441 G St. N.W.
Washington, DC 20548

Comptroller General
of the United States

April 20, 2020

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th St., NW
Washington, D.C. 20429

Priority Open Recommendations: Federal Deposit Insurance Corporation

Dear Ms. Chairman:

The purpose of this letter is to provide an update on the overall status of the Federal Deposit Insurance Corporation's (FDIC) implementation of GAO's recommendations and to call your personal attention to areas where open recommendations should be given high priority. In November 2019, we reported that on a government-wide basis, 77 percent of our recommendations made 4 years ago were implemented.[1] FDIC's implementation rate for these recommendations was 96 percent. As of February 2020, FDIC had seven open recommendations. Fully implementing these open recommendations could significantly improve FDIC's efforts to more effectively oversee risks to consumers and the safety and soundness of the U.S. banking system

FDIC has both of its two priority recommendations remaining from those we identified in our April 2019 letter. We ask your continued attention to those remaining priority recommendations. We also are adding one new recommendation related to financial technology (fintech), bringing the total number of priority recommendations to three. (See enclosure for the list of recommendations.)

Financial Technology and Consumer Protection. Consumers are using financial technology firms to aggregate information from their various financial accounts. In March 2018, we reported that market participants disagreed over whether consumers using financial account aggregators would be reimbursed for losses arising from unauthorized activity. We recommended that FDIC engage in collaborative discussions with other relevant financial regulators and stakeholders to address these issues. Bank and credit union regulators and the Consumer Financial Protection Bureau (CFPB) have been holding such discussions. These collaborations have resulted in a 2019 interagency statement on the use of alternative data in credit underwriting, but they have

[1]GAO, *Performance and Accountability Report: Fiscal Year 2019*, GAO-20-1SP (Washington, D.C.: Nov. 19, 2019).

not provided firms or banks more specific direction on the appropriate use of the data. To implement our recommendation, FDIC needs to continue to actively participate in these ongoing efforts to help ensure they result in tangible outcomes.

In addition, in December 2018, we found that some fintech lenders used data not traditionally used by national consumer reporting agencies in making credit decisions or attempting to detect fraud. Using alternative data, however, presents both potential benefits and risks. We recommended that FDIC coordinate with other federal banking regulators and CFPB and communicate in writing to banks that engage in third-party relationships with fintech lenders on the appropriate use of alternative data in the underwriting process. FDIC and the other banking regulators have issued third-party publications that can be used by banks that partner with fintech lenders, but these documents do not clearly communicate the regulators' views on the appropriate use of alternative data. To fully implement our recommendation, FDIC needs to complete its plans to work collaboratively with the other banking regulators and CFPB to determine what type of communication would most effectively serve the purpose of addressing the recommendation.

Derisking. One recommendation relates to derisking—the practice of banks limiting services or ending customer relationships to avoid perceived regulatory concerns about facilitating money laundering. In our February 2018 report, we determined that Bank Secrecy Act/anti-money laundering (BSA/AML) regulatory concerns have played a role in banks' decisions to terminate and limit customer accounts and close bank branches. However, regulators have not fully assessed the BSA/AML factors influencing banks to derisk.

We recommended that FDIC jointly conduct a retrospective review of BSA/AML regulations and their implementation for banks with the Board of Governors of the Federal Reserve System (Federal Reserve), Office of the Comptroller of the Currency (OCC), and the Financial Crimes Enforcement Network (FinCEN) and revise regulations or their implementation, as appropriate. This review should focus on how banks' regulatory concerns may be influencing their willingness to provide services.

FDIC agreed with the recommendation and convened a working group in 2018 with the Federal Reserve, OCC, FinCEN, the National Credit Union Administration, and the Office of Terrorism and Financial Intelligence to identify ways to improve the efficiency and effectiveness of BSA/AML regulations, supervision, and examinations. Full implementation of the recommendation will require the working group to consider whether other supervisory concerns should be factored into banks' decisions to derisk. To fully implement our recommendation, the working group needs to evaluate the full range of factors that may influence banks to derisk.

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In March 2019 we issued our biennial update to our high-risk program, which identifies government operations with greater vulnerabilities to fraud, waste, abuse, and mismanagement or the need for transformation to address economy, efficiency, or effectiveness challenges.[2] Our high-risk program has served to identify and help resolve serious weaknesses in areas that involve substantial resources and provide critical service to the public.

One of our high-risk areas, modernizing the U.S. financial regulatory system, including encouraging regulators to strengthen systemic risk oversight and monitor progress on reforms, centers directly on FDIC. Several government-wide high-risk areas, including (1) Ensuring the Cybersecurity of the Nation, (2) Improving the Management of IT Information Technology Acquisitions and Operations, (3) Strategic Human Capital Management, (4) Managing Federal Real Property, and (5) Government-wide Personnel Security Clearance Process, also have direct implications for FDIC and its operations.[3] We urge your attention to government-wide issues as they relate to FDIC. Progress on high-risk issues has been possible through the concerted actions and efforts of Congress, the Office of Management and Budget, and the leadership and staff in agencies, including FDIC.

Copies of this report are being sent to the Director of the Office of Management and Budget and appropriate congressional committees, including the Committees on Appropriations, Budget, and Homeland Security and Governmental Affairs, United States Senate; and the Committees on Appropriations, Budget, and Oversight and Reform, House of Representatives. In addition, the report will be available at no charge on the GAO website at https://www.gao.gov.

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[2]GAO, *High-Risk Series: Substantial Efforts Needed to Achieve Greater Progress on High-Risk Areas*, GAO-19-157SP (Washington, D.C.: Mar. 6, 2019).

[3]GAO-19-157SP. See pages 91-94 for Modernizing the U.S. Financial Regulatory System, pages 178-184 for Ensuring the Cybersecurity of the Nation, pages 123-127 for Improving the Management of IT Acquisitions and Operations, pages 75-77 for Strategic Human Capital Management, pages 78-85 for Managing Federal Real Property, and pages 170-177 for Government-wide Personnel Security Clearance Process.

I appreciate FDIC's commitment to these important issues. If you have any questions or would like to discuss any of the issues outlined in this letter, please do not hesitate to contact me or Daniel Garcia-Diaz, Managing Director, Financial Markets and Community Investment at garciadiazd@gao.gov or 202-512-8678. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report. Our teams will continue to coordinate with your staff on all of the seven open recommendations, as well as those additional recommendations in the high-risk areas for which FDIC has a leading role. Thank you for your attention to these matters.

Sincerely yours,

Gene L. Dodaro

Gene L. Dodaro
Comptroller General
of the United States

Enclosure - 1

Enclosure

Priority Open Recommendations to the Federal Deposit Insurance Corporation

Financial Technology and Consumer Protection

Financial Technology: Agencies Should Provide Clarification on Lenders' Use of Alternative Data. GAO-19-111. Washington, D.C.: December 19, 2018 (reissued with revisions on March 12, 2019).

Recommendation: The Chairman of the Federal Deposit Insurance Corporation (FDIC) should, in coordination with the other federal banking regulators and the Consumer Financial Protection Bureau and with input from relevant stakeholders, communicate in writing to banks that engage in third-party relationships with fintech lenders on the appropriate use of alternative data in the underwriting process, including issues to consider when selecting types of alternative data to use.

Action Needed: FDIC agreed to take action on our recommendation and issued an interagency statement in December 2019 along with the other banking regulators, on the use of alternative data in credit underwriting. However, to fully implement our recommendation, a statement is needed that provides firms or banks more specific direction on the appropriate use of the data.

Director: Michael E. Clements, Financial Markets and Community Investment

Contact Information: clementsm@gao.gov or 202-512-8678

Financial Technology: Additional Steps by Regulators Could Better Protect Consumers and Aid Regulatory Oversight. GAO-18-254. Washington, D.C.: March 22, 2018.

Recommendation: The Chairman of the Federal Deposit Insurance Corporation should engage in collaborative discussions with other relevant financial regulators in a group that includes all relevant stakeholders and has defined agency roles and outcomes to address issues related to consumers' use of account aggregation services.

Action Needed: FDIC agreed with the recommendation. FDIC staff told us that throughout 2019, they participated in interagency meetings with industry stakeholders and international efforts and engaged in collaborative discussions on the subject. However, FDIC's actions have yet to produce outcomes that would fully satisfy the recommendation. Specifically, the collaborating agencies need to define the short-term and long-term outcomes that the collaboration is seeking to achieve and clarify the roles and responsibilities of the participating agencies.

Managing Director: Daniel Garcia-Diaz, Financial Markets and Community Investment

Contact Information: garciadiazd@gao.gov or 202-512-8678

Derisking

Bank Secrecy Act: Derisking along the Southwest Border Highlights Need for Regulators to Enhance Retrospective Reviews. GAO-18-263. Washington, D.C.: February 26, 2018.

Recommendation: The Chairman of the Federal Deposit Insurance Corporation should jointly conduct a retrospective review of Bank Secrecy Act/anti-money laundering (BSA/AML) regulations and their implementation for banks with the Board of Governors of the Federal Reserve System (Federal Reserve), the Office of the Comptroller of the Currency (OCC), and the Financial Crimes Enforcement Network (FinCEN). This review should focus on how banks' regulatory concerns may be influencing their willingness to provide services. In conducting the review, FDIC, the Federal Reserve, OCC, and FinCEN should take steps, as appropriate, to revise the BSA regulations or the way they are being implemented to help ensure that BSA/AML regulatory objectives are being met in the most effective and least burdensome way.

Action Needed: FDIC agreed to address our recommendation and said it convened a working group in 2018 with the Federal Reserve, OCC, FinCEN, the National Credit Union Administration, and the Office of Terrorism and Financial Intelligence to identify ways to improve the efficiency and effectiveness of BSA/AML regulations, supervision, and examinations. FDIC staff believe that the ongoing review conducted by this working group addresses our recommendation. However, we believe that full implementation of the recommendation will require the working group to consider whether there are other supervisory concerns that factor into banks' decisions to derisk, which it has not yet done. We will continue to monitor the activities and related outcomes of the working group for actions that are fully responsive to our recommendation.

Managing Director: Daniel Garcia-Diaz, Financial Markets and Community Investment

Contact Information: garciadiazd@gao.gov or 202-512-8678

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