September 22, 2020

Mr. Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

RE: Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services

The Marketplace Lending Association (MLA) applauds the FDIC for issuing a request for information (RFI) as part of its FDiTech initiative to promote the efficient and effective adoption of technology at FDIC-supervised banks and savings associations (financial institutions), particularly at community banks, and to facilitate the supervision of technology usage at these institutions without increasing costs or regulatory burden. The RFI centers on efforts at increasing transparency, improving supervisory and regulatory efficiency, and supporting innovation in banking.

In this RFI, the FDIC has expressed interest in information on models and technology services developed and provided by financial technology companies, often referred to as "fintechs." This RFI contains a number of detailed questions that the MLA (a “fintech” trade association) and its Members believe will be best answered by the individual fintech companies and supervised banks leveraging their own experiences in building partnerships to adopt new technology. The MLA, therefore, here offers the FDIC contextual feedback on how standard-setting and voluntary-certification programs could be established to support financial institutions' efforts to implement models and manage model risk by certifying or assessing certain aspects of the models themselves, and to conduct due diligence of third-party providers of technology and other services by certifying or assessing certain aspects of the third-party providers' operations or condition.

First, is the critical area of regulator collaboration. If possible, the FDIC should seek a unified approach to standard-setting and voluntary certification of compliance especially by all of the Federal banking agencies and the Consumer Financial Protection Bureau (CFPB). The MLA applauds the recent action under which five federal financial regulatory agencies were able to issue a joint statement on the use of alternative data in underwriting by banks, credit unions, and non-bank financial firms. The December 2019 statement from the Federal Reserve Board (Federal Reserve), the Consumer Financial Protection Bureau (CFPB), the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and the National Credit Union Administration (NCUA) demonstrated the ability of federal regulators to work together to promote technological innovation in financial services. Coordination among the agencies will help resolve jurisdictional issues. For instance, banks relying on partnerships with MLA Members are getting assistance with customer acquisition, fraud prevention and credit underwriting / decisioning. This means that it is critical for any SSO / certification process to cover both safety and soundness and consumer protection considerations, which will fall into separate regulators' jurisdictions.

Second, MLA believes that for a voluntary certification process to be effective and draw industry participation, a certification of compliance with the standards set by the Standard Setting Organization (SSO) and certified via the proposed mechanism must be accepted by the FDIC *as conclusive evidence that a bank's model risk management and/or third-party risk management satisfy applicable regulatory standards*. While the MLA recognizes that the FDIC has not proposed making modifications to examiner guidance, the MLA believes the FDIC may find that it needs to modify its current guidance, including model risk management and third-party risk management guidance, to make clear that any new SSO / certification is a true alternative to an FDIC examination of a third-party model or third-party provider. As such, the MLA would recommend that a certification resulting from a rigorous process should be valid for a period of not less than three years, subject to the agency's receiving updates on an interim basis as necessary.

Third, it is important to note that the FDIC's RFI envisions "a collaboration among an SSO, the FDIC, and other stakeholders to set standards under an SSO, along with a voluntary conformity assessment process through accredited, independent certification organizations." In driving towards this ambitious goal, MLA believes that the FDIC should look, wherever possible, to provide interim relief to institutions while this SSO and certification process is being developed. Such an approach could encourage a more rapid adoption and use of technologies that can support consumer and small business customers and credit availability through COVID19 emergency.

To provide such interim relief in a safe and sound manner, the MLA encourages the FDIC and other stakeholders to review carefully existing models of reliance on an external standard setting and certification. First, the System and Organization Control (SOC) reporting regime is one existing model for how providers of services provide assurance to a range of counterparties. SOC Reporting comes in a number of different forms and so provides different types of assurance. The FDIC approach to SSO and certification could both expect parties to have SOC audits in place for certain areas and in effect become a regulatory "SOC" for a bank seeking assurance that a 3rd party provider has in place frameworks for ensuring compliance (generally) with laws and regulations and meeting regulatory expectations. Under this model, the FDIC would also establish a framework that the third-party firms (such as major audit firms) must follow to become certified, thus broadening the reach of the FDIC's expertise. The FDIC's participation in the development of the standards and the credentialing of one or more certification organizations positions the agency to ensure such a model's integrity.

A related example can be seen in the context of bank capital requirements and emergency lending programs, where the federal banking regulators have extensive experience in relying exclusively on certain "nationally recognized" statistical ratings organizations for trustworthy ratings. For instance, in the Federal Reserve Board's large bank capital requirements, extensive references are made to credit ratings issued by *nationally recognized statistical ratings organizations (NRSROs)*. In the Board's Risk-Based Measure for state member banks and bank holding companies (general risk-based capital rules) and the Board's Internal-Ratings-Based and Advanced Measurement Approaches (Basel II advanced approaches capital rules) capital requirements for larger banks assign risk weights to securitization exposures *based on the external credit ratings* of such exposures. Under these general risk-based capital rules, asset-backed securities that are rated by an NRSRO are risk-weighted according to the level of the *external* ratings.[1] Similarly the Federal Reserve Board's 13(3) Term Asset Loan Facility defines its eligibility based on it attaining an *external AAA rating from two NRSROs*.[2] For purposes of this RFI, the FDIC may wish to review how the Federal Reserve Board determines which statistical ratings organizations first achieve, and then remain in compliance with its high standards, thus earning trust as critical certified validators in these two crucial areas that involve the exposure of taxpayer funds.

The examples identified above can inform a possible path to community bank adoption of online lending technology to better serve customers and diversify its assets. In the case, for instance, of a bank's use of a 3rd party's credit evaluation or underwriting model under the bank credit policy, the FDIC and other regulators may find that it is sufficient for a community or mid-sized bank to rely on detailed model validation by an NRSRO-type entity. Under this approach, the community bank management would need to demonstrate an understanding of the basic functioning and intent of the third party's model, while relying on the NRSRO's certification of the model's compliance with existing safety and soundness or consumer protection standards. This approach would be subject to regular reporting to the FDIC and a re-validation over a period of time.

The MLA thanks the FDIC for the work on this RFI, and looks forward to further dialogue on these critical issues.

Sincerely,

[1] https://www.federalreserve.gov/publications/other-reports/credit-ratings-report-201107.htm
[2] https://www.federalreserve.gov/monetarypolicy/talf.htm

The Board of the Marketplace Lending Association