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Pushing the boundaries of the banking regulatory perimeter

What nonbanks should know in advance when engaging with financial services products, and what banks should be prepared for when offering these services

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Executive summary

Over the past several decades, nonbanks—including consumer, health care, and fintech companies—have chipped away at the "bank" franchise, finding alternative avenues to tap into banking services without needing a bank license. Driven by a desire to increase revenue and profitability (for example, by offering new products),[1] more directly manage the customer relationship,[2] and assert more control over the customer value chain and respective data, nonbanks have often found ways to achieve banking business strategies without obtaining a bank charter (figure 1). These strategies require collaborating with a bank, in arrangements commonly referred to as "banking as a service" or BaaS.

Over the past six years, fintech companies have received more than $150 billion in funding as part of almost 9,000 deals. In 2021 alone, the number of fintech deals increased by 42% to 1,827, and the funding received increased by 171% to more than $62.9 billion (figure 2).[3] About one in five venture capital investment dollars went to fintech in 2021. Banks and nonbanks are in a race to find the optimal path to offer banking products and services that forge the bond between customer and institution. Nonbanks engaged in banking activities have become more common, and they have often eclipsed the customer acquisition of traditional banks. Players in this space are vying for new ways to win customers' hearts, minds, and wallets to contribute to their institution's balance sheet and bottom line.

Increasing regulatory and supervisory focus on BaaS providers will likely result in the development and implementation of additional risk management supervisory guidance for banks (for example, third-party risk) and more frequent enforcement actions against BaaS providers, among a range of other policy and supervisory tools. Existing guidance will be leveraged and further reinforced by banking regulators. In this evolving landscape, both banks and nonbanks should anticipate the following potential impacts when engaging with financial services products.

Nonbanks will likely feel greater regulatory scrutiny and indirect pressure from collaborating banks.

- Certain nonbanks are subject to the Bank Service Company Act (BSCA) and already receive targeted examinations conducted by the federal banking regulators that are part of the FFIEC.[4] The federal banking agencies have gained momentum on the policy front with the issuance of cloud computing guidance in 2020 and finalization of the Computer-Security Incident Notification rule which have pushed the envelope for banks and their service providers.[5]
- There will likely be increasing focus and accountability on collaborating banks to enhance risk management of their third-party relationships. The proposed interagency guidance on managing risks associated with third-party relationships and interagency guidance on *Conducting Due Diligence on Financial Technology Companies: A Guide for Community Banks* provide the basis for supervisory expectations on risk management.[6]
- Proposed legislation may empower federal banking regulators to expand their purview to new products such as stablecoins.[7] Stablecoins are generally created, or "minted," in exchange for fiat currency that an issuer receives from a user or third party.[8]
- The frequency and scope of state-led supervisory activities—including examinations, where resources are available (focused on state-regulated institutions)—may increase.
- There is potential for the Financial Stability Oversight Council (FSOC) to use its designation authority to subject nonbanks to consolidated supervision by the Board of Governors of the Federal Reserve System (FRB).

Figure 1. Relationship between banks, fintechs/nonbanks, and customers

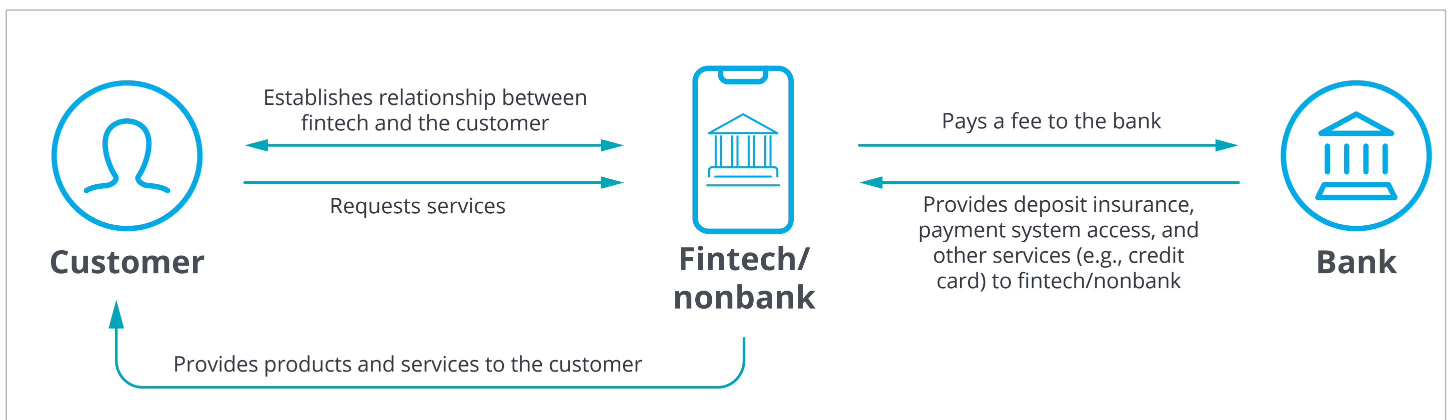
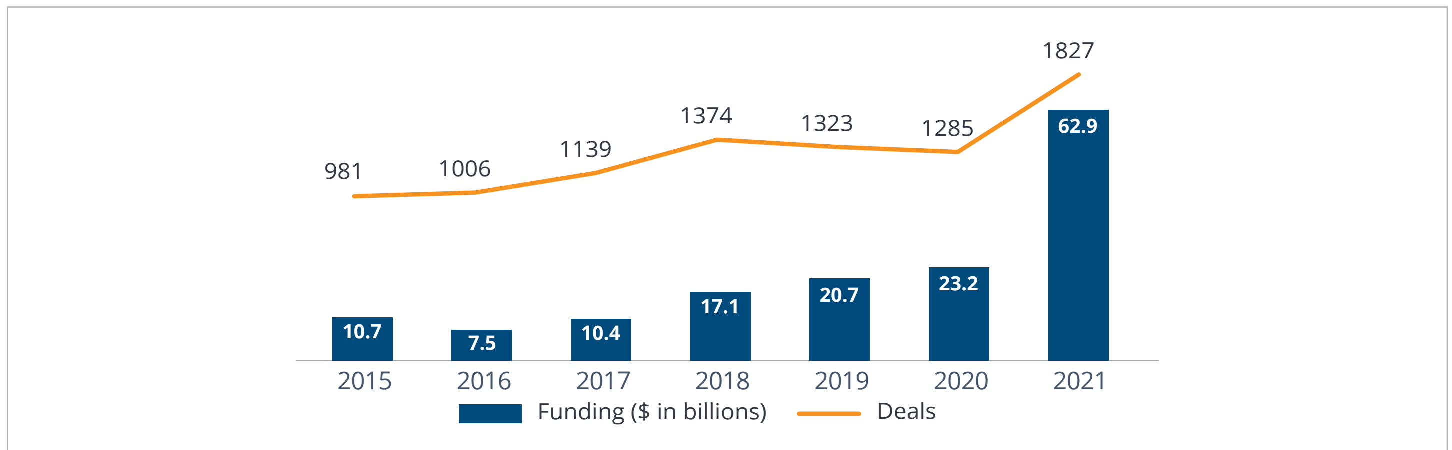


Figure 2. US fintech funding volume and deal count (2015–2021)[11]



Source: CB Insights, *State of fintech 2021 report*, January 25, 2022.

- Global regulatory bodies, such as the Basel Committee for Banking Supervision, the Financial Stability Board, and US political forces, may push additional expectations on nonbank providers from various angles (for example, competition, separation of banking and commerce, and systemic risk posed by nonbank providers).

Banks that provide BaaS services should be prepared for significant increase in focus from regulators.

- Banks should anticipate increased supervisory focus and attention commensurate with their activities and any associated risks in addition to their asset size and risk profile; these banks should expect to be held to large bank supervisory standards.
- Third-party risk management requirements, currently applicable to banks, will continue to evolve; regulator's identification of issues (for example, matters requiring attention) and enforcement actions could increase against banks that do not meet third-party risk management guidelines with governance and controls not maintaining the scope of the type of partnerships, joint ventures, etc.
- Banks should have a heavy focus on business acceptance processes, and the considerations factored into liquidity management, reputational risk, business resiliency, and control framework over third parties (for example, anti-money laundering (AML) risks).
- Banks that form relationships with nonbanks to deliver products or services at various stages during the product life cycle—for instance, at origination, account servicing, and cross-selling—may be forced to expand their product risk management capabilities as well as the oversight of these providers.[9]
- Banks should have a greater focus on building foundational risk management and compliance capabilities to manage and monitor increased third-party risk through enhancing or building new business policies and processes.

The exportation of financial services and resulting regulations will continue to evolve. Whether you are a traditional bank or a nonbank performing banking activities, the paradigm is shifting significantly, and winners and losers are emerging. At the same time, bank regulators have increased their reach into third-party providers to bank (for example, cloud guidance issued during COVID and the computer incident notification regulations).[10]

A refresher on the bank regulatory perimeter

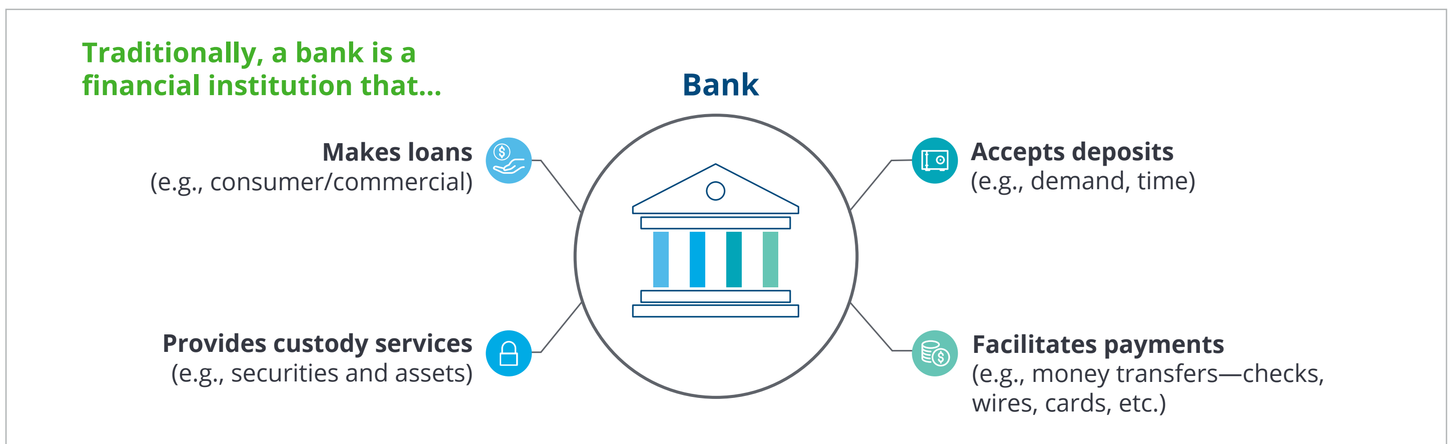
The US bank regulatory system has been built around a set of permissive (rights and privileges) and restrictive regulatory requirements, together creating a sort of legal boundary, or regulatory perimeter, around the US banking sector. Organizations within the perimeter may engage in a broad set of banking activities, subject to various forms of regulation and supervision (figure 3).

- **Making loans:** Typically funded by deposits, the core function of a Federal Deposit Insurance Corporation (FDIC) insured depository institution (IDI)[12] is extending credit to consumers and businesses in the form of mortgages, small business loans, commercial loans, and working capital products, among others.
- **Accepting deposits:** Deposits are the safekeeping of a customer's funds in a debtor (bank)/creditor (depositor) relationship, compared to a non-deposit custody arrangement. Deposits serve as the entry point to financial services for many consumers. Consumer deposit accounts are dominated by IDIs due to the existence of deposit insurance.
- **Facilitating payments:** Common methods of payments are cards (debit, prepaid, or credit), cash, and bank transfers. Due to their near-exclusive access to the Federal Reserve's payment services (Fedwire, Automated Clearing House) and the ability to settle obligations in central bank funds, IDIs play a critical role in retail payments. Many payments in the United States depend on interbank payment services as part of their settlement processes.
- **Providing custody services:** Banks can provide custody services to safeguard customer assets and generate revenue from the fees associated with providing these services.

Banks have traditionally played a special role in supporting economic activity, particularly because of their combined services of taking deposits, making loans, and facilitating payments. This role has entitled IDIs to both *privileges* (for example, access to the public safety net through the Federal Reserve System's discount window, access to Federal Reserve System payment services, and FDIC deposit insurance), and *obligations* such as supervisory oversight and prudential regulatory requirements with any associated costs. These measures are designed to protect consumers, provide fair access to financial services, maintain the solvency of individual banking institutions, and reduce the probability or severity of a financial crisis.[13]

While the financial system has evolved over the decades, many of the current supervision and enforcement mechanisms presume that banking services could largely be limited to traditional banks and governed by the FRB, the Office of the Comptroller of the Currency (OCC), the FDIC, and the Consumer Financial Protection Bureau (CFPB). Meanwhile, outside the regulatory perimeter and its respective laws are organizations conducting other financial and nonfinancial activities (with nonfinancial activities under the broad heading of commerce) that are subject to alternative laws and restrictions. As the lines between banking, nonbanking financial services, and commerce become more blurred, the regulatory perimeter faces a variety of challenges.

Figure 3. Core functions of a bank



How are nonbanks supervised within this regulatory perimeter?

The supervision of nonbanks currently spans federal and state regulators depending on the products offered and the overall nonbank business model. Nonbanks are often subject to individual state licensing and supervisory regimes that require nonbanks to obtain a license in each state they operate within for the services they provide (for example, consumer lending, money transmission). Due to differences in state law, this often leads to multiple sets of rules being applied to the same organization in each state where it does business.[14] In contrast, the federal banking regulators (for example, the FRB, OCC, FDIC, and CFPB) apply a common set of consumer protection regulatory requirements across state lines. The nature of nonbank supervision is largely dependent on business models, including product and service offerings, and the entity's engagement with supervised banking organizations. When considering collaborating with a bank, nonbanks should understand which agencies will have supervisory authority and what supervisory oversight may entail.

Notably, banks have a responsibility to determine regulatory compliance of nonbank service providers under the umbrella of safety and soundness, and more specifically consistent with third-party risk management requirements. Regulators are in the process of updating third-party risk management guidance, as evidenced by the July 13, 2021, joint press release requesting comment on proposed interagency guidance. Finalization of the guidance is expected to result in a more consistent supervisory approach across agencies, which will likely set forth a more prescriptive risk management framework for third-parties, especially those that support critical banking activities.[15]

Nonbanks have direct responsibilities under the BSCA[16], where sections 7(a) and (c) grant the federal banking regulators authority to inspect and regulate bank service providers to the same extent as their principal investors or the banks to which they provide services.[17] Under Section 7(b) of the BSCA, bank service providers are also subject to section 8 of the Federal Deposit Insurance Act, which among other things allows the FDIC to initiate enforcement actions or recommend that other federal banking regulators initiate enforcement actions based on safety and soundness.

Nonbanks that partner with banks to provide banking services subject to the BSCA are also responsible for adhering to the Computer-Security Incident Notification rule (Notification rule).[18] The Notification rule was set forth on an interagency basis by the OCC, FRB, and FDIC and requires companies that provide banking services to notify affected bank customers immediately after a computer-security incident that could disrupt, degrade, or impair the provision of services subject to the BSCA for four or more hours.[19] Specifically, service providers are required to contact at least two individuals at affected banks to help ensure that notice has been received.

In addition to the Notification rule, the banking agencies issued a joint statement on cloud computing to establish risk management principles for the use of cloud computing in the financial sector.[20] The principles summarize safe and sound practices that are expected to promote the adequacy and effectiveness of security, operations, and controls.

Individual states and federal agencies possess different statutory authority to conduct a range of activities consisting of supervision, enforcement, information collection, and reporting.[21] By offering unbundled products and services (excluding products that can only be offered with a banking license) without obtaining a banking charter, activities of certain nonbank firms can largely be conducted outside the federal regulatory perimeter.[22]

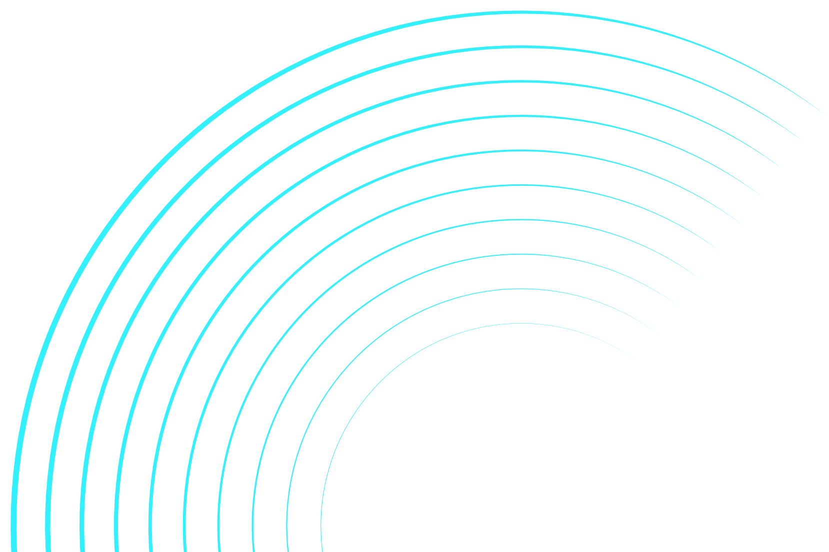


Figure 4. An example of how a banking product (for example, a deposit product) can span various levels of the bank regulatory perimeter

Consumer Protection (CFPB)

(C) **Unlicensed service provider/fintech**
(provides services, can be customer-facing)

(A) **Money Transmitter/State Lending License/BitLicense**
(make loans, send/receive payments)

Special Purpose Depository Institution (SPDI)
State Charter/State Trust
(custody, potential payments system access, potential FDIC Insurance)

Limited Purpose/National Trust Company
(custody, fiduciary, payments system access)

(B) **National or State Commercial Bank*/Bank Holding Company (BHC)**
(FDIC Insurance, discount window, fractional banking, payments system access)

Federal Financial Institutions Examination Council IT Handbook

(A) **Nonbank originates consumer deposits and onboards customers**

(B) **Partners with bank to provide FDIC Deposit Insurance (and sometimes an additional bank to stay under $10B threshold)**

(C) **Technology companies provide services (e.g., cloud) to enable these processes**

The darker the shade of blue—including providing services to companies toward the center—the greater the level of federal banking supervision.

***** A state-insured depository institution and its parent are within the federal regulatory perimeter.

Who should be allowed access within the perimeter?

There is renewed debate among regulators and financial sector stakeholders on which entities (outside of IDIs, non-IDI national "banks," and US branches and agencies of foreign banks) should have access to the Federal Reserve's payments systems. The conversation has gained attention given recent and ongoing business model developments in the banking sector where fintech companies and crypto natives are now seeking Federal Reserve payments system access to bolster operational capacity and enhance value from a business model perspective. Last month, the FRB announced the denial of a membership application by Custodia Bank, Inc., an uninsured special purpose depository institution chartered in Wyoming. The agency concluded that the firm's application as submitted was inconsistent with the required factors under the law. This denial is the most recent public reminder of the high bar for access to the Federal Reserve payment system.

On August 15, 2022, the FRB issued its final guidance regarding payments system access, confirming the use of a three-tiered system to analyze access requests (figure 4).[23] Public comments submitted prior to the finalization of the guidance expressed concerns about nonbanks having a competitive advantage over traditional banks if they are granted access to the Federal Reserve payments system without the same regulatory restraints and related costs of compliance that traditional banks face.[24] However, many fintech companies entering core consumer finance markets have shown little interest in becoming an IDI, perhaps in part because of the significant regulatory requirements, extensive lead times, and significant associated costs. Either way, nonbanks will need to (1) consider current or prospective charters, legal entity structures, and business models prior to initiating the FRB access request process and (2) anticipate potentially significant bank-like supervisory oversight should access be granted.

What's at stake for banks and nonbanks: Collision or collaboration?

As disruption, innovation, and technology developments challenge the financial services space, they also challenge existing banking services business models. While many use cases are driving changes in the industry—from a technology company that sees banking-related services as an extension of (or complement to) its existing product suite, to the fintech organization that is focused on modernizing traditional banking services through the use of technology—the fact remains that banking and, consequently, a banking license are no longer seen as relegated to the sphere of traditional banking institutions. Just as nonbanks have been incentivized to collaborate with banks to access certain services, banks, too, have found benefits stemming from relationships with emerging players. For instance:

- The use of artificial intelligence (AI) can help banking organizations improve efficiency, lower costs, enable growth, boost differentiation, manage risk, comply with regulations, and upgrade the customer experience. While many organizations were already investing in AI enablement, the pandemic also heightened customer expectations around digital banking. This prompted many banks, especially those with substantial brick-and-mortar presences, to examine how they deliver services to their customers, many of whom now demand compelling, intuitive digital experiences on both mobile and online platforms, similar to what they receive from leading e-commerce companies.
- Banks are now focusing on being more sustainable, leveraging existing consumer data to understand customer behavior, and providing financial products tailored to customer requirements.
- The pandemic has been an unprecedented catalyst for digital and mobile banking usage across different age groups.[25] This shift suggests that, today, consumers are more open to exploring options outside the traditional banking channels. Some evidence of the movement of nonbanks into banking-like services can be seen in the recently published Treasury Report:[26]
  - "By one estimate, fintech firms increased their share of the balance of unsecured personal loans from 5% in 2013 to 39% in 2019."[27]
  - "Data on a set of personal lending-focused fintech firms (several of which have since acquired, been acquired by, or become IDIs) shows a compound annual growth rate of cumulative originations of nearly 32% from Q3 2016 to Q3 2021."[28]
  - "One study estimates that BNPL [buy now, pay later] industry volumes in the United States have risen from $3 billion in 2019 to $39 billion in 2020."[29]
  - "One study estimates that fintech firms—through their BNPL offerings—have diverted between $8 [billion] and $10 billion in annual revenues away from banks in the last few years."[30]

- Younger consumers are looking for innovative services offered by nonbanks such as automated spending insights, peer-to-peer (P2P) payments functionality, access to cryptocurrencies, digital wallets, BNPL services, and other features.[31]
- Nonbanks including fintech companies tend to have advantages over traditional banks in terms of reduced costs and the use of data-intensive automated processes that provide direct services to consumers.

Despite this surge in innovation and evolution in the banking sector, banking licenses continue to be needed to fully serve the following needs end to end:

- **Offering FDIC-insured deposits:** Offered only by national or state banks that are members of the FDIC. Provide the standard insurance amount of $250,000 per insured bank, for each account ownership category.[32]
- **Credit and debit card issuance:** Banks are the sole issuers of debit and credit cards.
- **Interest rate exportation:** Exportation of a bank's authorized home state (for example, Delaware, South Dakota, Utah) loan interest rates across the country and on a nationwide basis (in contrast to non-IDIs, which should comply with the usury laws in each state).
- **State licensing:** Banks can operate nationwide without having to obtain state licenses; state chartered IDIs generally are exempted from state license requirements.
- **Federal Reserve discount window access:** Provides a direct channel for term and overnight borrowings under four programs.[33]
- **Federal Reserve Bank master account eligibility and related payments system access:** Enhances payments capacity through the use of services.[34]

Spotlight on leading regulatory perspectives

While regulators have been somewhat slow to respond to this shifting environment from a policy perspective, recent developments signal a change, with certain agencies focusing on modernizing their supervisory approaches. Illustrating this renewed focus on bank and nonbank partnerships, Acting Comptroller of the Currency Michael J. Hsu recently stressed bank/nonbank partnerships and the complications behind them.[35] Taken together, the acting comptroller's statements reflect ongoing regulatory concern about nonbanks' presence in the regulated banking system and the potential for nonbanks to transfer risk to partnering banks.[36] They also signal a clear focus by regulators on addressing these arrangements.

This topic was further addressed in detail in the November 2022 Treasury Report, *Assessing the impact of new entrant non-bank firms on competition in consumer finance markets*.[37] The report notes the difference in the regulation and supervision of traditional banks, on the one hand, and nonbank firms that are increasingly engaging in similar activities, on the other, presenting potential risks and opportunities for forms of regulatory arbitrage. Some of the highlighted risks include prudential concerns, the mixture of commerce and banking, concerns of conflicts of interest, unfair advantages, and preferential treatment that could lead to competition asymmetries and concentration of market power.[38] The report also notes that novel uses of data and technology could also create the potential for new forms of discrimination, including increased opportunities for predatory targeting and price discrimination, if left unchecked. See Appendix 2 for a further breakdown of the report's takeaways.

Acting Comptroller Hsu commented on the recognition of short-term "efficiency gains" from bank-nonbank partnerships with "the most material risks" becoming apparent in the longer term.[39] He also communicated his view that the increase of fintech companies' participation in the traditional financial sector, including through partnerships with banks, has led to "de-integration" in the banking sector, which could eventually lead to "a severe problem, or even a crisis."[40]

These regulatory perspectives and reports, together with recent enforcement actions such as the guidance on cloud computing and the computer incident notification regulation, suggest that the federal banking regulators are tightening supervisory oversight regarding bank/nonbank relationships.

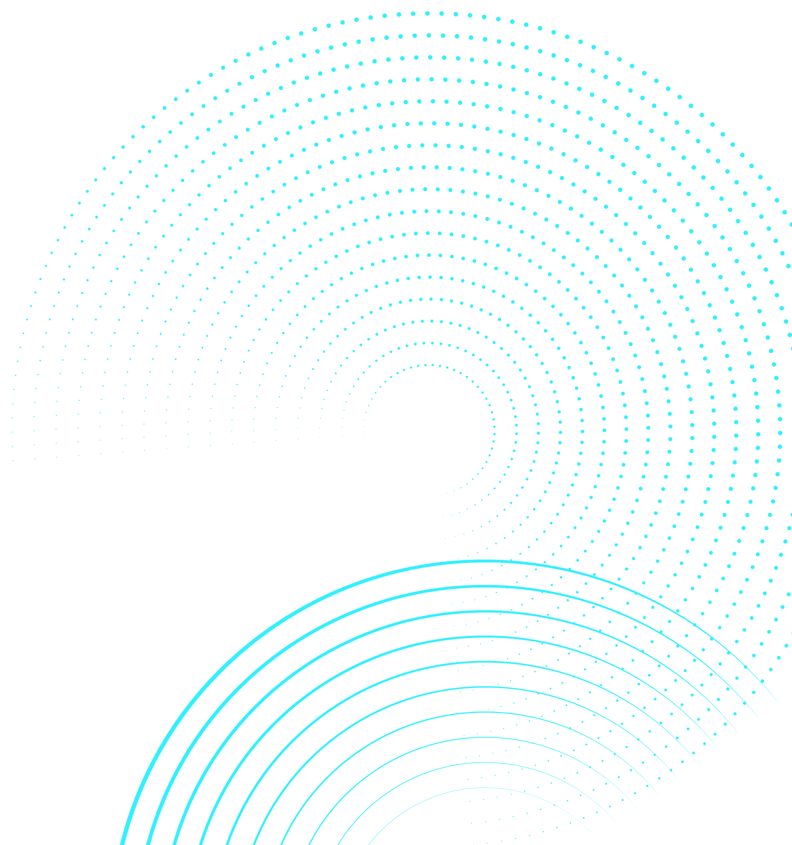
The 'back door' into offering financial services

Considering the ongoing evolution of the bank regulatory perimeter described above, aided by technological innovation and digital adoption, nonbanks have increasingly been able to find an indirect route or a metaphorical back door into offering traditional banking services, such as facilitating payments, holding deposits (or stored value in the form of wallets), and extending credit,[41] while operating outside of the traditional bank regulatory perimeter.[42] With bank licenses still being required for offering some core banking products and services, a new ecosystem centered on BaaS has emerged. The development of this ecosystem has been amplified by the rapid growth of new digital asset products (for example, stablecoins) and the rise of nonbank crypto firms that have further pressured the need for clarification on who and what is regulated, as well as how they are regulated. Furthermore, the number of digital distribution channels for banking products and services has also continued to expand. The ability for nonbanks to pursue growth unencumbered by the traditional constraints of federal and state banking regulations has contributed further complexity, creating potential advantages (for example, speed to market) for nonbanks operating outside of the regulatory perimeter. Together, this evolution has introduced a paradigm shift in terms of how we see the banking industry.[43]

Ironically, the same activities (for example, managing deposits, payments, custody services, and extensions of credit) that seek to circumvent traditional banking models have, in fact, been enabled by bank/nonbank relationships. These relationships have been growing at a rapid pace in recent years, where almost 60% of banks and credit unions entered into at least one relationship with a fintech company over the past three years.[44] While these relationships have given nonbanks access to banking products, they have also allowed banks to serve an evolving, often technologically driven customer base. Many IDIs with legacy technology, lacking in-house experience and operating under the burden of regulatory supervision anchored to the "regulatory perimeter," have thus started exploring relationships with nonbanks to drive customer base growth and offer new products and services. These relationships, and the exportation of banking services outside of the regulatory perimeter, have resulted in the conduct of large volumes of banking activities outside the purview of traditional banking supervision. What has materialized is a symbiotic relationship between banks and nonbanks that has served as an accelerating force.

Legal and regulatory factors have also contributed to the rise in bank/nonbank relationships among smaller banks (principally under the $10 billion in assets threshold, where the Durbin Amendment cap on debit card fees does not apply) that have emerged in the post–Dodd-Frank Act era.[45] Advantaged by less severe interchange requirements under the Durbin Amendment, nonbanks have formed relationships with smaller banks to earn more income from payments transactions than from similar relationships with larger banks subject to the cap.[46]

These enabling bank/nonbank relationships have not been without their own accompanying risks. Banks entering these relationships have remained accountable for the risks presented by the nonbanks with which they collaborate as well as the products and services offered by the nonbanks. Banks have also remained responsible for understanding the nature of the nonbank's activities and the extent to which those activities pose risk to the banking franchise. The onus is on banks to monitor and mitigate the risks of nonbanks under the umbrella of third-party risk management. However, the proliferation of these relationships, along with recent examples of insufficient third-party oversight, has brought this regulatory back door to the forefront.[47]



Regulators are starting to take notice

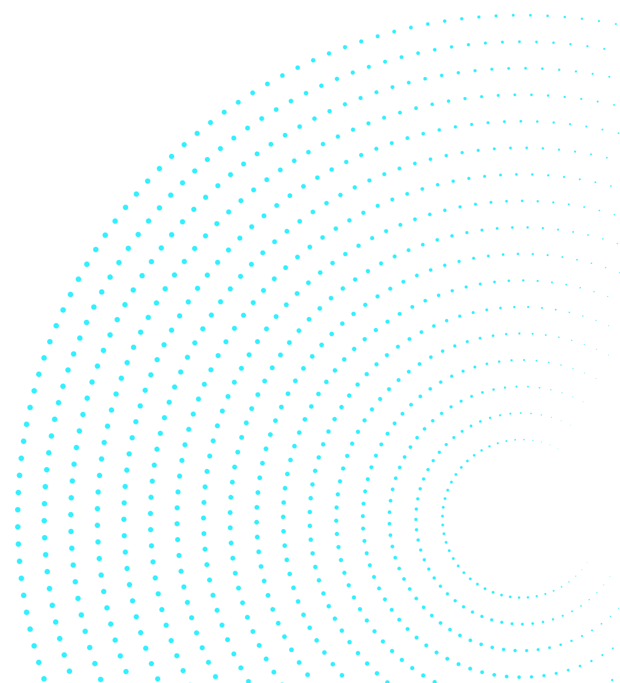
The new BaaS ecosystem, as well as the existing regulatory arbitrage, has not gone unnoticed by the federal banking agencies, with regulators starting to put more pressure on banks to level the playing field (with a particular focus on the class of banks under $10 billion that are prolific BaaS providers) and scrutinizing services offered to nonbanks. Today, nonbanks and their holding companies do not have a primary federal regulator and are not subject to consolidated supervision, leading to regulatory gaps and respective risks that exist out of the sight of regulators. By pushing through and into nonbank relationships, the agencies are potentially broadening the regulatory perimeter to encompass these nonbanks, with many nonbanks likely being forced to reckon with enhanced supervision.[48]

Looking ahead, regulatory scrutiny of bank/nonbank relationships is likely to increase, with further regulatory tightening and oversight of these relationships anticipated. Recent enforcement actions, and market disruptions resulting from supervisory examinations and related actions at many bank partners, reflect this tightening regulatory climate.[49] The OCC and FDIC appear to be prioritizing BaaS providers, with enhanced supervisory levels of focus. Their supervisory strategy will factor in bank size, complexity, and risk profile (likely including characteristics such as the nature and number of bank/nonbank relationships).[50] This wave of change and regulatory development may force both banks and nonbanks to rethink their strategic goals and redefine their business models within the context of the regulatory perimeter and heightened supervision. Organizations that can adjust to evolving trends in the banking sector and anticipate the focus of supervisory activities will be better positioned to avoid negative regulatory attention. Nonbanks can likely expect more focus and scrutiny from regulators, including the CFPB and Federal Trade Commission (FTC) on areas of competition and protecting consumer interests.[51] CFPB investigations involving whether an entity provided consumers with false or misleading information "concerning the ability to earn interest and the security of their digital assets in an unfair, misleading or abusive manner" are becoming more common.[52]

FFIEC oversight authorities will expect nonbanks to develop and implement enterprise IT risk management, IT governance, cybersecurity, and a range of other resiliency processes in alignment with interagency expectations. This means that nonbank activities are subject to the same risk management, security, privacy, and other internal controls and policies that a bank could follow if it were to perform the activities in-house.

More broadly, proposed legislation that could empower federal banking regulators to expand their purview to new products such as stablecoins may result in increased regulatory scrutiny for banks and nonbanks,[53] greater scrutiny may be felt by nonbanks as partnering banks increase control of contract terms and third-party relationships via heightened risk management practices, and heightened scrutiny may arise if a nonbank is designated as a "systemically important financial institution" by the FSOC.[54]

Given these and other potential trends, it will be necessary to watch how the federal banking regulators, in conjunction with the FFIEC, utilize their supervisory authority on covered service providers. Banks that employ BaaS models will need to up their game to satisfy supervisory expectations or face criticisms that could potentially lead to enforcement actions. In the current environment, regulators are starting to place additional emphasis on risk-focused supervisory approaches. This is already playing out to a certain extent, with the cloud computing and computer incident notification regulation, third-party risk management requirements, etc. To the extent that small bank/nonbank relationships involving BaaS is an area of regulatory concern, smaller banks should expect that supervisory expectations could be commensurate with the assumed risk regardless of size.



Some final thoughts to help you think through what to do next

The inevitability of more regulatory focus and regulatory change has placed the imperative upon both banks and nonbanks to define how they will adapt to thrive within the evolving regulatory perimeter. This may mean recalibrating strategic priorities and enhancing capabilities to meet a specific business strategy and regulatory requirements.

For nonbanks, the expanding regulatory perimeter will likely translate to an expectation for heightened oversight of nonbanks' businesses and partners. There will likely be a need for nonbanks to reassess existing compliance and risk management programs. Nonbank engagement with products and services that have been traditionally relegated to the banking industry will likely prompt regulators to extend consumer protection efforts (for example, fair lending, privacy, and fraud) as well as broaden the scope of safety and soundness expectations. Business continuity planning for nonbanks needs to be revisited to make sure that customers are protected in case of unprecedented circumstances. More prescriptive risk management and compliance expectations are expected to follow for nonbanks that collaborate or intend to collaborate with traditional banks. As nonbanks continue to explore how they engage with banks, the regulatory perimeter (e.g., access to payments systems, offering payment products, building super apps that centralize financial service products) will continue to be an area of tension between federal and state regulators.

Traditional banks will likely feel increased pressure to act as proverbial gatekeepers of the banking ecosystem consistent with regulators' efforts to protect the regulatory perimeter. From a practical perspective, this likely means a higher focus on third-party risk management to confirm that bank/nonbank relationships truly meet regulatory obligations on a continual basis. Banks will probably need to enhance the rigor with which they conduct due diligence on potential nonbank collaboration and the effectiveness of ongoing monitoring of their respective risk and compliance environments. The effectiveness with which banks and nonbanks respond to this next iteration of changes to the regulatory perimeter will set the tone for the road ahead. Going forward, banks will need to intensify their oversight of nonbank relationships and conduct comprehensive risk management assessments accordingly.[55]

As you think about what you will do next, consider:

- **Taking a forward-looking approach to assessing your business and regulatory strategy** by identifying your strategic value proposition, including where you'll "play," how you'll "win," what capabilities you have in place, and how you'll be able to manage execution of your strategic vision.
    - Develop a view on how the regulatory landscape will evolve and how your business model will respond
- **Being proactive in evaluating what risk management capabilities** and controls you may need to stand up or enhance so you can take the high ground when it comes to shifting regulatory expectations and compliance.
    - Determine your level of preparedness for examination activities well in advance; develop a clear understanding of supervisory assessments and examination scopes to prevent adverse outcomes
- **Evaluating risks holistically by focusing on new business, product, and service processes** and ensuring third-party programs effectively highlight risks. Also, consider issuance that extends regulatory guidance and regulations to third-party service providers.
    - Obtain support on the conduct of effective and comprehensive third-party risk management activities to confirm that all bases are covered.
- **Monitoring legislative, regulatory, and supervisory developments.** Establish a mechanism that provides a line of sight into shifts in laws, regulations, guidance, and examination processes.
    - Link the monitoring system to any existing systems that handle change management and controls transformation.
- **Taking a look at Deloitte's Business and Entity Transformation services** for insights and support to navigate the evolving regulatory perimeter.

It's a pivotal time to review and reflect on the current landscape, and further strengthen how banks and nonbanks engage, to facilitate responsible innovation. No matter what type of entity you are—bank or nonbank—it is an advantageous time to make sure you are linking your strategic goals with your regulatory strategy.

Appendix 1

What are banks/nonbanks currently doing in the financial product and service space?

We have discussed how nonbanks collaborate with banks and "export" services outside the regulatory perimeter. Below, we review some actual industry examples of nonbank/bank arrangements, leveraging publicly available information.

This is not an exhaustive review, as we have focused only on some select players within certain segments of the economy (for example, tech, fintech, digital banking). Our review captures the different "banking-like" activities engaged in by these nonbank firms, primarily focused on the core pillars of loans, deposits/stored value, and payments.

Our review addresses select areas across select market players:

- **Licenses:** Existing payments or banking licenses the organization holds (e.g., money services business (MSB), IDI)
- **Deposits:** FDIC-insured deposits provided by themselves or in collaboration with a bank
- **Lending:** Lending services provided (e.g., retail, commercial)
- **Payments:** Payment services provided (e.g., digital wallets, retail payments)
- **Provision of data and services:** Cloud/data-related services offered

We divided the service offerings into three broad categories:

- **Existing services:** Full suite of product offerings provided to the client
- **Specific services:** Limited or specific services offered (e.g., only auto loans for automotive companies or only reward cards)
- **Nascent services:** Full expanse of services are not offered, or services are not fully developed based on their peers in similar industries

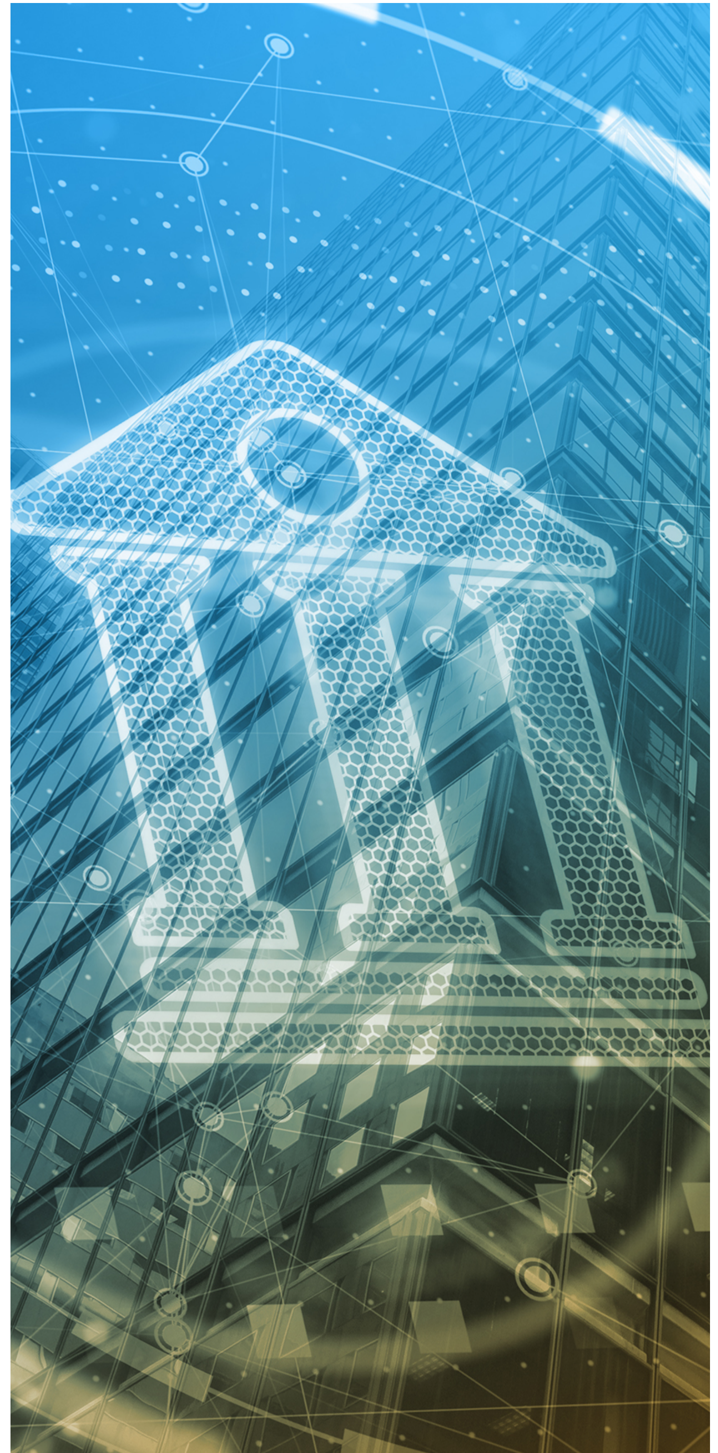


Table 1: Glossary

Terms	Description
Trust company	Able to engage in fiduciary activities and custody services and perform related functions. Many trust companies are not insured by the FDIC. These companies are chartered and regulated by a state or by the OCC. Trust companies that are owned by a bank holding company are also subject to supervision by the FRB. Trust companies that are owned by banks are subject to examination and supervision by the parent bank's primary regulator.
BitLicense	A license authorizing virtual currency activities, issued by the New York Department of Financial Services, under regulations designed for companies or individuals that engage in virtual currency business activity. Covered services may not be offered to New York residents without this license (subject to limited exceptions for certain bank and trust entities).
MSB	A nonbank doing business in one or more of the following capacities: • Currency dealer or exchanger • Check casher • Issuer of traveler's checks, money orders, or stored value • Seller or redeemer of traveler's checks, money orders, or stored value • Money transmitter MSB businesses are subject to state licensing requirements (with the triggers varying by state). These nonbanks are also subject to registration requirements with Financial Crimes Enforcement Network, relating to anti-money laundering (AML) compliance.
Digital wallet	A software application that stores payment or account details to facilitate traditional payments using bank and credit card details and/or cryptocurrency transactions. In addition, digital wallets facilitate P2P transfers. Digital wallets are generally used for (1) payments to merchants through the use of near-field communication or quick response (QR) codes for in-person purchases; (2) P2P transfers of funds through an app, via text message, or QR codes; (3) storing value from a linked bank account or debit card on an app-based account; or (4) storing, providing access to, and transacting in cryptocurrency.
B2B/retail payment	A retail payment system manages transactions between an organization and its buyers. This system enables customers to transfer funds to an organization when goods or services are purchased, and vice versa with returns and refunds. Buyers are end users and can be businesses or consumers. Business-to-business (B2B) payments are the exchange of currency between two business entities for goods or services supplied. These payments may happen on a one-time basis or repeatedly, depending on the terms of the buyer and seller agreement. Business entities may include corporations, wholesalers, retailers, manufacturers, or distributors.

Figure A-1. Tech

Tech	Licenses				Deposits		Lending				Payments			Provision of data services	
	IDI	Trust company/ custodian	BitLicense	MSB	FDIC-insured	Partnership with banks	Retail	Commercial	Leases	Card in partnership with banks	Digital wallet	B2B	Retail	Data	Cloud
Apple				✓			✓ (Buy Now, Pay Later (BNPL) services by itself or subsidiary)		✓ (Specific services)	✓	✓	✓	✓		
Google				✓							✓	✓	✓	✓	✓
Facebook/ Meta				✓							✓				
Amazon				✓			✓ (Buy Now, Pay Later (BNPL) services through third-party)	✓		✓	✓	✓	✓	✓	✓
Microsoft								✓ (Nascent, specific services)				✓ (Nascent, specific services)	✓ (Nascent, specific services)	✓	✓

Legend: ✓ Existing services; ◌ Specific services; ✓ Nascent services; ◯ Buy Now, Pay Later (BNPL) services by itself or subsidiary; ◯ Buy Now, Pay Later (BNPL) services through third-party; ◯ Digital wallets for crypto products

Sources:
Apple Disclaimer: This is an independent (publication) and has not been authorized, sponsored, or otherwise approved by Apple Inc. (https://www.cnbc.com/2022/06/08/apple-will-handle-lending-for-apple-pay-later.html; https://www.apple.com/shop/finance/business-financing; https://www.cnbc.com/2019/03/26/apples-move-into-banking-raises-the-bar-for-fintech-credit-cards.html#:~:text=The%20tech%20giant%20unveiled%20its,banks%20and%20newer%20fintech%20firms),
Google (https://finance.yahoo.com/news/google-wallet-venmo-paypal-fdic-insurance-215842545.html; https://wallet.google/; https://www.cbinsights.com/research/report/big-tech-in-lending/; https://blog.google/outreach-initiatives/grow-with-google/small-business-fund-cdfi/; https://www.db.com/news/detail/20201204-deutsche-bank-and-google-cloud-sign-pioneering-cloud-and-innovation-partnership?language_id=1; https://www.prnewswire.com/news-releases/google-cloud-announces-cloud-first-partnership-with-keybank-301474732.html),
Facebook/Meta (https://about.fb.com/news/2022/06/introducing-meta-pay/; https://www.facebook.com/payments_terms/licenses),
Amazon (https://www.cbinsights.com/research/report/amazon-across-financial-services-fintech/; https://sell.amazon.com/programs/amazon-lending; https://www.aboutamazon.com/news/small-business/amazon-community-lending-pilot-program-to-fuel-small-business-growth; https://www.thebalance.com/what-you-need-to-know-about-amazon-bnpl-5185538; https://www.propertycasualty360.com/2021/03/22/amazon-to-offer-business-insurance-through-new-partnership/?slreturn=20220604041846#:~:text=Amazon%20Care%2C%20which%20was%20launched,simple%20and%20affordable%20purchasing%20experience.; https://aws.amazon.com/financial-services/#:~:text=AWS%20Financial%20Services%20is%20How.&text=AWS%20provides%20financial%20services%20institutions,to%20the%20needs%20of%20tomorrow; https://www.cnbc.com/2016/11/30/how-amazon-web-services-is-luring-banks-to-the-cloud.html; https://www.computerworld.com/article/3643631/new-goldman-sachs-aws-data-service-points-to-a-larger-banking-trend.html; https://www.cnbc.com/2018/02/14/amazon-and-bank-of-america-partner-for-lending-program-but-growth-has-stalled.html; https://business.amazon.com/en/find-solutions/reduce-costs/payment-solutions),
Microsoft (https://docs.microsoft.com/en-us/learn/modules/create-transactions-e-commerce/; https://azure.microsoft.com/en-in/industries/financial/banking/; https://partner.microsoft.com/el-gr/licensing/financing)

Figure A-2. Fintech digital banking

Fintech digital banking	Licenses				Deposits		Lending				Payments				Provision of data services	
	IDI	Trust company/ custodian	BitLicense	MSB	FDIC-insured	Partnership with banks[1]	Retail	Commercial	Leases	Card in partnership with banks	Digital wallet	Stablecoin issuer	B2B	Retail	Data	Cloud
Anchorage Digital		✓N		✓				✓			✓ (BNPL through third-party)		✓			
Fireblocks				✓							✓ (BNPL through third-party)		✓	✓ (nascent)		✓ (nascent)
Coinbase		✓S	✓	✓		✓C				✓ (specific)	✓ (BNPL through third-party)		✓	✓	✓	✓
Circle			✓	✓		✓C						✓	✓	✓ (nascent)		
Paxos		✓NC		✓		✓R+C					✓ (BNPL through third-party)	✓	✓ (nascent)	✓ (nascent, specific)		

✓N Holds a National Trust Charter.
✓S Holds a State Trust Charter.
✓NC The OCC had granted a preliminary conditional charter to Paxos National Trust.
[1] These include reserves held for stablecoins or customers' cash held in the custody accounts, which are placed with banks.
✓R Depicts reserves held for stablecoins are placed with banks.
✓C Depicts cash held by customers in the company's accounts are placed with banks.

Legend: ✓ Existing services; dashed circle: Specific services; grey ✓ Nascent services; green circle: Buy Now, Pay Later (BNPL) services by itself or subsidiary; red circle: Buy Now, Pay Later (BNPL) services through third-party; yellow circle: Digital wallets for crypto products

Sources:
Anchorage Digital (https://blockworks.co/bankprov-partners-with-anchorage-for-ethereum-backed-loans/; https://www.prnewswire.com/news-releases/bankprov-offers-financing-for-ethereum-backed-line-of-credit-through-partnership-with-anchorage-digital-301305472.html; https://www.anchorage.com/legal; https://www.anchorage.com/insights/introducing-anchorage-digital-bank-the-first-federally-chartered-digital-asset-bank; https://www.aba.com/member-tools/industry-solutions/industry-providers/anchorage-digital-bank-na#; https://www.anchorage.com/services/custody; https://www.anchorage.com/services/trading; https://www.anchorage.com/services/custody; https://www.anchorage.com/insights/anchorage-digital-launches-build-with-anchorage-digital-to-link-every-business-to-crypto),
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Coinbase (https://help.coinbase.com/en/coinbase/other-topics/legal-policies/how-is-coinbase-insured; https://thefinancialgeek.com/blog/is-coinbase-fdic-insured/#:~:text=Coinbase%20FDIC%20Insured%3F-,Coinbase%20is%20FDIC%20insured.,are%20insured%20by%20the%20FDIC; https://help.coinbase.com/en/coinbase/other-topics/legal-policies/how-is-coinbase-insured; https://www.coinbase.com/wallet; https://www.coinbase.com/borrow; https://commerce.coinbase.com/; https://help.coinbase.com/en/commerce/getting-started/for-merchants; https://help.coinbase.com/en/commerce/getting-started/for-customers; https://www.coinbase.com/card; https://coinbase.com/legal/licenses; https://data.coinbase.com/; https://www.coinbase.com/cloud; https://www.coinbase.com/prime/custody),
Circle (https://www.circle.com/en/payments; https://www.circle.com/en/accounts; https://www.circle.com/en/products/yield; https://www.circle.com/en/solutions-for-institutional-traders; https://www.circle.com/en/legal/licenses; https://www.circle.com/en/payments),
Paxos (https://account.paxos.com/signup; https://freewallet.org/usdp-wallet; https://paxos.com/stablecoin-and-payments/#; https://paxos.com/crypto-brokerage/; https://paxos.com/commodities-settlement/; https://paxos.com/itbit/; https://paxos.com/paxgold/; https://www.coindesk.com/markets/2021/04/23/paxos-becomes-third-federally-regulated-crypto-bank/)

Figure A-3. Fintech digital banking and healthcare firms

		Licenses				Deposits		Lending				Payments			Provision of data services	
		IDI	Trust company/ custodian	BitLicense	MSB	FDIC-insured	Partnership with banks	Retail	Commercial	Leases	Card in partnership with banks	Digital wallet	B2B	Retail	Data	Cloud
Fintech digital banking	Block (Square)	✓ ILC		✓	✓		✓		✓ [BNPL through third-party]		✓		✓	✓		
	PayPal[1]			✓ C	✓		✓	✓ [BNPL through third-party]	✓		✓	✓	✓	✓	✓	
	Chime				✓		✓	✓			✓			✓		
	Monzo**						✓				✓		✓	✓ [nascent]		
	Revolut**						✓	✓ [nascent, specific]			✓		✓	✓ [nascent]		
Healthcare firms	UnitedHealth Group	✓ ILC				✓					✓* [specific]	✓ [specific]		✓ [specific]		
	Walgreens						✓	✓ [nascent, BNPL through third-party]			✓	✓ [specific]	✓	✓ [specific]		

[1] PayPal is a licensed bank in Europe.
** These are not US firms; however, their corresponding US entities have been analyzed for the purposes of this point of view.
✓ILC Industrial loan company.
✓C NYDFS granted PayPal, Inc. a conditional virtual currency license in October 2020.
✓* UnitedHealth Group (Optum Bank) is an ILC bank and offers an Optum Bank payment Mastercard by itself to its customers to pay for eligible and qualified medical expenses without submitting paper claim form.

Legend: ✓ Existing services; Specific services (dotted circle); ✓ Nascent services (grey); Buy Now, Pay Later (BNPL) services by itself or subsidiary (green circle); Buy Now, Pay Later (BNPL) services through third-party (red circle); Digital wallets for crypto products (yellow circle)

Sources:
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Revolut (https://www.revolut.com/en-US/savings-vaults-fdic-insured; https://www.revolut.com/on-demand-pay; https://www.revolut.com/payments; https://www.revolut.com/business/accept-payments; https://www.revolut.com/cards; https://www.revolut.com/business/cards; https://www.pymnts.com/news/2022/revolut-partners-with-cross-river-bank-to-offer-financial-services-in-us/#:~:text=Revolut%20Partners%20With%20Cross%20River%20Bank%20to%20Offer%20Financial%20Services%20in%20US&text=Cross%20River%20Bank%2C%20a%20technology,Revolut%2C%20a%20press%20release%20said; https://www.pymnts.com/news/b2b-payments/2022/revolut-debuts-united-states-dollar-transfers-uk/#:~:text=The%20new%20feature%20lets%20Revolut's,payments%20through%20the%20SWIFT%20network),
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Walgreens (https://www.walgreens.com/mywalgreens/cards/debit.jsp?ban=FY22_DC_Roto_October; https://news.walgreens.com/photo_display.cfm?photo_id=15283; https://thepaypers.com/online-payments/walgreens-and-other-brands-join-mastercard-instalments--1255238#; https://www.pymnts.com/partnerships/2022/mastercard-installments-adds-hsbc-jpmorgan-natwest-others-as-bnpl-partners/; https://www.pymnts.com/digital-payments/2021/walgreens-updates-app-for-streamlined-payments-with-apple-pay/; https://www.walgreens.com/mywalgreens/cards/credit.jsp; https://www.walgreens.com/mywalgreens/cards/debit.jsp?ban=FY22_DC_Roto_October; https://www.pymnts.com/news/b2b-payments/2018/walgreens-auction-liquidation-overstocks-marketplace/)

Figure A-4. Automotive firms

Automotive firms	Licenses				Deposits		Lending				Payments			Provision of data services	
	IDI	Trust company/ custodian	BitLicense	MSB	FDIC-insured	Partnership with banks	Retail	Commercial	Leases	Card in partnership with banks	Digital wallet	B2B	Retail	Data	Cloud
GM Financial	✓P						◌✓	◌✓	◌✓	✓*			◌✓		
BMW Financial	✓ILC				✓		◌✓		◌✓	✓**					
Toyota Financial	✓ILC				✓		✓	✓		✓					
Tesla							◌✓1		◌✓				◌✓		
Ford	✓P						◌✓	◌✓	◌✓	◌✓	◌✓ (nascent)		◌✓ (nascent)		

✓P ILC Charter pending; provided an application to FDIC but has not yet been approved.
✓* GM card is offered by the OEM in partnership with banks and not the captive firm.
✓ILC Industrial loan company.
✓** ILC BMW credit cards were previously issued by BMW Bank of North America (BMW ILC) but are now being issued by Elan Financial Services, a division of U.S. Bank.
✓1 Tesla vehicles can be bought by securing a loan with a Tesla financier or a third-party lender over the terms of 36 to 72 months. Tesla lending is only available for approved applicants depending on state.

Legend: ✓ Existing services; ◌ Specific services; ✓ Nascent services; ○ Buy Now, Pay Later (BNPL) services by itself or subsidiary; ○ Buy Now, Pay Later (BNPL) services through third-party; ○ Digital wallets for crypto products

Sources:
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Tesla (https://www.tesla.com/support/financing; https://www.tesla.com/support/lending/making-payments; https://www.tesla.com/support/energy/tesla-software/autobidder; https://www.tesla.com/support/insurance),
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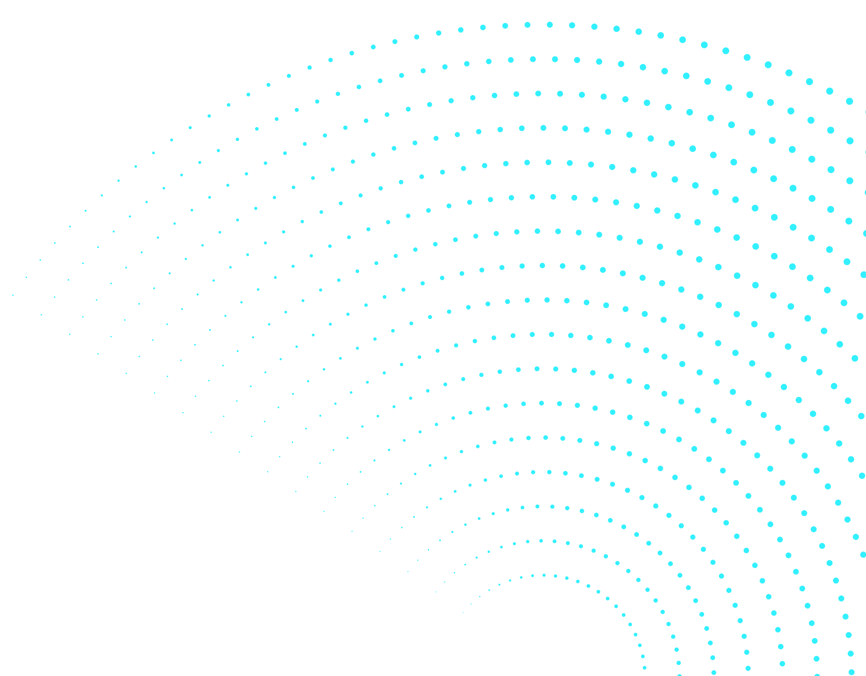

Figure A-5. Consumer retail firms

Consumer retail firms	Licenses				Deposits		Lending				Payments			Provision of data services	
	IDI	Trust company/ custodian	BitLicense	MSB	FDIC-insured	Partnership with banks	Retail	Commercial	Leases	Card in partnership with banks	Digital wallet	B2B	Retail	Data	Cloud
Walmart				✓			✓ (BNPL through third-party)	✓		✓	✓	✓	✓		
Home Depot							✓ (specific service; BNPL through third-party)	✓ (specific service)		✓		✓	✓		
Costco										✓		✓	✓		
Best Buy							✓ (specific service; BNPL through third-party)	✓ (specific service)	✓ (specific service)	✓		✓	✓		

✓ Existing services; ◌ Specific services; ✓ Nascent services; ○ (green) Buy Now, Pay Later (BNPL) services by itself or subsidiary; ○ (red) Buy Now, Pay Later (BNPL) services through third-party; ○ (yellow) Digital wallets for crypto products

Sources:
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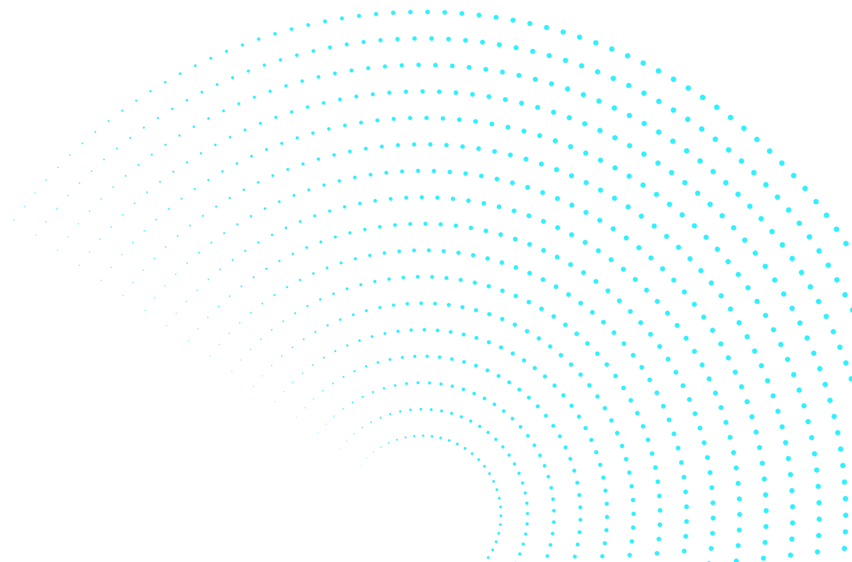
Best Buy (https://www.bestbuy.ca/en-ca/about/best-buy-financing/blt12a5f527f63859b7; https://www.bestbuy.com/site/electronics/bestbuy-business/pcmcat230900050001.c?id=pcmcat230900050001; https://www.bestbuy.com/site/financing-rewards/progressive-leasing/pcmcat1535574988808.c?id=pcmcat1535574988808; https://www.bestbuy.com/site/financing-rewards/best-buy-pay/pcmcat1475001387481.c?id=pcmcat1475001387481; https://www.bestbuy.com/site/totaltech/best-buy-protection/pcmcat1608643232014.c?id=pcmcat1608643232014; https://www.bestbuy.com/site/geek-squad/geek-squad-protection/pcmcat159800050001.c?id=pcmcat159800050001; https://www.bestbuy.com/site/electronics/bestbuy-business/pcmcat230900050001.c?id=pcmcat230900050001&intl=nosplash)

Appendix 2

Who are the federal regulatory agencies and what is under their purview?

- **State banking supervisors:** State-specific banking departments with oversight of state licensed financial organizations.
  - Priorities:
    - Consumer lending and money service businesses (including BSA/AML)
    - Licensing
    - Consumer protection
    - State attorneys general (AGs): Unfair, Deceptive, or Abusive Acts or Practices compliance
  - Supervisory and enforcement scope:
    - State financial regulators are the primary regulators of nonbanks operating within the United States, including mortgage providers, money services businesses, consumer finance companies, payday lenders, check cashers, and debt collection firms
    - State AGs have broad enforcement powers
  - Supervisory activities:
    - Supervision (e.g., examinations that can be multistate or joint with primary federal regulators)
    - Enforcement (e.g., investigations that can be multistate or joint with state AG)
    - Complaint resolution
- **Consumer Financial Protection Bureau (CFPB):** Federal agency providing direct consumer protection supervision (including examination) oversight for banks, thrifts, and credit unions with assets exceeding $10 billion, their affiliates, and certain other consumer finance entities as established pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").[56]
  - Priorities:
    - Consumer protection
    - Competition
  - Supervisory and enforcement scope:
    - A nonbank covered "person" that is engaging or has engaged in conduct that poses risks to consumers regarding the offering or provision of consumer financial products or services
  - Supervisory activities:
    - Supervision (e.g., examinations, ongoing monitoring)
    - Regulation, such as Equal Credit Opportunity Act (Regulation B), Truth in Lending (Regulation Z), including amendments and issuance of related guidance
    - Enforcement (e.g., investigations)
    - Information requests (from supervised entities without conducting examinations, as appropriate)
- **Federal Trade Commission (FTC):** Protects consumers and competition by preventing anticompetitive, deceptive, and unfair business practices through law enforcement, advocacy, and education without placing undue burden on legitimate business activity.[57]
  - Priorities:
    - Consumer protection
    - Competition
    - Commerce
  - Supervisory and enforcement scope:
    - Persons, partnerships, or corporations (except certain banks, savings and loan institutions, federal credit unions, common carriers, air carriers, and foreign air carriers) engaged in commerce
  - Supervisory activities:
    - Investigations
    - Reports or information requests



- **Federal Financial Institutions Examination Council (FFIEC):** Interagency body that develops uniform principles, standards, and report forms for use in conjunction with federal examinations of financial institutions by the FRB, FDIC, National Credit Union Administration (NCUA), OCC, and CFPB.[58] The FFIEC's IT handbook includes several booklets outlining supervisory practices applicable to nonbanks including supervision of technology service providers. FFIEC supervises the third-party service providers (TSPs) that enter into a contractual relationship with IDI. FFIEC can conduct IT-related examinations of banks and their TSPs that focuses on underlying IT risk and risk assessment process and considers business-line risk rankings to determine that covered services are effectively included.
    - Priorities:
        - IT risk management
        - IT resiliency
        - Cyber
        - Third-party risk management
    - Supervisory and enforcement scope:
        - Companies subject to the Bank Service Company Act (BSCA) including those that provide certain covered services to banks and those that are owned by banks
    - Supervisory activities:
        - Nonbanks designated as bank service companies are subject to potential examination and regulation by the appropriate primary federal banking regulator

Appendix 3

Summary of select highlights from a recent Treasury report

Following the executive order issued by the Biden administration in July 2022 on economic competition, the Treasury has released its *Assessing impacts of new entrant nonbank firms on competition in consumer finance markets* report, which seeks to assess the impact these new entrant nonbank firms are having on competition in core consumer finance markets:

- **New entrant nonbank firms are contributing to diversification and complexity:** IDIs continue to be important to the underlying infrastructure that supports many of these new business models, which often involve new entrant nonbank firms inserting themselves between the IDI and the consumer. As a result, relationships with IDIs have led to an environment where IDIs and new entrant nonbank firms increasingly interact as both direct competitors and collaborators. In these ways, new entrant nonbank firms have added complexity to the financial system.
- **New entrant nonbanks are adding competitiveness to the market:** New entrant nonbank firms have a growing presence across core consumer finance markets and are increasingly managing the points through which consumers access financial products and services. This trend has been particularly acute in the markets for payments and consumer lending. More than 1,200 fintech firms, focused on consumer deposits, lending, and payments, formed in the decade following the 2007–08 global financial crisis. In the mortgage market, fintech and other nonbank originations rose from approximately 30% of the market in 2007 to 50% by 2015. Additionally, fintech funding has grown, with an average of 1,200 general fintech funding deals completed each year between 2015 and 2021. Over this period, the annual total funding for the industry increased from $10.7 billion in 2015 to $62.9 billion in 2021. There have also been increasing investments in technology by IDIs.
- **New entrant nonbanks provide both opportunities and risks:** This report suggests fintech lenders may be reaching an expanded number of consumers, including consumers who have been unserved by IDIs. Where new entrant nonbank firms are rebundling core banking services outside the bank regulatory perimeter, there may be risks similar to those posed, for example, by the intermingling of commerce and banking.
- **Big tech firms entering into the consumer market could require review:** Big tech firms may be able to use data advantages, network effects, mergers and acquisitions, predatory pricing, and other tactics to gain or entrench market power to the detriment of competition. Such scenarios require consideration given the size and potential impact of these firms if they choose to broadly engage in core consumer finance markets.

The report offers the following recommendations for consideration by the applicable federal agencies:

- To enable competition in responsible consumer credit underwriting, Treasury recommends that regulators take various steps to determine that credit underwriting practices of lenders are designed to increase credit visibility, reduce bias, and prudently expand credit to consumers.
- To enable effective oversight of bank/fintech relationships, Treasury recommends that federal banking regulators implement a clear and consistently applied supervisory framework for an IDI's role in bank/fintech relationships to address competition, consumer protection, and safety and soundness concerns.
- To encourage competition in responsible small-dollar lending, Treasury recommends that the agencies increase consistency in supervisory practices related to small-dollar lending programs.
- To enable secure data sharing, Treasury recommends that federal banking regulators and CFPB take steps to help promote a more unified approach to oversight of consumer-authorized data sharing.
- Treasury also supports and encourages federal agencies' ongoing efforts on issues related to those addressed by this report, including:
    - The federal banking regulators and the Department of Justice's review of bank merger policies
    - The CFPB's inquiries into big tech payment platforms and buy now, pay later providers
    - The CFPB's rulemaking efforts to address consumer financial data access through implementation of Section 1033 of the Dodd-Frank Act, among other efforts

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42. The regulatory perimeter consists of the boundaries of the various federal and state regulatory and legal frameworks that apply in different ways to different types of financial institutions and financial services offerings.
43. As the landscape evolves, we are reminded that this is not the first time we have seen a concentration of financial activity take place outside of the regulatory perimeter, nor is it the first time that such activity has raised significant risk management or financial stability concerns. After the 2008–2009 financial crisis, the Financial Stability Oversight Council (FSOC) was empowered with designation authorities to apply Federal Reserve Board requirements for enhanced prudential standards and consolidated supervision applicable to designated nonbanks. In 2019, the FSOC issued a notification of proposed interpretive guidance introducing an "activities-based" approach for nonbank designations that would likely be more relevant to designations in the current environment.
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