MORTGAGE BANKERS ASSOCIATION

September 22, 2020

Robert E. Feldman
Executive Secretary
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, DC 20429

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

Dear Mr Feldman:

The Mortgage Bankers Association (MBA)[1] appreciates the opportunity to comment on the Federal Deposit Insurance Corporation (FDIC) Request for Information (RFI) on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services.[2] The FDIC's evaluation of voluntary certifications is a positive step towards consistency in evaluations as well as a step that potentially could reduce the costs associated with oversight of third-party providers.

MBA supports voluntary certifications for models and technology products. Voluntary certifications may be considered similar to conformity assessments as documented in Office of Management and Budget (OMB)a Circular A-119. Independent certifications based on standards can provide consistency in the evaluation process, provide insights into model/technology capabilities for smaller organizations without the resources to perform their own evaluations, and provide a reliable mechanism for the oversight of third parties that otherwise would be expensive and impractical for small financial institutions as well as small third-party providers.

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[1] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 280,000 people in virtually every community in the country. Headquartered in Washington, DC, the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of over 2,100 companies includes all elements of real estate finance: mortgage companies, mortgage brokers, commercial banks, credit unions, thrifts, REITs, Wall Street conduits, life insurance companies, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[2] FDIC, "Request for Information on Standard Setting and Voluntary Certification for Models and Third-Party Providers of Technology and Other Services," 85 FR 44890, July 24, 2020. Available at: https://www.federalregister.gov/documents/2020/07/24/2020-16058/request-for-information-on-standard-setting-and-voluntary-certification-for-models-and-third-party.

Widespread adoption is critical to the success of voluntary certifications. Without such adoption, the costs associated with certifications are simply additive to the costs of doing business without resulting in any cost reductions. Third-party providers will gravitate towards independent certifications, and financial institutions will utilize them, if the regulatory community permits financial institutions to rely upon these certifications as one component of a comprehensive third-party oversight program. If examiners have the discretion to ignore the benefits and value associated with voluntary, independent certifications and can require financial institutions to perform their own assessments, voluntary certification programs will not succeed. To ensure that certifications meet the needs of all parties, including regulators, all impacted organizations should to take part in the development of standards and related certifications as encouraged under OMB Circular A-119.

Responses to Questions in the RFI:

1. Are there currently operational, economic, marketplace, technological, regulatory, supervisory, or other factors that inhibit the adoption of technological innovations, or on-boarding of third parties that provide technology and other services, by insured depository institutions (IDIs), particularly by community banks?
    a. Each of the factors noted can inhibit adoption of innovations. There are costs to evaluate products, monitor their performance, maintain awareness of new products entering the arena, evaluate whether products integrate easily with other products, and ensure that products fully comply with all relevant laws and regulations. Lenders require highly skilled and costly resources to manage each of these activities. Companies must be conscious of utilizing scarce resources spread over too many potential products and vendors. The ability for small organizations to identify and assess innovative products from new vendors is especially limited, as they simply do not have the necessary personnel and financial resources. And, to the point of this RFI, to date, financial institutions have not been able to fully rely upon third-party certifications to assist with the adoption of innovative products.

2. What are the advantages and disadvantages of establishing standard setting and voluntary certification processes for either models or third-party providers?
    a. Advantages – Standards and certification processes provide clear guidelines to follow. They create consistency of measurement against a common set of guidelines. Consistent standards help reduce the possibility of different parties looking at the same functional process and coming to materially different conclusions.
    b. Disadvantages – Certifications do not offer enough value to either financial institutions or third-party providers if the regulatory community

does not accept certifications. The reason any provider would pay for a certification, or a financial institution would rely upon one, is that the certification reduces or eliminates steps that each organization otherwise would be required to perform. Certifications that do not provide for both the needs of regulators and regulator acceptance of the certification are likely to fail. The development of consensus on what "compliance" means also is a complicated process that increases in complexity as more parties are involved.

3. What are the advantages and disadvantages to providers of models of participating in the standard-setting and voluntary certification process? What are the advantages and disadvantages to providers of technology and other services that support the IDI's financial and banking activities of participating in the standard-setting and voluntary certification process?
   a. Advantages to providers – Providers currently are reviewed/evaluated by each existing and potential client, along with certain regulatory examiners. For some providers, this can mean hundreds or thousands of client questionnaires and visits. This is a very expensive and time-consuming process that can be improved if financial institutions could rely upon certifications for some of their third-party oversight. The entities being reviewed and certified also might benefit from the insights of a qualified, independent third party. A finding that a product meets consensus-based standards and has been certified by a trusted independent company saves time and money for the owner of the model or technology.
   b. Disadvantages to providers – There is limited value in participating in a certification process if clients and regulators do not accept the evaluation of the third-party certifier. It is important to understand that financial institutions cannot utilize certifications if examiners simply ignore the value of the certifications and require financial institutions to independently execute the steps that are also included in the certification.

4. What are the advantages and disadvantages to an IDI, particularly a community bank, of participating in the standard-setting and voluntary certification process?
   a. Advantages to IDI – These organizations usually outsource functions because other entities have developed the expertise to perform the function better and cheaper than the IDI. The advantage to the IDI is that it can rely upon an expert third party to perform certain reviews. This is particularly important for smaller community banks that cannot afford or may not have the in-house expertise to conduct an appropriate

review on their own. The reliance upon the third-party review does not mean that the IDI does not need to review and evaluate the results of the certification, as they still retain the responsibility to do so to evaluate the risk.

b. Disadvantages to IDI – The IDI should participate in the process of developing and overseeing the certification process, as well as contributing to the funding of the process. Relying upon the certification process is not free to the IDI.

5. Are there specific challenges related to an IDI's relationships with third-party providers of models or providers of technology and other services that could be addressed through standard-setting and voluntary certification processes for such third parties?
    a. Are there specific challenges related to due diligence and ongoing monitoring of such third-party providers?
        i. It is difficult for smaller financial institutions to allocate due diligence and monitoring resources across multiple products and vendors. The ability to rely upon third-party certifications for some of these functions would enable smaller organizations to evaluate innovative products developed by more companies.
    b. Are there specific challenges related to the review and validation of models provided by such third parties?
        i. Models can be complex and opaque with respect to their structure. The ability to rely upon third-party certifications for some of these functions would enable smaller organizations to evaluate innovative models developed by more companies.
    c. Are there specific challenges related to information sharing or data protection?
        i. Third-party providers may be reluctant to share certain information with all existing and potential clients. They do not, for example, want to share detailed information about how they manage information security, yet the financial institution needs to evaluate risks associated with products they use. Enabling the third-party provider and the financial institution to rely upon an independent certification can ensure that sensitive information is not widely disseminated while providing comfort that a qualified party is assessing certain risks.

6. Would a voluntary certification process for certain model technologies or third-party providers of technology and other services meaningfully reduce the cost of due diligence and on-boarding for: (1) the certified third-party provider? (2)

the certified technology? (3) potential IDI technology users, particularly community banks?

   a. Certifications would result in significant cost reductions for third-party providers as well as financial institutions. Providers would experience a significant reduction in the number of organizations for which they would have to complete questionnaires and onsite reviews. Financial institutions could review the output of the certifications rather than performing costly reviews of all existing or potential vendors.

7. What are the challenges, costs, and benefits of a voluntary certification program or other standardized approach to due diligence for third-party providers of technology and other services? How should the costs of operating the SSO and any associated COs be allocated (e.g., member fees for SSO participation, certification fees)?
   a. There are costs to determining what should be included in the certification, in keeping it up to date, and executing on the certification. Depending upon the complexity of the function provided by the model/technology, costs associated with the certifications can be high. These costs will not be as high as those incurred without certifications, but they will be noticeable to the participants. The allocation of costs across financial institutions and vendors may vary for different types of certifications and therefore there is no single model for creating standards organizations or certifications. Costs should be shared equitably across participants, ensuring that all parties are involved in the process and have a voice in the decisions that are made.

8. Would a voluntary certification process undermine innovation by effectively limiting an IDI's discretion regarding models or third-party providers of technology and other services, even if the use of certified third parties or models was not required? Would IDIs feel constrained to enter into relationships for the provision of models or services with only those third parties that are certified, even if the IDIs retained the flexibility to use third parties or models that were not certified?
   a. A heavy, costly, and bureaucratic certification process that favors large, well-funded organizations could inhibit new participants and innovation. It is vital that certifications focus primarily on the critical functions that are included in the model/technology product. New models/products should have a clear path towards certification that is not overly burdensome or expensive for new entrants. Further, adoption of certification standards does not preclude an IDI from conducting its own certification of a technology or model if it chooses to do so.

9. What supervisory changes in the process of examining IDIs for safety and soundness or consumer protection would be necessary to encourage or facilitate the development of a certification program for models or third-party providers and an IDI's use of such a program? Are there alternative approaches that would encourage or facilitate IDIs to use such programs?
    a. Examiners always must have the flexibility to follow their instincts to uncover unexpected or hidden risks. In order for independent certifications to have any value to IDIs and vendors, however, examiners need to be trained in the certifications and understand the value provided by third-party experts performing the certification. If examiners do not understand and accept the certification process, the investment made by all parties will be wasted.

10. What other supervisory, regulatory, or outreach efforts could the FDIC undertake to support the financial services industry's development and usage of a standardized approach to the assessment of models or the due diligence of third-party providers of technology and other services?
    a. The FDIC should seek agreement among the key regulatory bodies to participate in and accept the results of the standardized approach. Agreement to support certification by federal and state regulators (FDIC, Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, National Credit Union Administration, Consumer Financial Protection Bureau, Federal Housing Finance Agency, and Conference of State Bank Supervisors) would be necessary.

11. For which types of models, if any, should standards be established and a voluntary certification process be developed? For example, is the greatest interest or need with respect to: (1) traditional quantitative models? (2) anti-money laundering (AML) transaction monitoring models? (3) customer service models? (4) business development models? (5) underwriting models? (6) fraud models? (7) other models?
    a. Certifications could be developed for models that perform any function. If the regulatory community signals its willingness to support certifications, it is likely that the key participants will agree to collaborate for each of the items noted above and in many additional areas.

12. Which technical and operational aspects of a model would be most appropriate for evaluation in a voluntary certification program?
    a. The functions that can be linked directly to regulations, industry consensus standards, and best practices are appropriate for inclusion in a certification program. Undocumented requirements, or

requirements that are unique to a specific entity, may not lend themselves to third-party certification programs.

13. What are the potential challenges or benefits to a voluntary certification program with respect to models that rely on artificial intelligence (AI), machine learning (ML), or big data processing?
    a. Due to the nature of AI/ML, it may require both specially trained personnel and new methods of evaluating models. These technologies must have well-documented evidence supporting decisions made by AI/ML as well as checks/balances/controls to quickly discover and remediate poor decisions made by AI/ML, much like what is required for decisions made by humans.

14. How can the FDIC identify those types of technology or other services, or those aspects of the third-party provider's condition, that are best suited for a voluntary certification program or other standardized approach to due diligence? For example, should such a certification program include an assessment of financial condition, cyber security, operational resilience, or some other aspect of a third-party provider?
    a. The FDIC does not need to identify the technologies or services. Government institutions should focus on supporting voluntary certifications and participating in the development process. The collaborative participation of industry and regulators can determine what should be included in any specific certification. The example questions asked could be included in some certifications but not others, based on the risk of the function/product being certified.

15. If the FDIC partnered with an SSO to set standards for due diligence and assessments of models or third-party providers of technology and other services, what considerations should be made in choosing the SSO? What benefits or challenges would the introduction of an SSO into the standard-setting process provide to IDIs, third-party providers, or consumers?
    a. There is no need for the FDIC to pick an SSO. SSOs will volunteer based on their specific expertise. SSOs should operate in alignment with OMB Circular A119, which guides government adoption of voluntary industry standards and government participation in such organizations.

16. To what extent would a standards-based approach for models or third-party providers of technology and other services be effective in an environment with rapidly developing technology systems, products, and platforms, especially

given the potential need to reassess and reevaluate such systems, products, and platforms as technologies or circumstances change?

   a. Core standards for models and functional technologies should not vary greatly due to innovation or other changes. How a model or technology serves a purpose is not the purpose of the standard or certification.

17. What current or draft industry standards or frameworks could serve as a basis for a standard-setting and voluntary certification program? What are the advantages and disadvantages of such standards or frameworks? Do standards and voluntary certifications already exist for use as described herein?

   a. MISMO® is the standards development organization for the mortgage industry. Its standards are widely adopted across the mortgage ecosystem. MISMO has a certification program in place for certain functions (e.g., remote online notary) and is currently expanding into other mortgage functions. MISMO standards and certifications may be easily extensible to certain non-mortgage functions. MISMO is unlikely to pursue the development of standards and related certifications for non-mortgage functions, as those functions are not currently in the organization's mandate.

18. Given that adherence to SSO standards would be voluntary for third parties and for IDIs, what is the likelihood that third-party providers of models or services would acknowledge, support, and cooperate with an SSO in developing the standards necessary for the program? What challenges would hinder participation in that process? What method or approaches could be used to address those challenges?

   a. Most third-party providers are overseen by multiple clients and potentially by multiple regulators. Some utilize a SOC2 to provide certification-like information to customers. Most third-party providers would welcome independent certifications if regulators supported the certification program.

19. What is the best way to structure an SSO (e.g., board, management, membership)? Alternatively, are there currently established SSOs with the expertise to set standards for models and third parties as described herein?

   a. There is no single best way to structure an SSO. SSOs have existed for many years and have developed practices and structures that work for them. There likely is no reason for the FDIC to independently document requirements for SSOs. The National Institute of Standards and Technology (NIST) has produced materials that are helpful with respect to this topic. SSOs should be open to participation by any company that operates in a specific function, as well as to relevant government entities. Rather than having one SSO for all financial services, it is likely that multiple SSOs would provide certification services. MISMO, for example, likely would enhance its efforts in this space for key mortgage functions.

20. To what extent should the FDIC and other federal/state regulators play a role, if any, in an SSO? Should the FDIC and other federal/state regulators provide recommendations to an SSO? Should the FDIC and other federal/state regulators provide oversight of an SSO, or should another entity provide such oversight?
    a. The FDIC and other state and federal financial regulators can and should play two key roles in SSO certifications. First, they should participate in the process of developing standards/certifications. This is encouraged by OMB Circular A119. Second, for the certification to be successfully adopted by industry, regulators need to ensure that their organizations also adopt the certification. This means that examiners need to understand the purpose and benefits of the certification. Regulators need to educate their organizations about the SSO and related certifications. IDIs and vendors are concerned that examiners will ignore the consensus-based requirements included in a certification. Regulators should participate openly in the SSO and freely offer their perspectives, including participating in the governance process. If regulators feel their voice is not being heard on an important issue, they should raise their concerns to the leadership of the SSO. If necessary corrective action is not taken by the SSO, regulators should make clear that they are prepared to withdraw their support for the certification.

21. What benefits and risks would COs provide to IDIs, third parties, and consumers?
    a. Benefits – Benefits include consistency, clarity of requirements, expertise in performing certification procedures, and cost savings.
    b. Risks – There are risks that certification processes become too cumbersome and therefore lose some of the benefit for which they were created.

22. To what extent would COs be effective in assessing compliance with applicable standards in an environment with rapidly developing technology systems, products, and platforms, especially given the potential need to reassess and reevaluate such systems, products, and platforms as technologies or circumstances change?

   a. Certifying organizations cannot be stagnant, as change is a constant. These organizations need to continually monitor changing circumstances to maintain their value to all parties. They need to be staffed and funded to meet these evolving needs. The alternative would be for each IDI/vendor/regulator to independently monitor underlying changes if the certification entity did not exist. This is not to imply that each entity should not pay attention to changing circumstances, but it is more effective and efficient to do so as part of a collaborative than as an individual organization.

23. For model validation and testing, would COs evaluate a model based solely on reports, testing results, and other data provided by the third-party provider of the model? Or would the COs need to test the model and generate their own test results? What steps would the COs need to take to protect the intellectual property or other sensitive business data of the third party that has submitted its model to the validation process?
    a. The steps involved in the process would vary from one certification to another. The certifying organization would indicate that a certified model/product passed the certification test. It need not necessarily publish detailed information about how the model/product passed. The amount of detail made available publicly would vary depending upon the certification. In some processes, it is possible that more detailed information would be made available in a restricted portal for use by approved parties. All information obtained during the evaluation process would be kept confidential. It is likely that such information could be shared with regulatory entities if such permission were granted by the certified organization.

24. If COs receives derogatory information indicating that a certified third party or certified model or technology no longer meets applicable standards, should the COs develop a process for withdrawing a certification or reassessing the certification? (1) If so, what appeal rights should be available to the affected third party? (2) What notification requirements should COs have for financial institutions that have relied on a certification that was subsequently withdrawn? (3) Should the FDIC or federal/state regulators enter information sharing agreements with COs to ensure that any derogatory information related to a certified third party or certified model or technology is appropriately shared with the COs?
    a. COs should consider documenting and disclosing the version of the model/product that was certified, along with the underlying criteria (e.g., a specific version of a regulation) that was used. This should limit the types of situations in which a certification would need to be withdrawn.

Newer product versions, or new regulations, would require new certifications. Should a situation exist, however, where a previous certification should be withdrawn, the affected party should have the right to appeal the decision and/or make the necessary changes to retain the certification. Given that certifying organizations may not have a relationship with financial institutions that rely upon the certification, it will be incumbent upon financial institutions to periodically review certification status information published by the certifying organizations. This responsibility would be part of the financial institution's third-party review process.

25. Are there legal impediments, including issues related to liability or indemnification, to the implementation of a voluntary certification program that the FDIC, other federal/state regulators, third-party providers, and IDIs should consider?
    a. Liability and indemnification risks will vary depending upon the technology/model that is being certified. These risks will need to be documented for each certification.

26. To what extent should the FDIC and other federal/state regulators play a role, if any, in the identification and oversight of COs, including assessments of ongoing operations? Should the FDIC and other federal/state regulators provide oversight of COs, or should another entity, such as an SSO, provide such oversight?
    a. The FDIC and other regulators should not oversee the CO. The SSO will be responsible for that function. Regulators should participate in the SSO to ensure that their concerns are addressed by the SSO.

MBA appreciates your consideration of our comments on voluntary certification of models and technology. We welcome the opportunity to meet and discuss these comments. Should you have any questions or wish to discuss any aspects of these comments, please contact Rick Hill, Vice President of Industry Technology, at rhill@mba.org.

Sincerely,

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Mortgage Bankers Association
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