



April 19, 2024

The Honorable Martin J. Gruenberg
Chairman
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429

Dear Chairman Gruenberg:

On behalf of the American Fintech Council (AFC),¹ I am writing to follow up on our previous letter and express serious concerns with the Federal Deposit Insurance Corporation's (FDIC) posture and actions towards innovation within financial services.

AFC's mission is to promote an innovative, transparent, inclusive, and customer-centric financial system by fostering safe and responsible innovation in financial technology (Fintech), and encouraging sound public policy. AFC members are at the forefront of fostering competition in financial services and pioneering ways to better serve underserved consumer segments and geographies. AFC and its members strongly support the development and implementation of regulatory frameworks that encourage the responsible development of innovative financial products and services.

During your tenure as Chairman of the FDIC, the agency has systematically changed its posture towards innovation, both programmatically and in practice. As noted in our previous letter to you, AFC was supportive of the innovation goals set forth in FDIC's current strategic plan and the efforts of its FDITech Office. However, over the past two years your agency has deprioritized and defunded these innovation efforts in favor of pursuing policies and activities that stymie innovation and put undue burden on community banks seeking to remain viable through the use of responsible technology.

While your agency has not issued public guidance or other statements explicitly admonishing or limiting banks from engaging in partnerships with fintech companies we have identified a distinct "regulation by enforcement" approach from the FDIC. As has been explained to us by many regulated institutions, over the last couple of years FDIC examinations have taken a decidedly different approach. Specifically, many institutions have raised significant concerns regarding the misapplication of the FDIC's risk-based examination framework on the fintech

¹ American Fintech Council's (AFC) membership spans innovative banks, payments providers, loan servicers, credit bureaus, earned wage access companies, and personal financial management companies.

partnerships and activities these innovative banks pursue, as well as the protracted timeframes associated with their examinations.

Further, according to recent industry research, over a quarter of the FDIC's formal enforcement actions have been issued against banks that partner with fintech companies.² While the Office of the Comptroller of the Currency and the Federal Reserve have also recently issued enforcement actions against fintech-partnered banks under their jurisdictions, the FDIC's enforcement activities show a concerted, years-long effort against responsible bank-fintech partnerships. The unbalanced enforcement activity has disproportionately targeted banks who partner with fintech companies and has resulted in a significantly increased chance of receiving a formal enforcement action from the FDIC based solely upon the business model. Simply put, under your leadership, it appears that the FDIC has developed an approach towards its examinations of and enforcement actions for innovative banks that is improperly targeting certain institutions and severely limiting consumer choice in financial services.

In addition, banks that are not partnered with fintech companies face a 1.8 percent chance of receiving an enforcement action, compared to 15 percent for those attempting to innovate. Importantly, this percentage does not reflect non-public enforcement actions such as memoranda of understanding, suggesting that the actual percentage could be much higher. This fact is especially surprising in the wake of the 2023 bank failures of Silicon Valley Bank and Signature Bank, which were tied to traditional banking issues, such as interest rate risks and liquidity mismatches, not partnerships with fintech companies.³ The FDIC's focus towards banks engaged in partnership with fintech companies—under the misplaced guise of risk—even in the wake of the 2023 bank failures demonstrates a severe misalignment of examination priorities. This mis-prioritization could ultimately cause significant harm to the resilience, safety, and soundness of the community banking system, thus putting consumers, the FDIC's Deposit Insurance Fund, and the U.S. financial services industry at substantial risk.

When considered in the broader context of FDIC's posture towards innovation, including the dismantling of the agency's FDITech Office, the FDIC's enforcement actions signal an overarching regulatory agenda that is devised to inhibit bank-fintech partnerships and stymie the innovation they provide. The agency's current efforts towards bank-fintech partnerships belie a technophobia that has allowed the FDIC to actively select which business models or operations it will allow to succeed in the market, under the guise of adequately assessing risk and protecting the resiliency of the financial system. Beyond the potential legal issues presented by this type of activity from a federal agency, AFC believes that pursuing these activities will result in significant harm to the community banking sector and to the consumers and small businesses these banks serve.

The U.S. financial services industry represents the most competitive and diverse financial services market in the world. This reputation is afforded to it in large part because of the robust community banking sector that continues to exist within this market. Through the development

² Konrad Alt, Klaros Group "Who's been toughest on fintech partner banks recently", LinkedIn, Apr. 10, 2024, *available at* https://www.linkedin.com/posts/konrad-alt-12a7b35_sponsorbanks-enforcementactions-fintech-activity-7183876219917021185-qHID?utm_source=share&utm_medium=member_desktop.

³ U.S. Government Accountability Office, "Bank Regulation: Preliminary Review of Agency Actions Related to March 2023 Bank Failures", GAO-23-106736, Apr. 28, 2023, *available at* <https://www.gao.gov/products/gao-23-106736>.

of responsible bank-fintech partnerships, community banks are able to provide their relationship-based banking services to a national consumer base, including to communities that might otherwise be unable to obtain responsible and affordable banking products and services. In turn, these banks are able to remain competitive and viable, ensuring a robust, resilient, and competitive market for the benefit of consumers and small businesses.

As noted in our previous letter, agency engagement with industry is crucial to ensuring pragmatic regulatory frameworks and effective oversight of the modern banking system. With the rapidly evolving financial ecosystem, many federal and state agencies have proactively recognized the importance of engaging with responsible industry participants to properly understand the innovative product and service offerings in financial services.⁴ We therefore reiterate our commitment to working with your agency to find a prudent and collaborative path towards properly engaging with the innovative banks under your jurisdiction and ensuring that they receive the appropriate amount of oversight. Given the recent Congressional inquiry into FDIC's activities regarding innovative banks and fintech companies,⁵ it seems especially important to engage collaboratively to find pragmatic regulatory solutions.

In closing, AFC and its members thank you for your consideration of our concerns regarding FDIC's posture and activities related to the innovative banking models and activities by those banks under your jurisdiction. We respectfully reiterate our commitment to working with your agency to find a prudent and collaborative path forward to ensure that the innovative banks receive the appropriate amount of oversight that does not impede innovation.⁶ We sincerely hope that you will heed the concerns presented above and work collaboratively with us to find a pragmatic path forward.

Sincerely,



Hon. Phil Goldfeder, CEO
American Fintech Council

Cc: Travis Hill, Vice Chairman, Federal Deposit Insurance Corporation
Brian Whittaker, Chief Innovation Officer, FDITech

⁴ AFC, Advocacy Letter to FDIC in Support of Innovation, Feb. 2, 2024, *available at* <https://www.fintechcouncil.org/advocacy/american-fintech-council-shares-letter-to-fdic-on-thoughts-towards-innovation>.

⁵ Congressional Letter, Chairman Patrick McHenry, Rep. Andy Barr, and Rep. French Hill to Chairman Martin Gruenberg, FDIC, Re: FDIC's strategy towards innovation, Feb. 2, 2024.

⁶ *Ibid*, AFC Advocacy Letter to FDIC.