

July 22, 2020

FDIC Requests Comments on Potential Program to Promote Banks' Use of New Technologies

FDIC Requests Information and Comment Relating to the Potential Establishment of a Standards-Based Voluntary Certification Framework to Facilitate Banks' Use of Financial Technology

On July 20, 2020, as part of its FDiTech initiative,¹ the Federal Deposit Insurance Corporation (“FDIC”) published a request for information (the “RFI”)² seeking public input on the benefits of a standards-based voluntary framework for certification of third-party models and other third-party technology products and services, and in particular services provided by financial technology companies.³ The purpose of such a program would be to reduce the costs and burdens of adopting technological advances, particularly by smaller and community banks.⁴ The FDIC recognizes the key role that technological innovations can play in transforming the business of banking and enabling regulators to supervise more efficiently and has indicated it is exploring opportunities, such as the RFI, to assist financial institutions in effectively complying with laws and regulations regarding management of third-party risks concerning the use of technology and models.⁵ Specifically, the proposed framework would involve:

- ***Establishment of a Standard-Setting Organization.*** A standard-setting organization (“SSO”) would work with stakeholders, including the FDIC, other relevant government entities, academia, industry and consumers to set standards applicable to third-party providers of technology and other products and services, including certain models.⁶ Although the RFI focuses on the creation of a new SSO, it also asks whether any existing SSO has the expertise to set these standards.⁷
- ***Creation of a Voluntary Certification Process to Assess Conformity with Standards.*** Accredited, independent certification organizations (“COs”) would assess the conformity of third-party vendors, or of their products, services or models, with the standards established by the

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SSO.⁸ Vendors would voluntarily submit themselves or their products or services to a CO for assessment.⁹

The RFI seeks public input on a broad range of issues relating to the development of such a framework, including “all aspects of establishing an SSO, qualifying COs, and implementing a voluntary conformity assessment process,” as well as any modifications such a framework would require the FDIC to make to its supervisory and examination processes.¹⁰ The RFI indicates that the FDIC would intend to work collaboratively with an SSO and with other stakeholders to develop standards and the related assessment process.¹¹

The RFI also solicits comment regarding the potential benefits and challenges of such a framework. Specifically, the FDIC is interested in whether the framework could assist banks in performing assessments, due diligence and monitoring of models, technology providers, and their products and services to confirm their compliance with applicable regulatory requirements.¹² The FDIC also requests information on current challenges banks face in performing these activities, in particular with respect to third-party technology and technology providers.¹³ Conversely, the FDIC inquires whether such a standards-based framework could in fact undermine innovation by effectively limiting banks’ discretion.¹⁴

The FDIC also poses questions with respect to the appropriate scope of application of such a framework. For example, it asks for comment on the types of models and technologies that should be included in such a framework, which suggests that the FDIC is open to applying this framework in a somewhat tailored way.¹⁵

In the RFI, the FDIC acknowledges that models and technologies can allow financial institutions to provide greater benefits to consumers, increase financial inclusion and provide access to greater expertise or efficiency in providing a particular product or service at lower cost.¹⁶ However, the FDIC highlights perceived disadvantages faced by community banks—and their customers—vis-à-vis larger institutions in adopting technological innovations, due to the costs associated with either generating the technology internally or ensuring that technology provided by third parties complies with applicable regulatory requirements.¹⁷ To this point, the FDIC notes that “[m]any financial institutions, particularly community banks, have indicated to the FDIC that sometimes the costs and other resources associated with deploying models or technologies from third parties can be prohibitive.”¹⁸ The FDIC indicates that the establishment of a standards-based framework like that proposed in the RFI could “potentially allow for more financial institutions—particularly community banks—to engage with third parties, including fintechs; permit FDIC supervision resources to be used more efficiently and effectively; and reduce costs of doing business for financial institutions and providers of models.”¹⁹

The RFI notes that comments are welcome not only from banks for which the FDIC serves as primary federal regulator, but also from other affected parties, including depositors and consumers, consumer

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groups, fintech companies, technology service providers and other third-party vendors, as well as existing SSOs.²⁰

Responses to the RFI will be due 60 days after the date of its publication in the *Federal Register*.

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ENDNOTES

- 1 Federal Deposit Insurance Corporation, *FDIC Technology*, <https://www.fdic.gov/fditech/>.
- 2 Federal Deposit Insurance Corporation, *Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services*, RIN 3064-ZA18 (Jul. 20, 2020), available at <https://www.fdic.gov/news/press-releases/2020/pr20083a.pdf> (hereinafter, the “RFI”).
- 3 *Id.* at 6.
- 4 *See id.*
- 5 *See* Federal Deposit Insurance Corporation, *FDIC Technology*, <https://www.fdic.gov/fditech/>.
- 6 RFI, *supra* note 2, at 9.
- 7 *See id.* at 15.
- 8 *Id.* at 10.
- 9 *Id.*
- 10 *Id.* at 11.
- 11 *Id.* at 10.
- 12 *See id.* The RFI repeatedly notes that among these requirements are those relating to fair lending and other anti-discrimination laws. *See, e.g., id.* at 4-5 n.6.
- 13 *See id.*
- 14 *Id.* at 13.
- 15 *See id.* at 13-14.
- 16 *Id.* at 5.
- 17 *Id.*
- 18 *Id.*
- 19 *Id.* at 6.
- 20 *Id.* at 11.

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