CENTER FOR CAPITAL MARKETS COMPETITIVENESS

Julie Stitzel
VICE PRESIDENT

1615 H STREET, NW
WASHINGTON, DC 20062-2000
(202) 463-5339
jstitzel@uschamber.com

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

Re: Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services, Docket RIN-3064-ZA18

Dear Mr. Feldman:

The U.S. Chamber of Commerce's Center for Capital Markets Competitiveness ("CCMC") appreciates the opportunity to respond to the request for information ("RFI") issued by the Federal Deposit Insurance Corporation ("FDIC") regarding standard setting and voluntary certification for models and third-party providers of technology and other services.[1]

As the FDIC notes, standards have long supported the U.S. economy and can significantly guide companies' behavior, including to the extent that they are subject to audit and assessment, or are incorporated into contractual requirements. As with standards developed in other contexts, the Chamber supports voluntary standard setting.[2] U.S. standard setting processes, which are generally private-sector driven and voluntary, and take a consensus approach, provide for an appropriate level of government involvement: government agencies actively participate, but do not set standards. This approach has served the U.S. well and will continue to do so. The built-in flexibility and collaborative nature of the U.S. standard setting process encourage innovation, reward it appropriately, and deploy standards in the market

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[1] *See* Federal Deposit Insurance Corporation, *Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services*, RIN 2064-ZA18, 85 Fed. Reg. 44890 (July 24, 2020).
[2] *See, e.g.*, Letter from R. Bruce Josten to Dr. Patrick Gallagher, *Re. Effectiveness of Federal Agency Participation in Standardization in Select Technology Sectors for National Science and Technology Council Subcommittee on Standardization* (Mar. 7, 2011), *available at* https://www.nist.gov/system/files/documents/standardsgov/Chamber_of_Commerce.pdf.

efficiently. We consequently would urge the FDIC to ensure that its approach reflects key features of U.S. standards setting processes. Thus, standards should be designed, where possible, through a voluntary and private sector standards body; the process should be open and transparent; the FDIC should rely on private-sector-led standard-setting processes and established standards bodies; and conformity assessments should be performed by third-party private sector entities where such independent assessment is desirable.

Beyond these general principles, it is important to recognize particular complexities associated with establishing standards and voluntary certification in the context of models and third-party providers of technology and other services. As an initial matter, this topic is relevant to all financial institutions, regardless of their primary regulator, and other regulators have weighed in on related topics. Adding further complexity, the specific challenges faced in this context may vary significantly among the various financial institutions subject to the FDIC's authority, creating the risk of establishing an approach that does not work appropriately for a broad range of financial institutions subject to FDIC regulation. Moreover the intended scope of the contemplated standard setting is unclear, while the ultimate output of this process could have significant effects upon future innovation in this context. As a result, while standard setting holds promise in this context, as in many others, there could be significant negative consequences if the contemplated standard-setting process is mishandled.

We accordingly write to emphasize that the FDIC should:

- Coordinate with other regulators to the extent possible;

- Develop an approach that works for all financial institutions subject to its jurisdiction;

- Clarify the scope of activities that would be subject to the contemplated standard-setting;

- Ensure that standard setting facilitates—rather than stifles—innovation;

- Take a careful, incremental, and collaborative approach.

Analysis

1. The FDIC should coordinate with other regulators to the extent possible.

Standard setting and voluntary certification for models and third-party service providers is an important issue that broadly affects the financial institutions that are subject to FDIC jurisdiction. Third-party risk management also is a significant issue for financial institutions outside the FDIC's authority and one that has been addressed in different ways by other regulators. The Office of the Comptroller of the Currency, for example, has provided guidance on the topic.[3]

The development of conflicting approaches by the financial regulators could create significant confusion and unnecessary inefficiency in this field. Many technology service providers support a broad range of banks. Development of a consistent approach would create economies of scale by allowing those service providers to meet a single set of requirements (and ultimately pass on cost savings to financial institutions and their customers). In contrast, different approaches by the financial regulators are likely to create regulatory uncertainty, confusion, and inefficiency.

We urge the FDIC to coordinate with other regulators to the extent possible so that this effort leads to a more consistent approach to third party risk management. This issue affects banks regardless of the type of charter they hold and solutions should be consistent and coordinated among the members of the FFIEC. For example, certification under any future standard that emerges from this FDIC process should be understood to meet third party due diligence expectations set by other financial regulators.

2. The FDIC should develop an approach that works for all financial institutions subject to its jurisdiction.

Financial institutions subject to the FDIC's regulatory authority vary significantly in size. They also vary in the particular ways in which they rely upon vendors, including the extent to which they perform certain functions in-house, as well as how they perform vendor due diligence. Contractual arrangements with vendors also vary. As a result, the FDIC should be careful to ensure that any approach that it develops is effective and fair for all institutions within its authority. While we recognize that standard setting and voluntary certification may ultimately provide particular benefit to smaller community banks with less resources to conduct independent due diligence, the FDIC should maintain a level playing field. For example, we would encourage the FDIC to avoid creating any framework that can only be relied upon by a certain class of institutions within its authority. Likewise, to the extent that it encourages the development of standards, they should be general in

[3] OCC Bulletin 2020-10, *Third-Party Relationships: Frequently Asked Questions to Supplement OCC Bulletin 2013-29* (Mar. 5, 2020).

application, such that they may be implemented by any FDIC-regulated institution (or any other financial institution) that sees fit to do so. Moreover, certification should be a floor; financial institutions should be free to take additional steps in any particular context in order to meet their own needs or to address changing risk environments.

3. The FDIC should clarify the scope of activities that would be subject to the contemplated standard-setting.

The RFI asks "whether a standard-setting and voluntary-certification program 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."[4] The FDIC further clarifies that it is "especially interested in information on models and technology services developed and provided by financial technology companies, sometimes referred to as 'fintechs.'"[5] Separately, the FDIC flags its potential interest in "(1) traditional quantitative models; (2) anti-money laundering (AML) transaction monitoring models; (3) customer service models; (4) business development models; (5) underwriting models; (6) fraud models; and (7) other models."[6]

As thus framed by the FDIC, we understand the RFI to be focused on financial institutions' use of models provided by "fintechs," including with respect to how financial institutions assess those models. Read broadly, however, the RFI would appear to cover almost any use of third-party "technology services" by a financial institution. For example, even well-established data processing services would appear to be in scope for the RFI, meaning that it would appear to apply to the procurement of vast portions of the services relied upon by financial institutions.

We appreciate that this RFI is the initial step in the FDIC's process and expect that the FDIC would narrow the scope of this activity in its next phase. We highlight the importance of clearly defining the scope of this activity, however, since we think that it is critical for at least four reasons.

- *First*, some activities may not be amenable to standard setting and voluntary certification. This, for example, may be because standards are already in place, because relevant best practices or legal requirements are unsettled or subject to dispute, or because the activities at issue are not susceptible to measurement. In particular, we would urge the FDIC to

[4] RFI, 85 Fed. Reg. at 44890.
[5] *Id.*
[6] *Id.* at 44893.

define areas that are out-of-scope and to be clear that it does not intend to enter areas where there are already well-established standards.

- *Second*, whether it is appropriate and how best to pursue standards and self-certification may differ significantly based on the subject matter at issue (e.g. AML vs. underwriting models) and the nature of the specific contemplated standard (e.g. a standard for up-front due diligence vs. a standard for conformity assessment). The FDIC will need to consider each specific context carefully if its analysis is to reach sound outcomes.

- *Third,* general third party supplier oversight is an extremely broad topic and will raise different issues than the use of specific third-party models. Clarifying that general third party vendor oversight is beyond the scope of this RFI will help avoid losing sight of the specific topics of interest where effective public-private collaboration on standards is most possible.

- *Fourth*, clarifying the scope of the contemplated standard setting will help stakeholders provide informed comments to the FDIC. Private sector entities have significant experience participating in standards setting processes and implementing self-certification processes. Clarifying the scope of the contemplated standard setting will help private sector entities provide the FDIC the full benefit of this experience.

4. The FDIC should ensure that standard setting facilitates—rather than stifles—innovation.

Standards can provide significant benefits to financial institutions. Enabling an institution—and particularly a small institution—to rely upon an accepted solution in a particular area, rather than having to reinvent the wheel, can allow for significant savings that institutions can redirect to serving their customers. A standard can even indirectly facilitate innovation since it can allow for institutions to focus instead on creating new products or developing new solutions.

Standards-setting processes may require significant investment of time and resources by financial institutions, however. Moreover, by encouraging broad adoption of a particular approach, standards can discourage financial institutions from taking alternative approaches. This may not be a problem in many cases: countless benefits flow, to pick just one example from another context, from a standard settling how much a pound weighs. An overbroad or misguided standard-setting process, however, could deter innovation by encouraging conformity in an area where financial institutions or third-party service providers should be competing. Likewise, a misplaced standard setting process could have the unintended effect of turning the government into a gatekeeper for market participation or, if not transparent or open, may favor certain market participants over others. Moreover, a standard-setting process that leads to regulatory uncertainty—for example, because it is unclear the extent to which the FDIC expects financial institutions to adopt the resulting standard—may lead to confusion in the marketplace that stymies potential innovation. The FDIC should be careful to avoid these pitfalls and thereby facilitate innovation that will benefit institutions and the customers they serve—not deter that innovation. This is particularly important in this context. As the FDIC recognizes, "the use of [third-party] models and technologies can assist [a] financial institution in providing greater benefits to consumers and increasing financial inclusion."[7]

5. The FDIC should take a careful, incremental, and collaborative approach.

As discussed above, standard setting and voluntary assessments offer promise as tools for efficiently supporting financial institutions of all sizes. As also reflected above, however, these topics present a series of complex issues and potential pitfalls. The FDIC will need to consider these issues closely as it proceeds and should not expect to identify a single, wide-sweeping solution in short order. Moreover, even when the FDIC identifies an appropriate course of action, it will take time for any standards organization to do its work, for standards to be implemented, and for compliance and assessment tools to be rolled out. We consequently would urge the FDIC to take a careful, incremental approach that incorporates stakeholder input at each step of the process.

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We thank you for the consideration of these comments and would be happy to discuss these issues further.

Sincerely,

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Julie Stitzel

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[7] *Id*. at 44891.