EnerBank USA
SALT LAKE CITY, UTAH • MOORESVILLE, NORTH CAROLINA

Ms. Rae-Ann Miller, Associate Director, Division of Risk Management Supervision
Federal Deposit Insurance Corporation
550 17th ST NW
Washington, D.C. 20429-9990

thirdpartylending@FDIC.gov

Re: FIL-50-2016 Request for comments regarding proposed guidance for third-party lending

Dear Ms. Miller,

We appreciate the opportunity to respond to the Request for Comments related to FIL-50-2016, published July 29, 2016, and are submitting the following comments on behalf of EnerBank USA.

EnerBank USA is an industrial bank that specializes in providing unsecured home improvement loan programs for homeowners through nationwide dealer networks of leading home improvement manufacturers, distributors, and franchisors as well as through home improvement contractors and retailers. Headquartered in Salt Lake City, Utah, EnerBank USA has approximately $1.3 billion in assets. Our parent company, CMS Energy Corporation (NYSE: CMS), is a Michigan-based company that owns an electric and natural gas utility, Consumers Energy Company, as its primary business and also owns and operates independent power generation businesses. EnerBank USA represents 3% of CMS Energy's net assets.

We applaud the goals of the FDIC in expanding its third-party lending guidance. However, we do believe the guidance should be further clarified and risk focused, as discussed below.

Clarification of Goals and Scope

In the beginning of the proposal, third-party lending is referenced very broadly as an arrangement that relies on a third party to perform a significant aspect of the lending process and may include (1) originating loans for third parties; (2) originating loans through third-party lenders or jointly with third-party lenders; and (3) originating loans using platforms developed by third parties. The proposal continues to itemize a wide variety of distinct lending-related functions (e.g. marketing, solicitation, customer service, collections, data services and reporting) that all might be covered by the proposed guidance. Based on this list, the guidance could be interpreted to cover nearly every subcomponent of lending. However, most of the subsequent content of the guidance focuses very specifically on loan origination activities undertaken by third parties.

Is the FDIC concerned primarily with outsourced loan origination activities? If so, the broad range of activities on pages one and two of the guidance may muddy the waters and distract from the true purpose of the guidance (e.g. managing a third-party data aggregator is completely different from managing a third-party originator). To this end, the FDIC should clarify the objectives and goals of third-party lending risk management and thereby aid the industry in achieving these objectives and goals. By being more specific and consistent regarding the types of third-party lending relationships and the risks the guidance intends to address, the guidance would be more instructive and practical for covered institutions.

Responsibility of Directors

Several sections of the proposed guidance address expectations of an institution's board of directors, including reporting of findings in third-party oversight (p.7-8), involvement in the identification and charge-off of uncollectible loans (p.10), and overseeing program implementation. These seem to be more appropriately assigned as management responsibilities. We request that expectations of board members be limited to involvement in the development and management of an institution's strategy.

Risk Focus

While the population of institutions under the purview of the FDIC is extremely diverse, much of the guidance seems to embrace a one-size-fits-all approach that inevitably will be too narrow for some and too broad for others. We appreciate that the proposed guidance states that third-party lending procedures "should take into account the type of lending activity, complexity, volume, and number of third-party lending relationships." However, the guidance follows this with a lengthy list of items that third-party lending policies "should at a minimum" contain, many of which would not apply to various covered institutions. A second list of "minimum expectations" is provided for due diligence and oversight—again including myriad factors that may or may not apply to third-party lending arrangements.

We are concerned that this checklist approach will result in covered institutions having to create lengthy policies and procedures that cover numerous inapplicable checklist items, simply to satisfy guidance that does not sufficiently provide for a risk-focused approach to third-party lending risk management.

Finally, the guidance indicates a degree of burden relative to model risk management that does not speak to the materiality of a third party's models. Indeed, if a third party is using a proprietary model with unreviewed output that directly affects the quality or valuation of assets funded by a covered institution, the institution should exercise a high level of investigation into, and oversight of, such a model. However, third parties may use models that are less significant and less proprietary, requiring little if any burden of investigation or oversight by the covered institution. Unfortunately, the guidance is mute on the materiality of third-party models and the resulting need for more or less scrutiny.

We would like to see the FDIC make the guidance less prescriptive and emphasize a risk-based approach throughout the proposal. This would allow covered institutions to develop policies and procedures commensurate with the size and complexity of the institution, designed to properly identify and mitigate specific risks that are relevant to their distinct business models and tailored to the magnitude and complexity of their third-party relationships.

Thank you for your consideration of these comments.

Sincerely,

Charles E. Knadler
EnerBank USA
President & CEO