FUNDATION®

September 22, 2020

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

SENT VIA ELECTRONIC MAIL TO Comments@fdic.gov

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

Fundation Group LLC ("Fundation") appreciates the opportunity to provide comments to the Federal Deposit Insurance Corporation ("FDIC" or "the agency") in response to its request for information ("RFI") on standard setting and voluntary certification for models and third-party providers of technology and other services. As an integral technology service provider to a number of financial institutions, supporting their small business lending efforts, we commend the FDIC for its interest in improving the ability of smaller financial institutions to partner with third-party providers that can meaningfully enhance the products and services those institutions can offer to their customers.

As an integrated service provider to multiple top 50 banks in the United States and a leading non-bank provider of affordable credit for the small business community, Fundation has unique insights into the challenges in onboarding and maintaining relationships with third-party technology providers. We also recognize that effectively competing in the financial services marketplace is increasingly dependent on the ability to leverage third party technology and technology related services.

About Fundation

Fundation is a market-leading digital lending platform serving the small business market through private-labeled loan origination solutions for community, regional and super-regional banks ("Platform Solutions") and as a direct originator of credit ("Credit Solutions"). Fundation empowers banks to serve small businesses by enabling them with a digital private label or co-branded loan origination solution. We also act as a lender ourselves, using our products to lend when a bank is unable to. We have originated more than $1.5 billion of term loans, lines of credit and business credit card accounts across our Platform Solution clients as well as our own balance sheet. In addition, we played a major role in the Paycheck Protection Program ("PPP"), facilitating more than $10 billion of demand for PPP loans.

While Fundation is not an FDIC-supervised bank, Fundation in many ways operates its business like a regulated financial institution. As an integrated service provider to the banking industry, we undergo a minimum of eight comprehensive bank vendor due diligence exercises annually, provide access to affordable credit for small businesses in 49 states and the District of Columbia, and are subject, indirectly, to regulatory third-party partner risk management guidance. We are therefore intimately familiar with the FDIC and other prudential regulators' expectations for technology service providers to banks today and offer the following feedback based on that experience:

Question 1: Are there currently operational, economic, marketplace, technological, regulatory, supervisory, or other factors that inhibit the adoption of technological innovations, or onboarding of third parties that provide technology and other services, by insured depository institutions (IDIs), particularly by community banks?

One of the core challenges that banks and financial technology companies alike face in deploying more innovative products and services to their customers is the time consuming, expensive and complex onboarding process involved in relationships with third-party service providers. While scrutiny of third-party service providers is critical to ensure customer protection and the safety and soundness of the banking system, many smaller financial institutions do not have the human resources to be able to adequately vet third parties, which is a deterrent for many smaller financial institutions to partnering with technology companies. From the perspective of a technology service provider, while the objectives of the onboarding and ongoing risk management oversight processes for every bank are identical – ensuring customer protection and meeting the requirements of the prudential and state regulators' requirements to maintain safety and soundness – the implementation of third-party risk management is typically different (sometimes materially) for each individual financial institution. For both the financial institution and the service provider, the cost, in terms of both time and human resources, of onboarding and maintaining a relationship with a third-party technology provider is increasingly challenging. This ultimately results in an unequal playing field that sees only the largest financial institutions capable of deploying more innovative products and services. Developing a more efficient process has the potential to meaningfully improve the ability of smaller financial institutions to compete in the marketplace and serve their local communities.

Smaller banks face at least two primary challenges in the pursuit of more advanced technology. First, most small institutions rely heavily on their core banking system provider ("core providers") to advance their digital goals, as smaller institutions naturally have fewer human and financial resources to pursue, procure, implement, and manage technology relationships with multiple third party providers. More so, most technology solutions available to banks, both large and small, have the greatest impact when they are integrated with the core operating systems of a bank. As a result, core providers are critical to any technology decision that a small bank faces, and, subsequently, are the primary providers for many of the technologies used by banks today, including application programming interfaces ("APIs") which allow for more seamless interoperability among different technology applications. It is notable that in 2019, 68 percent of small bank respondents said that API technology is provided by a core provider, 47 percent reported depending on a core provider for peer-to-peer payment technology, 43 percent reported that business process automation was provided by a core provider, and 42 percent indicated a core provider was responsible for enabling data aggregation.[1] The concentration in the core provider marketplace, which sees just a few companies providing technology solutions for thousands of smaller financial institutions, has created an environment in which individual banks' technology needs may not be addressed by a largely noncompetitive market.

The second primary challenge that small banks face is an overall lack of resources to vet and onboard new technology providers in a manner compliant with regulators' third-party partner risk management guidance. Certain institutions may lack in-house expertise regarding due diligence, the structuring of contracts that adequately protect against the risks a third-party provider may present, and resources to monitor whether the provider is adhering to all necessary regulatory requirements. Faced with these

[1] https://www.bankdirector.com/wp-content/uploads/2019_Tech_Report.pdf

challenges, the natural response for small financial institutions is to resist implementing technology tools altogether.

Question 3: What are the advantages and disadvantages to providers of models of participating in the standard setting and voluntary certification process? What are the advantages and disadvantages to providers of technology and other services that support the IDI's financial and banking activities of participating in the standard-setting and voluntary certification process?

With respect to the procurement process for technology providers, a certification of adherence to third-party partner risk management requirements, either by a standards body or by a self-regulatory organization, would provide assurance to small financial institutions that a third-party vendor meets the compliance requirements expected by the FDIC. This would provide any FDIC-supervised financial institution that wishes to work with that vendor with a significantly lower regulatory burden to onboard and work with that firm. This proposal has the potential, if implemented, to significantly reduce the friction for smaller financial institutions when working with technology partners that have been accredited by this process.

Such a certification process could enable an FDIC-supervised financial institution to leverage information that has already been provided or certified which would result in a less time-consuming process. An example of this could be that a bank that wants to implement with a third party could rely on all or some of the same information that was previously vetted, utilizing a package of information such as audit, SOC reports, and other policies typically all required by banks from their third-party partners to comply with third-party partner risk management requirements.

In our Platform Solutions business, through which Fundation serves the small business market through private label loan origination solutions, the macroeconomic benefits to the small business marketplace of the creation of a certification process are significant. With a larger number of smaller financial institutions able to partner with providers like us, the small businesses across the country would have access to a seamless digital lending application as well as the possibility to expand credit given Fundation's second look lending program, whereby Fundation reviews applications declined by the bank to then possibly extend credit to the small business. This results in significantly increased access to meaningfully less expensive credit while enabling the small business to maintain their relationship with their financial institution.

Ideally, small financial institutions and community banks would benefit from a certification process adopted by multiple regulatory agencies at both the federal and state level. As many smaller banks are supervised by state banking departments or by federal prudential regulators other than the FDIC, coordination on efforts to ease the adoption of technology tools at small banks across the patchwork of state and federal banking authorities will be necessary to create a sensible but rigorous regulatory regime for the next century that appropriately balances innovation with customer protection and safety and soundness. Interagency coordination on this front would provide for banks of all sizes to have access to the tools and vendors required to adopt technology and advanced modeling that enables a more inclusive, more affordable financial services ecosystem.

We would therefore respectfully offer that, for maximum impact, the FDIC should encourage additional agencies to participate in this process, as a joint effort would facilitate confidence for banks and third-parties of all sizes that participation in a certification or standardization process will be adopted and recognized by more than one regulator. This will ultimately create a safe harbor for smaller and regional financial institutions to partner with technology providers to the benefit of their customers.

Question 13: What are the potential challenges or benefits to a voluntary certification program with respect to models that rely on artificial intelligence, machine learning, or big data processing?

Despite the promise of new technologies, financial institutions are generally reluctant to employ artificial intelligence ("AI") and machine learning ("ML") solutions, in particular in making credit and lending decisions, due to perceived limitations in these technologies' audibility and transparency and the banking sector's fear that their regulators will not approve. There is growing awareness throughout the industry, however, of the potential of these technologies to be transformative due to the power of advanced statistical techniques and their ability to be employed to be more inclusive for credit, eliminate fraud, empower customers to make better financial decisions, help banks understand what products or services to offer their customers, and improve activities that rely on predicting outcomes that can be grounded in large amounts of data.

Community banks and smaller financial institutions can serve a particularly critical role in meeting the needs of underserved customers through the use of new technologies. Alternative risk models, algorithmic lending, and the integration of customer-permissioned data source can individually and collectively assist lenders in better understanding the credit risk of small business loan applicants, which could then enable a bank to approve more applications as it would then have information needed to better assess lending risk. The exigent need for these more predictive tools in the small business lending market has become more obvious in the wake of the economic impact of the COVID-19 pandemic, which has injected incredible uncertainty into the financial outlook of so many small business owners.

Lenders often identify a key obstacle in implementing AI and ML technologies as the lack of clarity from the regulatory community regarding how fair lending compliance will be assessed under these innovative new models. Fundation recognizes and unequivocally supports the need to ensure that any technology utilized must be safe and sound and ensure consumer protection. Technology-powered underwriting and lending tools should not be subject to lesser requirements than any other method of assessing a loan application. We offer, however, that clearer guidance from the regulatory community regarding the deployment of AI or ML technology would provide the marketplace with more confidence in how to use these technologies in a compliant manner and believe that voluntary standards or certifications for third-party providers could provide a pathway towards providing significantly more clarity to financial institutions regarding sanctioned and approved use cases for these technologies as compared to the status quo.

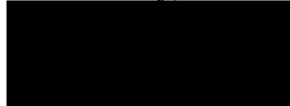
Today, as banks consider whether to partner with third parties to provide innovative products and services to their customers, they must consider strict adherence to the FDIC's and other prudential regulators' third-party partner risk management rules, which stipulate that each bank maintain responsibility for managing operational risks associated with these partnerships and that they will be held responsible for ensuring that they meet the same regulatory requirements as if the third party partner's services were being performed by the bank itself. This has resulted in a complex, slow, and expensive process that has

historically discouraged the broad deployment of transformative technology such as AI and ML solutions in the credit market. The clarity that a standards setting or voluntary certification process could bring to this space has the potential to significantly reduce the anxiety that some financial institutions may have in integrating these technologies into their credit models while maintaining robust customer protections and adherence to fair lending requirements.

Conclusion

Once again, thank you for the opportunity to provide Fundation's perspective regarding the FDIC's request for information on standard setting and voluntary certification for models and third-party providers of technology. We appreciate the FDIC's effort to be a leader among the agencies in encouraging innovation in the marketplace and recognition of the potential benefits to banks and their customers. As a leader in small business credit, we stand ready to provide any information, data or perspective to the FDIC that may be helpful.

Sincerely,



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