MAXINE WATERS, CA
CHAIRWOMAN

United States House of Representatives
Committee on Financial Services
Washington, DC 20515

PATRICK McHENRY, NC
RANKING MEMBER

October 11, 2022

Mr. Michael J. Hsu
Acting Comptroller of the Currency
The Office of the Comptroller of the Currency
400 7th Street, SW
Washington, D.C. 20219

Dear Acting Comptroller Hsu,

We write to seek clarification on several of your recent statements as well as actions taken by the Office of the Comptroller of the Currency (OCC) regarding the future of partnerships between banks and financial technology companies (fintech). Innovation is a critical component of the U.S. economy, and we are concerned with the potential for further uncertainty around partnerships and the consequences for consumers. New financial products and services can drive down costs and foster greater inclusion and competition in our financial system. Under the previous administration, the OCC worked to provide banks and their customers with a clear understanding of the regulatory and supervisory expectations surrounding emerging products and services and how to properly assess risk. While we expected the OCC to continue to provide clear rules of the road and support innovative banking services, such has not been the case.

For example, you recently highlighted five areas the OCC would prioritize in supporting community banks. Promoting fintech relationships was not among the five priorities. Instead, you stated:

> [W]hen it comes to community banks' third party relationships. This is not going to be easy and will require enhanced engagement, as we cannot simply adopt a lighter supervisory approach and expect less from community banks…. [M]ore work is needed, especially given the growth of banking-as-a-service arrangements, as those relationships are often complex or inverted and involve different risk considerations.[1]

Let us be clear. Technological innovation fostered by fintech partnerships has enabled banks to reach segments of the population that may have been left behind and increase customer engagement. Much of this innovation has been driven by industry newcomers that have developed a novel product or business model. When properly regulated, these partnerships can provide greater financial inclusion, spur technological innovation, and foster competition that ultimately benefits consumers.

[1] Hsu, Michael J. "Community Banking, Digitalization, and the OCC." Transcript of remarks before the Texas Bankers Association, September 1, 2022. https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-104.html.

Non-bank fintechs partner with banks for several reasons. Because of their deposit-based funding, banks tend to have the cheapest possible cost of capital among all capital allocators. Banks also have relatively large balance sheets, enabling them to absorb new loans rapidly, and are expert lenders. Finally, fintechs commonly partner with banks due to the special privileges Congress has given banks since the passage of the National Bank Act in 1864, including regulatory certainty about permissible interest rates.[2]

Moreover, banks typically seek partnerships with fintechs for the comparative advantages they bring to the table, such as more effective branding or marketing and better technology to support underwriting or to manage a customer relationship. It is often more cost-effective for banks to outsource to a fintech partner, as it can be expensive and challenging for banks to focus on these activities in-house.

When conducted properly, the benefits from these partnerships far outweigh the risks. Fintech partnerships can lead to cost savings for both fintechs and banks, increase competition, and provide faster, better, and cheaper banking products and services for consumers. Nevertheless, the model has generated political controversy. In June 2021, a Democrat-led Congress voted to nullify the OCC's True Lender Rule along party lines, preventing the OCC from issuing any substantially similar rule without subsequent statutory authorization.[3] This single act will have repercussions for communities throughout the United States, including those who need credit the most.

To that end, please respond to the following questions.

1. Last year, you emphasized that "modernizing the bank regulatory perimeter cannot be accomplished by simply defining the activities that constitute 'doing banking,' but will also likely require determining what is acceptable in a bank-fintech relationship."[4] How will the OCC determine what are acceptable terms in a bank-fintech partnership?

    a. Will the OCC take into consideration the impact on the underbanked, communities of color, rural communities, and small businesses?

    b. In your opinion, how will increased regulatory scrutiny by the OCC impact these partnerships?

    c. Do you anticipate fintech partnerships will cease to exist due to potential regulatory changes? If so, please explain how.

---

[2] *See* section 85 of the National Bank Act, 12 USC 85 (national banks, passed in 1864); section 27 of the FDI Act, 12 USC 1831d (state banks, passed in 1980). The provision allowing states to opt out of section 27 of the FDI Act is in the Notes to the annotated version of 12 USC 1831d.

[3] Pedersen, Brendan. "Biden Signs Repeal of OCC's 'True Lender' Rule." American Banker, July 2, 2021. https://www.americanbanker.com/news/biden-signs-repeal-of-occs-true-lender-rule.

[4] Hsu, Michael J. "Modernizing the Financial Regulatory Perimeter." Transcript of speech delivered at the Federal Reserve Bank of Philadelphia Fifth Annual Fintech Conference, November 16, 2021. https://www.occ.gov/news-issuances/speeches/2021/pub-speech-2021-117.pdf.

2. As the OCC's determines what is acceptable in a bank-fintech partnership, how does the OCC plan to analyze fintech companies that are helping to bring the banking business into the digital era?

3. Last year, you stated that fintechs may "have not sought to become banks because regulators have been unpredictable with regards to chartering new banks and approving fintech acquisitions of banks."[5] You also emphasized, "that leveling up [the OCC's] understanding, policies, and staffing related to emerging technologies can help address this challenge."[6] Under your leadership, please describe whether the OCC leveled up its understanding of emerging technologies.

    a. Has the OCC prioritized technology expertise in its hiring process or offered training to staff?

    b. If that work is still underway, please explain the rationale behind proposing additional regulatory changes at this time.

4. You recently stated, "my strong sense is that this process, if left to its own devices, is likely to accelerate and expand until there is a severe problem or even a crisis."[7] Would you elaborate on the specific risks in the "process" that you think could result in a crisis?

5. As noted above, you have raised concern with the "exponential" growth and complexity of fintech partnerships.[8] Is this a risk in itself, or is it a byproduct of success in meeting consumer demand and providing consumers with an enhanced product offering they have come to expect?

6. In your efforts to examine fintech partnerships and propose potential regulatory changes, would you describe how the OCC plans to minimize the regulatory burdens on these arrangements? How will the OCC ensure that the regulatory burden on these firms is commensurate with the actual risk that they pose?

7. The OCC's Fiscal Year 2023 Bank Supervision Operational Plan states that examiners should place a particular focus "whether banks are providing proper risk management governance of their third-party relationships," including fintechs.[9] Please explain how the OCC will ensure that examiners do not discourage innovation through fintech partnerships and will not impose unreasonable burdens on banks and fintechs.

---

[5] Hsu, Michael J. "Leveling Up Banking and Finance." Transcript of speech delivered at American Fintech Council Fintech Policy Summit 2021, November 3, 2021. https://www.occ.gov/news-issuances/speeches/2021/pub-speech2021-115.pdf.

[6] *Id.*

[7] Hsu, Michael J. "Safeguarding Trust in Banking: An Update" Transcript of speech delivered at the TCH + BPI Annual Conference 2022, September 7, 2022. https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-106.html.

[8] *Id.*

[9] Fiscal Year 2023 Bank Supervision Operational Plan, at 2, https://www.occ.gov/news-issuances/news-releases/2022/nr-occ-2022-124a.pdf.

a. Please explain how OCC examiners will determine whether "third parties have sufficient, qualified staff to meet contractual obligations." Will this sort of examination workplace needless burden on fintechs and lead to examiners improperly creating staffing standards that are not supported by regulation or law?

b. Please explain how examiners will "evaluate the bank's assessments of third parties' cybersecurity risk management and resilience capabilities." Will such evaluations be carefully tailored to the actual risk posed by the particular bank-fintech partnership?

We appreciate your prompt attention to these questions. Please respond in writing as soon as possible, but no later than October 31, 2022. If you have any questions, please do not hesitate to contact Kathleen Palmer or Allison Behuniak at 202-225-7502. We look forward to your response.

Sincerely,

Patrick McHenry
Ranking Member
Committee on Financial Services

Warren Davidson
Ranking Member of the Task Force on Financial Technology

Pete Sessions
Member of Congress

Tom Emmer
Member of Congress

Bryan Steil
Member of Congress