

September 22, 2020

Via Email Submission

Robert E. Feldman
Executive Secretary
Attention: Comments
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429

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

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts on the Federal Deposit Insurance Corporation’s (“FDIC”) Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services request for information.

ETA supports the FDIC’s effort to gather public feedback and continue to explore ways that enable innovation, safety and soundness, and consumer protection in the digital age through the FDITech initiative. However, there are a couple of concerns the FDIC should consider before establishing a standards-setting body and certification program:

- Standard setting should be uniform across all bank regulatory agencies to ensure consistency;
- Apply a dynamic, risk-based, approach to standards and certification requirements to facilitate sustainability and innovation;
- Avoid overly prescriptive standards that will stifle innovation and limit competition, and instead consider a framework that provides flexible guiding principles;
- Adopt consistent data security standards based on existing guidance to ensure consistency across the regulatory ecosphere; and
- Implement uniform standards for model risk management to drive consistency across all third-party bank service providers

Who We Are

ETA is the leading trade association for the payments industry, representing over 500 companies that offer electronic transaction processing products and services. ETA’s members include banks, mobile payment service providers, mobile wallet providers and non-bank financial technology companies (“FinTech”) that provide access to credit, primarily to small businesses, either directly or in partnership with other lenders. ETA member companies are creating innovative offerings in financial services, revolutionizing the way commerce is conducted with safe, convenient, and rewarding payment solutions and lending alternatives – facilitating over \$22 trillion in payments in 2019 worldwide.

Comments

Standards Should Be Harmonized Across Federal Regulatory Agencies that Oversee Financial Institutions

There are a myriad of Federal agencies that regulate and oversee financial markets and companies – including the FDIC, Federal Reserve Board of Governors (“Fed”), the Office of the Comptroller of the Currency (“OCC”), and the Consumer Financial Protect Bureau (“CFPB”), among others. These agencies each have a specific range of duties and responsibilities that enable them to act independently of each other while they work to accomplish common objectives of a robust, healthy, and well-regulated financial ecosystem that protects consumers, and the safety and soundness of financial institutions.

In addition, there are numerous federal and state laws that apply to payments and related financial products and services. Depending on the circumstances, relevant laws address money transmission, customer due diligence, credit reporting, information security, data protection, privacy, electronic funds transfer, and prohibitions on unfair, deceptive, or abusive acts or practices. Furthermore, most payments companies work closely with banks and other regulated financial services providers, which means they are oftentimes contractually obligated to comply with bank regulatory requirements.

ETA understands the importance of efficient regulations and laws while maintaining consumer protection and safety and soundness standards. Many ETA member companies are regulated by more than one agency on the federal and state level. ETA believes any new regulation should be tailored based to their risk profile of the participant.

If the FDIC moves forward with a standard-setting organization or certification program for third-party providers, how will the FDIC collaborate and apply this across other financial regulators? If a third-party provider does not receive a certification or develop a standard set by the FDIC for their role in facilitating payments, how would this impact the supervision from other financial regulators, innovation, competition, or the safety and soundness of the financial system as a whole? If a third-party provider does not go through the certification process will they be at a competitive disadvantage? How will the FDCI ensure the certification program does not favor one sized (e.g. large over small) third-party provider over another?

Prescriptive vs Principal Framework Guidelines

As the FDIC’s RFI points out, technological innovations play a transforming role in financial services. ETA suggests that any new standards or certification program the FDIC may issue, strike the proper balance between regulatory and market needs, by continuing to enable innovation, promoting consumer protection, and strengthening competition through a flexible principles-based framework, and not prescriptive programs. Technology is ever evolving, and any guidelines may become obsolete prior to their implementation. A flexible, principal-based approach provides a common framework is more sustainable in that it adjusts to changes in the market and technology, which allows any new guidelines to be tailored based to the risk profile of the participant. This strikes the necessary balance among principles of safety and soundness, consumer protection, innovation and promoting competition.



A principle framework also recognizes the payments industry's long history of meaningful self-regulation including, for example, developing innovative solutions to ensure privacy and security in transactions and encourages a collaborative approach that relies on existing standards. In addition to the legal framework outlined above, the payments industry has implemented robust and sophisticated self-regulatory programs to further protect the integrity of the payments ecosystem and the consumers and businesses that rely on it with every transaction.

Likewise, the payments industry has a long history of fighting fraud through robust underwriting and monitoring policies and procedures. Working with its members and industry and government stakeholders, ETA has published various guidelines that provide underwriting and diligence best practices for merchant and risk underwriting, including the "Guidelines on Merchant and ISO Underwriting and Risk Monitoring" and "Payment Facilitator Guidelines." These documents provide industry with underwriting and diligence guidance, including information on anti-fraud tools, security, and related issues.

Proprietary Information

Most ETA member companies have access to sensitive personal information that helps identify a consumer or business. Additionally, they have proprietary information such as algorithm formulas and fraud risk monitoring and mitigation processes and techniques. Given the cost of a security breach – losing customers' trust and perhaps even defending themselves against a lawsuit – ETA members take safeguarding personal information as a top priority.

While the Gramm-Leach-Bliley Act, the Fair Credit Reporting Act, the Federal Trade Commission Act, and various state laws require financial institutions to provide reasonable security for sensitive information fraudsters are continually trying to access consumer data and information.

Any standards-setting body and certification program should recognize that third-party providers are already strongly incentivized to ensure the security of sensitive information. To maintain consistency, any third-party service provider data security standards established by the FDIC should align with the Interagency Guidelines Establishing Information Security Standards¹ that are already in place and applicable to all financial institutions regulated by the FDIC.

Supervisory Guidance on Model Risk Management

In 2017, the FDIC adopted the Supervisory Guidance on Model Risk Management, which addressed the agency's supervisory expectation for model risk management and, among other things, specified that banks' use of vendor and other third-party models should be incorporated into the model risk management framework.

¹ "Interagency Guidelines Establishing Information Security Standards" implementing section 501(b) of the Gramm-Leach-Bliley Act and section 216 of the Fair and Accurate Credit Transactions Act of 2003. See 12 CFR 30, appendix B (OCC); 12 CFR 208, appendix D-2 and 225, appendix F (FRB); 12 CFR 364, appendix B (FDIC); and 12 CFR 748, appendix A (NCUA) (collectively referenced in this booklet as the "Information Security Standards").

The framework included a model validation process that was intended to provide a standard used by financial institutions with over \$1 billion in assets. In the years since the guidance was issued, what we have seen in practice is that the application of the guidance by each financial institution has varied, as was the case with financial institutions' interpretation of Supervisory Guidance on Model Risk Management issued by the Fed (SR-117) and the OCC (OCC Bulletin 2011-12).

What we have found is that each institution customized the validation process according to its individual interpretation and circumstances. The significant customization by large financial institutions has resulted in a very complicated and costly model validation process that third party service providers are required to undertake for each of their bank clients.

ETA is in favor of standardization and uniformity for community banks, provided it is followed. We would not want to repeat the outcome as experienced by the large financial institutions and their service providers. A varied application of the model validation process by community banks could result in increased complexity and cost for the numerous services provided to community banks by third parties who have to meet the individual validation program requirements. In other words, the model standard process could become the "floor," with each financial institution choosing to customize the model, potentially becoming unworkable for the third-party service providers to support.

Therefore, we respectfully request that should the FDIC decide to establish this type of program for the community bank segment, that it craft the standard and guidelines in such a way that it serves as a truly uniform and standard approach that is replicated consistently, with minimal variances, by community banks and their third party service providers.

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ETA appreciates the opportunity to provide input on this important issue. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott at stalbott@electran.org.

Sincerely,



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