

October 26, 2016

*Submitted electronically to: [thirdparty lending@fdic.gov](mailto:thirdparty lending@fdic.gov)*

Ms. Rae-Ann Miller, Associate Director, Division of Risk Management Supervision  
Federal Deposit Insurance Corporation  
550 17<sup>th</sup> ST NW  
Washington, D.C. 20429-9990

**Re: FIL-50-2016: FDIC Seeking Comment on Proposed Guidance for Third-Party Lending**

Dear Ms. Miller:

The American Bankers Association<sup>1</sup> appreciates the opportunity to provide comments on the FDIC's proposed "Guidance for Third-Party Lending" (proposal). The FDIC's proposal seeks to set forth safety and soundness and consumer compliance measures FDIC-regulated institutions should follow when lending through a business relationship with a third party. The proposal is intended to supplement the FDIC's existing *Guidance for Managing Third-Party Risk*, which is applicable to any of an institution's third-party arrangements, including lending through a third party.

ABA welcomes the FDIC's effort to share information with FDIC-regulated institutions regarding evolving risks and emerging practices related to certain types of third-party relationships. It is instructive when regulators provide written, publicly available information regarding potential risks and emerging issues that are identified in a supervisory capacity. While we welcome the FDIC's effort to communicate this type of information regarding third-party lending relationships, we request that the FDIC revise the proposed guidance as follows:

- Clarify the types of third-party relationships to which the guidance would apply;
- Provide more specificity regarding risks that are unique to these third-party lending relationships;
- Emphasize that the proposal consists of risk management principles, and therefore financial institutions and examiners should apply the guidance in a manner that reflects the risk profile of each institution and its third parties;
- Consider the tempering effect that the proposal – including the potential for a 12-month examination cycle (in place of an 18-month cycle that might otherwise apply to the bank) – will have on institutions' ability to innovate and compete in an evolving marketplace, and permit flexible application of the proposal in innovative contexts;
- Distinguish more carefully the oversight role of an institution's board of directors and the operating role of management in delineating responsibilities; and
- Apply any new guidance in this area prospectively.

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<sup>1</sup> The American Bankers Association is the voice of the nation's \$16 trillion banking industry, which is composed of small, regional and large banks that together employ more than 2 million people, safeguard \$12 trillion in deposits and extend more than \$8 trillion in loans.

## **I. Clarify the Scope and Identify Risks that Necessitate Additional Guidance.**

ABA solicited input on the proposal from multiple banker working groups, committees, councils, and peer groups. Importantly, the bankers in each of these groups expressed significant uncertainty regarding which third-party relationships would be covered by the proposal. Their assessment was hampered by the limited discussion of new or unique risks the FDIC has identified with respect to third-party lending relationships that merit additional guidance.<sup>2</sup> For these reasons, we request that the FDIC contribute to tailoring the proposal by clarifying the types of third-party relationships to which the guidance would apply within the context of risks it has identified regarding covered third-party lending relationships.

### **a. Covered Third-Party Relationships.**

Explain the Impetus for Broad Third-Party Lending Guidance. It is not entirely clear what problem the guidance is intended to address or what issue prompted the need for additional guidance. Knowing that foundation would help. For example, we can recognize a connection to the FDIC's Office of Inspector General (OIG) Report No. [OIG-16-001](#), which addressed the agency's supervisory approach to financial institutions that offered refund anticipation loans (RALs).<sup>3</sup> In its March 11, 2016, response to the [OIG report](#), the FDIC stated that it had "begun developing guidance to address the risks associated with banks making loans through third parties as well as risk management practices that would be expected of banks engaging in these activities..."<sup>4</sup> The FDIC said that the guidance would specifically address making loans through rent-a-charter relationships, agent relationships, and other third-party relationships.

While there is a logical connection between RALs and agent relationships, we do not understand the rationale for applying the new guidance to all third-party relationships over the life of a loan. Accordingly, we recommend that the FDIC, in its definition of third-party lending, exclude certain activities (e.g., marketing; customer service; regulatory compliance; and data collection, aggregating, and reporting) if they are not directly connected with a loan, and distinguish and clarify that existing FDIC *Guidance for Managing Third-Party Risk* (FIL-44-2008) continues to apply to these activities.

Clarify Covered Activities. The proposed guidance would apply to arrangements where a financial institution relies on a third party to perform a significant aspect of the lending process. Under the proposal, third-party lending arrangements may include (1) originating loans for third parties, (2) originating loans through third-party lenders or jointly with third-party lenders, and (3) originating loans using platforms developed by third parties. Based on this list, it is possible that the proposal could be interpreted to encompass a wide variety of third parties that banks utilize with regard to their lending activities. For example, even though indications are that the proposal was intended to address RALs and rent-a-charter and agent relationships, there is uncertainty among ABA members as to whether the above definition is intended to apply to the following:<sup>5</sup>

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<sup>2</sup> Existing policy statements, such as the FDIC's *Guidance for Managing Third-Party Risk* (FIL-44-2008), already address third-party risk management expectations.

<sup>3</sup> A RAL is a particular type of loan product, typically offered through a national or local tax preparation company in conjunction with the filing of a taxpayer's income tax return.

<sup>4</sup> [FDIC's Office of Inspector \(OIG\) General Report No. \[OIG-16-001\]\(#\)](#) (March 15, 2016), p. 16.

<sup>5</sup> Additional information about these activities, as well as existing supervisory documents that already apply to most, if not all, of the activities potentially covered by the proposal, is included in Appendix A.

- Loan participations
- Correspondent lending
- Indirect lending
- Mortgage brokers
- White label credit card services
- Marketplace lending
- Small-dollar lending
- Loan Origination Systems
- GSE automated underwriting systems (Desktop Underwriter and Loan Prospector)

The lack of clarity regarding the proposal's scope and the risks to which the FDIC is seeking to alert bankers creates uncertainty for financial institutions as to what business lines and activities may be affected. One example of how the proposal would be more helpful is if the FDIC could illuminate the risks it sees as potentially different in the case of a third party not subject to the full range of banking regulation. Risks posed by relationships with other insured depository institutions could be mitigated in part by the comprehensive supervision and examination to which they are subject. Similarly, we do not expect the proposal to apply among and between subsidiaries and affiliates.

Inconsistencies Regarding Intended Scope. Questions regarding the intended purpose and focus of the guidance are compounded by inconsistencies within the proposal. Some parts of the guidance suggest that the FDIC intends to focus on third-party risk associated with loan origination. For example, the Purpose section explains that the objective of the guidance is to set “forth safety and soundness and consumer compliance measures FDIC-supervised institutions should follow when *lending through* a business relationship with a third-party” (emphasis added).<sup>6</sup> Similarly, the section on Elements for Evaluating and Monitoring Third-Party Relationships states that “a risk assessment will inform the institution of the risks associated with providing credit *through third parties* so that the institution, in turn, can decide how it can mitigate risk” (emphasis added).<sup>7</sup> Furthermore, the proposal's general categories of risk arising from third-party lending relationships as well as elements of a third-party lending risk management program are largely limited to risks associated with loan origination.

By contrast, pages 1 and 2 of the proposal suggest that the proposed guidance would apply to all significant third parties that a financial institution engages over the life of a loan, such as “marketing; borrower solicitation; credit underwriting; loan pricing; loan origination; retail installment sales contract issuance; customer service; consumer disclosures; regulatory compliance; loan servicing; debt collection; and data collection, aggregation, or reporting.” These examples appear to apply to a financial institution's involvement with any third-party over the life of a loan even though several of the third parties included in this list will not have a role in originating the loan. We recommend that the FDIC revise the proposal to address inconsistencies regarding the intended scope so as to not create uncertainty regarding the third-party relationships to which the guidance would apply.

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<sup>6</sup> p. 1.

<sup>7</sup> p. 6.

What Will Prompt Increased Supervisory Attention? Questions about the scope of the guidance take on added importance in light of the increased supervisory attention that would be given to third-party relationships. As with other aspects of the proposal, the language is unclear regarding the third-party relationships that trigger enhanced supervision.

For example, the Purpose section of the proposal states that “institutions that engage in new or significant lending activities *through* third parties” will be subject to enhanced regulatory oversight.<sup>8</sup> However, a subsequent portion of the proposal, entitled “Examination Procedures for Third-Party Lending Relationships,” seems to focus on bank programs, providing that “for institutions with significant third-party lending *programs relationships* [*sic*], the examination cycle will be at least every 12 months and [will] include concurrent risk management and consumer protection examinations.”<sup>9</sup> As a result, it is unclear whether the 12-month examination cycle would apply to financial institutions with significant third-party lending programs or significant third-party lending relationships. These strike us as very different things. For example, based on the list of specific third-party relationships on page 2 of the proposal, hiring a subservicer would constitute a third-party lending relationship. However, that relationship would not represent a third-party lending “program.” We also note that Question 9 in the FDIC’s list of questions soliciting feedback on the proposal states that the proposed guidance would establish “a 12-month examination cycle for institutions with significant third-party lending *programs*, including for those institutions that may otherwise qualify for an 18-month examination cycle.”<sup>10</sup>

Similarly, the proposal, in the Purpose section, mentions that *new or significant* lending activities through third parties will prompt increased supervisory attention. The “Examination Procedures for Third-Party Lending Relationships” references only “significant” in the context of a more frequent examination cycle and concurrent risk management and consumer protection examinations. If the 12-month examination cycle is intended to apply to all *new or significant* third-party relationships over the lifecycle of a loan, many community banks would no longer be eligible for the 18-month safety-and-soundness examination cycle, which Congress provided in Section 83001 of the Fixing America’s Surface Transportation Act (FAST Act).<sup>11</sup> We ask that the proposal be revised to clarify that increased supervisory attention is triggered when relationships with third-parties are “significant,” and remove the word “new”. For example, we do not believe that hiring a third-party to assist with certain lending-related activities, such as marketing, customer service, regulatory compliance, or data collection and reporting should subject a bank to a shortened exam cycle simply because the institution has not previously outsourced these functions.

#### **b. Third-Party Risks Presented.**

In addition to clarifying the scope of the proposal and the triggers for increased supervisory scrutiny, we request that the FDIC provide more specificity regarding risks it has identified that are new or unique to third-party lending relationships. While the proposal identifies

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<sup>8</sup> p.1 (emphasis added).

<sup>9</sup> p. 13 (emphasis added).

<sup>10</sup> p. 4.

<sup>11</sup> Joint interagency rules implementing the FAST Act specify that Insured Depository Institutions below \$1 billion in total assets with a CAMELS rating of “1” or “2,” and meeting certain other criteria, may qualify for an 18-month examination cycle.

general categories of risk, such as strategic risk, pipeline/liquidity risk, model risk, credit risk, and compliance risk, it only provides a cursory explanation of how those risks may materialize in the third-party lending context. A robust description of risks presented by third-party lending relationships will greatly assist in relieving uncertainty regarding what the guidance is intended to address or what issue prompted the need for additional guidance.

For example, one stated purpose of the guidance is to identify consumer compliance measures that institutions should follow when lending through a business relationship with a third party.<sup>12</sup> However, the proposal devotes only two high-level paragraphs to potential consumer compliance risk. These paragraphs list fair lending, debt collection, credit reporting, privacy, and unfair and deceptive acts and practices as potential risks, but do not provide any information regarding emerging consumer compliance risks that the FDIC has identified relative to third-party lending relationships. The guidance would provide greater value to financial institutions if it were to adhere to its stated purpose and provide more detailed examples of how consumer compliance issues may arise in the third-party lending context. In recent conferences and meetings with bankers, senior staff from the federal banking agencies (including the FDIC) shared illustrations of how loans originated in conjunction with certain third-parties could increase the risk of Equal Credit Opportunity Act violations based on where and how the third-party advertises for the covered product; where brokers/representatives for the third-party are geographically located; and whether third-party models, such as alternative underwriting mechanisms that use social media data, may present fair lending risk that is not fully understood. The proposal would be more helpful if it incorporated this type of information.<sup>13</sup>

## **II. A Tailored, Risk-Based Approach Is Necessary.**

ABA agrees with the proposal's statement that third-party lending procedures "should take into account the type of lending activity, complexity, volume, and number of third-party lending relationships." In fact, we urge the FDIC to highlight this risk-based approach (e.g., by applying a distinctive font, textbox, etc.) to help avoid the hazard that that institutions will be examined in a "checklist" fashion that will not be conducive to institutions focusing on the most salient risks associated with a particular lending activity. The FDIC should be vigorous about ensuring that examiners treat any third-party lending guidance as *guidance* and that financial institutions are able to exercise reasonable judgment about how to manage the risks that are most relevant to their third-party lending relationships.

### **a. Avoid a One-Size-Fits-All Approach to Risk Management.**

We request that the guidance remove language stating that the proposal contains "minimum expectations for due diligence and oversight" and acknowledge that not all types of due diligence or ongoing monitoring called for may be appropriate for all third-party lending relationships. For example, multiple due diligence and monitoring expectations set forth in the proposal would be irrelevant for loan participations (if they are subject to the guidance):

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<sup>12</sup> p. 1.

<sup>13</sup> For example, it is unclear what risks necessitate expanding the application of interagency *Expanded Guidance for Subprime Lending Programs* in the context of an institution utilizing a third-party loan origination system to process a nominal amount of near-prime loans while retaining these loans on the institution's balance sheet.



- Page 6 states that institutions should “establish a consumer complaint process that provides for timely identification and resolutions of complaints, complaint monitoring, and periodic reporting.” This expectation is not relevant in the context of loan participations for commercial customers.
- Pages 7 and 8 state that institutions should conduct due diligence and ongoing monitoring of a third-party’s information security program to protect consumer information as well as perform site inspections. Commercial credit transactions, such as loan participations with other federally-regulated financial institutions, do not pose a high risk of consumer harm that would warrant ongoing reviews of information security programs or site visits.

As discussed in Section I of this letter, the FDIC should clarify the particular risks it is concerned about relative to third-party lending, and risk management expectations should be linked to these specifically identified risks.

#### **b. Permit Flexibility in Third-Party Lending Policy Guidelines.**

The proposal contains *minimum* content requirements for third-party lending program policies that should be developed by management and approved by the board, including the expectation to “(e)stablish limits as a percent of total capital for each third-party arrangement and for the program overall, relative to origination volumes, credit exposures (including pipeline risk), growth, loan types and levels of credit quality (such as delinquency, losses, and charge-offs).”<sup>14</sup> These are some metrics that an institution may choose to employ, but they may not be appropriate for all forms of lending involving third parties and may miss the mark on capturing the true risks associated with some forms of third-party lending. For example, limits as a percent of capital have little utility in overseeing third-party arrangements such as marketing, customer service, or regulatory compliance services that are directly connected with a loan. The Proposal’s prescriptive enumeration of third-party lending policy expectations, is further hobbled in terms of flexibility and tailored application by including the stricture “at a minimum.” Such a list has supervisory and managerial value at most if it is clearly stated as being provided for illustrative purposes only.

#### **c. Prescriptiveness Inhibits Management’s Discretion in Applying Guidance, Particularly Given Broad Scope.**

The proposal articulates the FDIC’s expectations for contract structuring and review, some of which exceed the detail that was provided in FIL 44-2008. Specifically, the proposal addresses how third-party lending relationships and loan sale/purchase agreements should incorporate indemnification, representations, warranties, and recourse to avoid exposing the institution to “substantial risk.” While we recognize the importance of appropriately structuring contracts to mitigate risk, we note that some forms of lending that could be read to be covered by the proposal (e.g., correspondent lending) involve financial institutions that are on opposite sides of the contract. The contractual terms that may limit one institution’s risk may impose risk to another financial institution that is subject to the contract.

The proposal also addresses ongoing reviews of third party management information systems, information security, consumer complaints, internal and external audits, policies and

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<sup>14</sup> p. 6.

procedures, and training programs. The proposal indicates that, in some cases, institutions should conduct mystery shopping of third parties. We ask that the FDIC emphasize that the degree to which a financial institution requests and analyzes information related to its third parties (including through site visits) is dependent on the risk that a third-party poses to an institution. For example, a financial institution should not be expected to conduct extensive oversight on a third-party involved in low-volume, low-risk, or nominal lending activities. Similarly, page 7 of the proposal states that due diligence and ongoing monitoring findings should be reported to the board of directors. We recommend that such reporting be limited to “adverse” findings, and the expectation should be qualified with “as appropriate.”

### **III. Distinguish the Roles of Management and an Institution’s Board of Directors.**

Several sections of the proposed guidance address regulatory expectations of an institution’s board of directors. We request that regulatory expectations of board responsibilities be limited to developing strategy and approving policies. One example of new oversight obligations is on page 10, which says that the board and management are expected to identify adversely classified loans and promptly charge-off loans deemed uncollectible. The board should be involved in the development of strategy and approval of policies vis-à-vis third-party lending; management should be responsible for identifying classified loans and determining net charge-offs. We request that the proposed guidance clearly distinguish between the functions of the board of directors and management. Comingling their roles creates ambiguity and will further increase the difficulty of allowing board members to focus on what the board does best, set policy and direction for the institution.

### **IV. Consider Effects on Innovation.**

Financial institutions continue to offer innovative products and services, enabling them to meet better the needs and demands of their customers. Indeed, failure to remain relevant may place a bank at a competitive disadvantage vis-à-vis non-depository institutions. In the recently released ABA *Fintech Playbook*, Accenture estimated that community banks could lose up to \$15 billion of revenue to fintech companies, digital leaders, and other banks with digital platforms by 2020. However, for community banks adopting financial technologies, operating income could be \$20 billion or 52 percent greater by 2020. In many cases, bank adoption of financial technologies representative of the \$20 billion opportunity are – entirely appropriately – accomplished through partnerships or retention of third parties to enhance and broaden bank capabilities and expertise.

Any new endeavor naturally presents risk. Banks will be more successful if they can test their ideas, refine and adjust them according to demonstrated customer preferences, and identify and resolve other problems, including attention to unforeseen risk management concerns and compliance issues. Furthermore, some firms with which banks partner may be in early stages of development, and, as such, due diligence expectations should be different from what they would be for more established third parties. For example, financial due diligence of an early stage company may be constrained by the start-up’s lack of a long history of financial information. We request that the FDIC expressly permit financial institutions to apply the guidance flexibly in such circumstances relative to the significance, complexity, risk profile, and transaction volume of the third-party relationship. The FDIC should give innovative third-party relationships the opportunity to mature and permit financial institutions to apply the guidance with customer experience in mind so as not to constrain emerging products and delivery channels.

**a. Breach of the 18-month Examination Cycle a Hindrance to Innovative Lending Partnerships.**

As mentioned in section (I.)(a.), the proposal is unclear as to what activities will trigger enhanced supervisory attention, including imposition of a 12-month examination cycle (instead of a bank's 18-month exam cycle) with concurrent safety-and-soundness and consumer compliance examinations. We note that the potential for *enhanced* supervisory attention could present a particularly significant disincentive for institutions to engage in innovative lending partnerships involving a third-party. We ask that the FDIC revise the proposal to clarify that increased supervisory attention is triggered when relationships with third parties are "significant" and remove the word "new" so as not prematurely to constrain innovative relationships involving a third party.

**b. Model Validation Expectations Discourage Community Bank Innovative Partnerships.**

Expectations regarding model validation of third parties may discourage community banks from engaging in innovative partnerships. We appreciate that an understanding of a third party's models is necessary to ensure that the models are consistent with an institution's underwriting standards and risk appetite. However, when institutions utilize third-party models that are proprietary, it should be sufficient for institutions to demonstrate knowledge of the broad workings of the models and to evaluate periodically their performance against credit metrics and other performance measures to verify that the models are performing consistently and in alignment with the institution's expectations. We note that third parties that employ proprietary models may permit validation and audit of their models on a limited basis, but, in particular, may be reluctant to share model information with the thousands of community banks who, individually, may represent an insubstantial share of potential business.

We also request that the FDIC's expectation that models "consider fluctuations in the economic cycles and are adjusted to account for other unexpected events" be modified to reflect situations where institutions are testing certain third-party lending relationships. For institutions that lack the capacity to validate models in different economic scenarios, this requirement will discourage innovative partnerships.

**c. Coordinate with Other Agencies on Innovation Matters.**

The proposal applies only to FDIC-regulated institutions, and the FDIC did not coordinate with the other federal banking agencies in its development and issuance of the proposal. The heightened scrutiny that FDIC-regulated institutions would be subject to via the proposal should be considered with the other agencies through the Federal Financial Institutions Examination Council, particularly as it relates to innovation. By working collaboratively, regulators would be able to reduce the potential for inconsistent supervisory treatment and mixed policy signals as to institutions' engagement in innovative partnerships.



ABA previously applauded efforts by the OCC to invite comments on its Innovation White Paper. Several suggestions the FDIC may want to consider from our response<sup>15</sup> to the OCC's Innovation Whitepaper include:

- The FDIC should assess local examination team performance, in part, based on their receptiveness to community banks' efforts to innovate as a natural strategic evolution, rather than simply viewing such efforts as sources of increased potential risk.
- To the extent that the FDIC has information on third parties' compliance with applicable laws and regulations, it would be helpful to share some of this information to assist community banks that are evaluating potential partners.

The FDIC's guidance would be more effective if it balanced the downside risks associated with engaging with third parties in innovative lending relationships with the risks associated with financial institutions' failure to innovate. Consider the following text from OCC's Spring 2016 Semiannual Risk Perspective:<sup>16</sup>

Strategic risk remains an ongoing concern. Banks are several years into the risk accumulation phase of the economic cycle. The banking environment continues to evolve, with growing competition among banks, nonbanks, and financial technology firms. Banks are increasingly offering innovative products and services, enabling them to better meet the needs of their customers. While doing so may heighten strategic risk if banks do not use sound risk management practices that align with their overall business strategies, *failure to innovate to meet evolving needs or financial services may place a bank at a competitive disadvantage* [emphasis added].

**V. Apply New Expectations Prospectively.**

The proposal does not address an effective date. Many of the expectations outlined would require significant lead time to implement. Such new supervisory expectations should surely be applied by the FDIC only in a prospective fashion with an appropriately defined implementation time.

**Conclusion**

We thank you for considering our comments. If the FDIC would like additional information regarding these comments, please contact Barry Mills at (202) 663-5311.

Sincerely,



Barry Mills  
Senior Regulatory Advisor  
Office of Regulatory Policy

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<sup>15</sup> ABA Comment Letter to OCC re Innovation Paper, May 31, 2016:

<http://www.aba.com/Advocacy/commentletters/Documents/Response-OCC-Innovation-Paper-53116.pdf>.

<sup>16</sup> OCC's Spring 2016 Semiannual Risk Perspective, p. 5: <https://www.occ.gov/publications/publications-by-type/other-publications-reports/semiannual-risk-perspective/semiannual-risk-perspective-spring-2016.pdf>.

## Appendix A

Per section (I)(a.), we offer the following additional information and listing of existing supervisory documents pertaining to activities about which there is uncertainty regarding the proposal's applicability:

- **Loan participations:** “A loan participation is a sharing or selling of interests in a loan. Depository institutions use loan participations as an integral part of their lending operations. Banks may sell participations to enhance their liquidity, interest rate risk management, and capital and earnings. They may also sell participations to diversify their loan portfolio and serve the credit needs of borrowers.”<sup>17</sup> Existing *Interagency Guidance on Sales of 100% Loan Participations* addresses loan participations. For FDIC-regulated institutions, there is also FIL-49-2015: *Advisory on Effective Risk Management Practices for Purchased Loans and Purchased Loan Participations*.
- **Correspondent lending:** “Correspondents generally perform most or all loan processing functions, such as taking loan applications, ordering credit reports and appraisals, and verifying income and employment.”<sup>18</sup> Mortgages produced by a correspondent are closed in the correspondent's name and are subsequently sold to the bank.”<sup>19</sup> Existing supervisory documents include examination guidelines and procedures (e.g., FDIC *Home Equity Lending Credit Risk Management Guidance* (FIL-45-2005)), as well as FHA Mortgagee Letter 2002-21/Due Diligence in Acquiring Loans, which contains a list of practices that a lender should follow when purchasing FHA loans.
- **Indirect lending:** “Indirect lending involves a bank funding consumer purchases of personal goods such as autos, boats, recreational vehicles (RV) and motorcycles through a third party, typically the retailer selling the goods.”<sup>20</sup> Existing supervisory documents include Section 3.2 of FDIC's Risk Management Manual of Examination Policies and the CFPB's 2013 Bulletin, *Indirect Auto Lending and Compliance with the Equal Credit Opportunity Act*.
- **Mortgage brokers:** “Mortgage brokers typically perform loan processing functions, such as taking loan applications and ordering credit reports and appraisals. Unless they have delegated underwriting authority, mortgage brokers do not generally underwrite loans or close loans in their name. Instead, the acquiring bank underwrites the loan and provides funds for closing in the bank's name. Some loans are table-funded. Table-funded loans are closed in the name of a TPO (third-party originator), but the bank simultaneously provides the funds and acquires the loans.”<sup>21</sup> The FDIC's *Home Equity Lending Credit Risk Management Guidance* (FIL-45-2005) addresses mortgage brokers. In addition, the Bureau of Consumer

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<sup>17</sup> OCC website: <https://www.occ.gov/topics/credit/commercial-credit/loan-sales.html>.

<sup>18</sup> We note that, for some loan products, correspondents also underwrite the loan.

<sup>19</sup> OCC's February 2014 Mortgage Banking Handbook, p.28: <https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/ch-mortgage-banking.pdf>.

<sup>20</sup> Melrose, Tim and Bearss Karin, Federal Reserve Bank of Minneapolis, Banking in the 9<sup>th</sup>, December 2014: <https://www.minneapolisfed.org/publications/banking-in-the-ninth/indirect-lending>.

<sup>21</sup> OCC's February 2014 Mortgage Banking Handbook: <https://www.occ.gov/publications/publications-by-type/comptrollers-handbook/ch-mortgage-banking.pdf>.

Financial Protection issued, in 2014, guidance regarding mortgage brokers shifting to a “mini-correspondent” model.<sup>22</sup>

- **White label credit card services:** We understand white label credit card services to encompass an institution’s reliance on a third party to support a credit card lending platform for the institution’s use. In many cases, the credit card receivables are retained by the institution.
- **Marketplace lending:** The FDIC’s Winter 2015 *Supervisory Insight* defines marketplace lending as including any practice of pairing borrowers and lenders through the use of an online platform without a traditional financial intermediary.<sup>23</sup> We note that in many cases a traditional financial intermediary is involved in marketplace lending.
- **Small-dollar lending:** *FDIC Quarterly* describes small-dollar loans as alternatives to high-cost financial products, such as payday loans and fee-based overdraft protection.<sup>24</sup>
- **Loan Origination Systems (LOS Systems):** Financial institutions purchase LOS systems from vendors to help streamline application processing, underwriting, document preparation, disclosures, and closing/post-closing document distribution. Examples include EasyLender Mortgage (Fiserv), Empower (BlackKnight), and Encompass (EllieMae). These firms market their products as “end-to-end platforms.” The third-party vendors involved are systems vendors that help financial institutions achieve loan processing efficiencies and regulatory compliance; these firms do not have a stake in the loan transaction.
- **GSE automated underwriting systems (Desktop Underwriter and Loan Prospector):** Desktop Underwriter and Loan Prospector are proprietary GSE platforms that financial institutions use to determine whether a loan is eligible for sale to the GSEs.

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<sup>22</sup> Bureau of Consumer Financial Protection Policy Guidance on Supervisory and Enforcement Considerations Relevant to Mortgage Brokers Transitioning to Mini-Correspondent Lenders:

[http://files.consumerfinance.gov/f/201407\\_cfpb\\_guidance\\_mini-correspondent-lenders.pdf](http://files.consumerfinance.gov/f/201407_cfpb_guidance_mini-correspondent-lenders.pdf).

<sup>23</sup> FDIC *Supervisory Insights*, Winter 2015, “Marketplace Lending”, p. 12:

[https://www.fdic.gov/regulations/examinations/supervisory/insights/siwin15/SI\\_Winter2015.pdf](https://www.fdic.gov/regulations/examinations/supervisory/insights/siwin15/SI_Winter2015.pdf).

<sup>24</sup> *FDIC Quarterly*, 2008 Volume Two:

[https://www.fdic.gov/bank/analytical/quarterly/2008\\_vol2\\_3/2008\\_Quarterly\\_Vol2No3.html](https://www.fdic.gov/bank/analytical/quarterly/2008_vol2_3/2008_Quarterly_Vol2No3.html).