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October 27, 2016

Ms. Doreen R. Eberley
Director
Division of Risk Management Supervision
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Mr. Mark Pearce
Director
Division of Depositor and Consumer Protection
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

Re: Proposed Guidance for Third-Party Lending

Dear Ms. Eberley and Mr. Pearce:

The Independent Community Bankers of America (ICBA)[1] appreciates the opportunity to provide comment on the proposed guidance, *Examination Guidance for Third-Party Lending* (proposed guidance). Under the proposed guidance, the Federal Deposit Insurance Corporation (FDIC) seeks to establish a framework whereby examiners can set specific expectations about how FDIC-supervised financial institutions should manage their third-party lending arrangements. Under this framework, the FDIC is addressing specific principles that management of the institution should always adhere to, especially when engaging in significant lending arrangements through third parties. This principles-based guidance is important for managing third-party lending arrangements, because these arrangements will be subject to increased scrutiny by examiners when they could materially impact the level of earnings or capital.

[1] The Independent Community Bankers of America®, the nation's voice for nearly 6,000 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services.

With 51,000 locations nationwide, community banks employ 700,000 Americans, hold $3.9 trillion in assets, $3.1 trillion in deposits, and $2.6 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA's website at www.icba.org.

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ICBA welcomes the discussion on third-party lending arrangements and how they impact a financial institution's operations. The FDIC has raised some important points in the proposed guidance and has generated guideposts that all community bankers should consider when working with third parties in creating lending arrangements. However, ICBA questions whether increased scrutiny is warranted solely from the use of third parties to aid in the lending process. Third-party arrangements, including lending arrangements with community banks, are not a new phenomenon that requires new scrutiny. These institutions have long maintained high quality relationships with third parties such as loan aggregators, underwriters, credit review firms, appraisers, other financial institutions, and risk management firms. Community banks, as straightforward portfolio lenders that engage with consumers and small businesses on a relationship basis, tend to associate themselves only with the third-party lending relationships that provide an elevated level of assurance regarding business practices. For example, community banks who partner with online marketplace lenders look for those firms that maintain robust, efficient lending platforms with a heightened focus on assessing risk in the portfolio. ICBA also urges the federal banking agencies to work together when drafting guidance on third-party arrangements lending or otherwise, perhaps through the framework of the Federal Financial Institution's Examination Council (FFIEC).

The Proposal

The FDIC is proposing guidance for FDIC-supervised financial institutions to use when managing third-party lending arrangements and the risks that are present in these transactions. The guidance is intended for banks that originate loans for third parties, banks that originate loans using a third-party lender as a conduit, and banks that use third party platforms to originate their own loans. The guidance provides a description of the many types of risks that can arise from a third-party lending relationship including strategic risk, operational risk, credit risk, and compliance risk. Within operational risk, the guidance further delineates among transaction risks, pipeline risk, and model risk. Within compliance risk, the guidance further delineates between consumer compliance risk and Bank Secrecy Act/Anti-Money Laundering. The guidance notes that once management of the bank engages a third party, the bank loses direct control over lending activities thus introducing a new set of risks. Banks need to establish third-party lending risk management programs that properly reflect the complexities and risks associated with the third-party relationship.

As delineated in the guidance, a bank's risk management program should include third-party lending activities when engaging in strategic planning to ensure that the bank has the appropriate resources available to oversee the relationship with the third party. The bank should also establish third-party lending policies to formalize certain items such as minimum performance standards, reporting processes, permissible loan types, and credit underwriting standards. To monitor these third-party lending relationships as they progress, banks need to conduct due diligence and ongoing oversight with minimum expectations for monitoring. Items for ongoing oversight include policies and procedures, credit quality, compliance management, enforcement actions, model risk

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management, and the third party's own external relationships. All third-party lending relationships should have written contractual agreements that completely describe the terms of the contract.

The guidance states that bank examiners will be focused on specific areas of the third-party lending relationship including the credit underwriting standards established by the bank itself and not the third party. Consumer compliance follows a similar approach as the bank will continue to be subject to applicable consumer protection statutes and fair lending requirements. Consumer information held by third parties must be safeguarded to protect against foreseeable internal and external threats.

ICBA's Comments

As leaders in collaborative arrangements in the financial arena, community bankers have long maintained successful relationships with third parties regarding bank lending, as well as other avenues for partnerships, such as collaborations with marketplace lenders, risk sharing with nonbank firms, and sales of loans to other community banks. With the advent of new partnerships between banks of all sizes and online marketplace lending firms, this guidance is a strong reminder that third-party relationships are becoming a larger part of the community banking landscape and cannot be ignored. However, ICBA questions whether the proposed guidance can be implemented in a practical manner with the level of scrutiny that is called for. When a community bank has a longstanding relationship with a third-party lender that engages in quality lending activities, an intense level of examination scrutiny of that relationship introduces a new form of regulatory burden that negatively impacts an otherwise healthy relationship.

Community banks rely on third parties daily to help them provide vital banking services to their communities. Risk management firms, software vendors, liquidity providers, government agencies, appraisers, and other lenders are all examples of critical third parties in the lending process. Specifically, with respect to lending, third-party relationships are required to make origination transactions achieve success both at origination and continuing throughout the loan life cycle. Because community banks rely on relationship-based lending arrangements, they generally have more intimate knowledge of the third parties that they work with when compared to regional or money center financial institutions that rely on significant volumes of lending transactions to provide a healthy return to shareholders. When a community bank suspects that a third-party relationship has introduced new or heightened risk that may impact the bank, the bank's size, risk profile, and quality of personnel allow it to quickly identify the problem and work towards a quick resolution to protect all stakeholders. Therefore, the guidance provided in the proposal is already reflected in most community bank risk management practices. Any regulatory concerns about the use of third parties should be discussed individually with each financial institution based on the type of lending products they offer to their customers and their reliance on third parties to provide critical services to the lending transaction.

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ICBA fears that the proposed guidance may be too prescriptive for community banks that do not engage a third party for transactions of a significant number or a significant dollar amount. Without scalability and practical application for community banks, this guidance may represent new barriers to entry for community banks to enter the online lending marketplace or engage in other lending arrangements. At minimum, the guidance could provide a disadvantage to community banks who would compete against the largest banks or nonbank firms. Community banks that depend on a third-party lender for a significant component of a lending arrangement that is material to the institution should reasonably expect a heightened level of examination by their primary federal regulator. However, community banks that are small in size, enter into a limited number of transactions, or maintain a minimal level of loss exposure should reasonably expect little to no scrutiny by their primary federal regulator.

ICBA notes that the FDIC has issued this proposal exclusively without input from the other federal and state banking regulators. It is also noted that the other agencies have issued their own third-party guidance in some instances. Because there is a great deal of interconnectivity among the supervisory, safety and soundness duties performed by the agencies, ICBA believes that any third-party lending guidance proposed should be handled by the Federal Financial Institutions Examination Council (FFIEC) and not exclusively by the FDIC. By issuing joint guidance vetted by multiple federal and state banking agencies, regulators will ensure consistent adoption of third-party lending standards across all types of insured lending institutions and their respective holding companies.

ICBA appreciates the opportunity to comment on this proposal. If you have any questions or would like additional information, please do not hesitate to contact me at james.kendrick@icba.org or (202) 659-8111.

Sincerely,

/s/

James Kendrick
Vice President, Accounting & Capital Policy