the bank and the fintech company.
- Various considerations are the Privacy Policies of the parties, who will be conducting marketing activities during the relationship and who will "own" the customer during and after the relationship.
- If this is all discusses and documented at the outset of the relationship, the hope is to avoid future disputes and uncertainties, but it is not always possible to consider every scenario that may arise so even with careful planning, there could be disagreements.

- Describe the range of practices parties to a bank-fintech arrangement may use in contractually allocating functions among themselves, including the advantages and disadvantages of each such practice. For example, while the parties to such arrangements remain responsible for their own compliance with applicable laws and regulations, as a matter of contractual allocation, who performs which activities related to risk and compliance management, customer identification and due diligence, transaction monitoring, sanctions screening, fraud monitoring, end-user complaint management, dispute resolution, data protection, or credit underwriting, if applicable? Who develops and oversees marketing materials, develops and provides disclosures and account statements, addresses errors, receives and resolves disputes, and responds to complaints? How are contractual breaches and indemnifications typically addressed in these types of arrangements? Describe the range of practices for monitoring compliance with applicable laws and regulations, notwithstanding contractual allocations.
    - The parties will need to carefully discuss each of these aspects and identify which party, or other third party service provider, such as a processor, will perform each of these functions.
    - Any activity or services undertaken by the fintech will always be subject to the oversight of the bank and the fintech will be subject to audit by the bank's regulators.
    - The bank will have policies and procedures in place to monitor the fintech's compliance with the written agreement and applicable law.
    - If there are changes in law the affect the program, the parties will need to coordinate possible amendments to: the parties' agreement, end user disclosures or agreements, policies and procedures that apply to the program.
- Bank-fintech arrangements may involve processing payments transactions unrelated to any specific deposit-taking or credit offering in significant volumes. Describe the range of practices that banks adopt to manage potential risks associated with processing large volumes of otherwise unaffiliated payments transactions. Do banks view bank-fintech arrangements involving such processing differently from other payments-related products and services offered to end users?
    - Banks need to be aware of the types of customers and the types of transactions that will be processed under a program and the bank needs to be familiar with the risks associated with such customers and transactions so that the bank is not taking on more risk than it can tolerate.

- The program policies and procedures will need to take into account the types of customers and the types of transactions that are being processed so that certain customers and transactions can be prohibited and avoided.
- The bank will be relying on the fintech to perform due diligence on customers and potential customers, so the appropriate due diligence procedures must be established from the outset and adjusted as needed throughout the life of the program.

- In the context of bank-fintech arrangements, how are deposit accounts usually titled? Describe the range of practices reconciling bank deposit account records with the fintechs' records. Generally, what party holds and maintains the account records? Describe the structure in place to exchange accurate customer information between the bank and the fintech company and how the agreements between banks and fintech companies generally address these matters. Describe any additional controls, that banks or fintechs may use to provide for accurate reconciliations.
    - Deposit accounts are usually titled as a "for the benefit of" account (or "FBO Account"), which is a custodial account in which funds are held for all customers of a particular program.
    - Typically, the fintech will take on the responsibility for maintaining the subaccount ledger that tracks the balance in the FBO Account that is associated with each individual customer (i.e., end user), which tracking relies heavily on the processor for the program.
    - Reconciliations should be required at regular intervals and can take place on a daily basis.