VIRGINIA BANKERS ASSOCIATION

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Via e-mail: thirdpartylending@fdic.gov

Rae-Ann Miller
Associate Director
Federal Deposit Insurance Corporation
550 17th Street, N.W.
Washington, DC 20429-9990

RE: Proposed FDIC Examination Guidance for Third-Party Lending; FIL-50-2016

Dear Ms. Miller,

Thank you for the opportunity to comment on the FDIC's proposed Examination Guidance for Third-Party Lending (the "Proposed Guidance"). The Virginia Bankers Association fully endorses and recommends for your consideration the comments submitted by the American Bankers Association in a letter to the FDIC dated October 26, 2016 (the "ABA Letter"). We want to emphasize that the breadth and ambiguity of the Proposed Guidance, coupled with the 12-month examination cycle, will unnecessarily burden and inhibit lending by community banks.

The Proposed Guidance broadly defines "third-party lending" to include originating loans for, through, or jointly with, third-party lenders or using platforms developed by third parties. Third-party lending is also defined to include using a third party to perform any other significant aspect of the lending process, such as marketing, borrower solicitation, credit underwriting, loan pricing, retail installment sales contract issuance, customer service, consumer disclosures, regulatory compliance, loan servicing, debt collection, and data collection, aggregation, or reporting. The Proposed Guidance further states that banks with "significant" third-party lending activities will be subject to 12-month examination cycles with concurrent risk management and consumer protection exams. "Significant" is vaguely defined as having a material impact on revenues, expenses, capital, loan volumes or involving multiple third parties.

Community bank lending often involves significant reliance on third parties because community banks tend to have fewer internal personnel and resources, making them more dependent on third parties to navigate complex and evolving credit markets, regulations and technological innovations. The Proposed Guidance will broadly apply to a wide variety of very common third-party loan origination arrangements, including loan participations, correspondent lending, indirect lending, mortgage brokers, white label credit card services, marketplace lending, small-dollar lending, loan origination systems, and GSE automated underwriting

systems (Desktop Underwriter and Loan Prospector).[1] The Proposed Guidance will also apply to other aspects of the lending business where community banks often rely on third parties, including the use of marketing firms to develop marketing strategies and materials, consulting firms and law firms for regulatory compliance and disclosures, loan servicers to service loans, and debt collection firms to collect delinquent loans. Given the breadth of common lending related activities covered and the vague definition of "significant," most community banks will be deemed to be engaged in one or more significant third-party lending activities and automatically subject to a 12-month exam cycle and increased supervisory attention. This added regulatory burden will incentivize banks to scale-back or cease many lending activities and to avoid introducing innovative new lending technologies, thereby greatly limiting the availability of credit to borrowers in our communities.

Requiring an automatic 12-month exam cycle conflicts with the risk-centric policy adopted last year in the federal FAST Act, which expanded the number of community banks eligible for an 18-month examination cycle if they are well capitalized and well managed. That risk-oriented federal law adjusts the examination cycle based on a risk assessment of each individual bank, thereby reducing the exam burden on low-risk banks and enabling supervisory agencies to focus their limited resources on higher-risk institutions. Subjecting all well-capitalized and well-managed community banks to 12-month exam cycles for engaging in common third-party lending activities would negate the policy objectives of the FAST Act. In most instances, these banks and their third-party lending activities have been subjected to regular examinations for many years without any significant deficiencies. Instead, examiners should conduct risk analyses of these banks' third-party lending activities as part of their regular 18-month exams. Only when the third-party lending activities are specifically found to expose a bank to higher risks that are not adequately controlled should a bank be subjected to a 12-month exam cycle and additional heightened supervisory scrutiny.

In addition, the FDIC should clarify which third-party lending activities are intended to be covered by the Proposed Guidance and reconsider whether universal guidance is appropriate for such a wide variety of different activities involving significantly different risks. Informatively, each of the numerous prior laws, regulations and guidelines listed in the Proposed Guidance is narrowly focused on a particular type of loan products, services or relationships. If the FDIC has specific concerns with certain third-party lending activities, such as market-place lending, guidance precisely targeting those activities would be more effective for institutions participating in those activities and less confusing for banks participating in unrelated third-party lending activities.

As an example of some of the issues highlighted above, consider a well-capitalized, well-managed community bank that has engaged in significant indirect auto lending for many years, which activities have been subjected to numerous safety and soundness, regulatory compliance and fair lending examinations without any significant issues. Such a bank should not automatically be subjected to a 12-month examination cycle. Specific guidance addressing the risks involved in indirect auto lending already exists, and the Proposed Guidance complicates, rather than clarifies, how to mitigate those risks.

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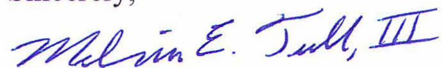
[1] See the ABA Letter for descriptions of these loan origination arrangements.

For the reasons stated above, we respectfully request that the FDIC revise the Proposed Guidance to tailor it to the precise third-party lending activities the FDIC is concerned about and to apply shorter exam cycles and increased supervisory scrutiny to third-party lending activities only when they are specifically determined to expose a bank to heightened risks. Thank you considering our request.

Sincerely,



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The Virginia Bankers Association represents banks of all sizes and charters and has served as the organized voice for Virginia's $615 billion banking industry and its 70 thousand employees since 1893.