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RE: FIL-50-2016, Proposed Guidance on Third-Party Lending

Dear Director Eberley and Director Pearce:

We would like to submit this comment in response to the FDIC's requests for comment on its Proposed Guidance for Third-Party Lending.

Reinvestment Partners is a non-profit group with a mission to seek economic justice. We achieve this goal using an interdisciplinary approach working with people, places, and policy. We provide direct services to consumers, either to protect them from financial harm or to improve their financial health. We are improving our immediate community through real estate development. We support small businesses working in our local food systems. In our policy work, we advocate on behalf of lower-income consumers and communities of color through efforts to promote systematic reforms to the financial system.

We are concerned that insured institutions may partner with non-bank lenders to originate high-cost loans to consumers. In these arrangements, insured institutions extend the privileges of their charter to non-bank lenders. Both the insured institution and the non-bank lender benefit, but at the expense of the consumer.

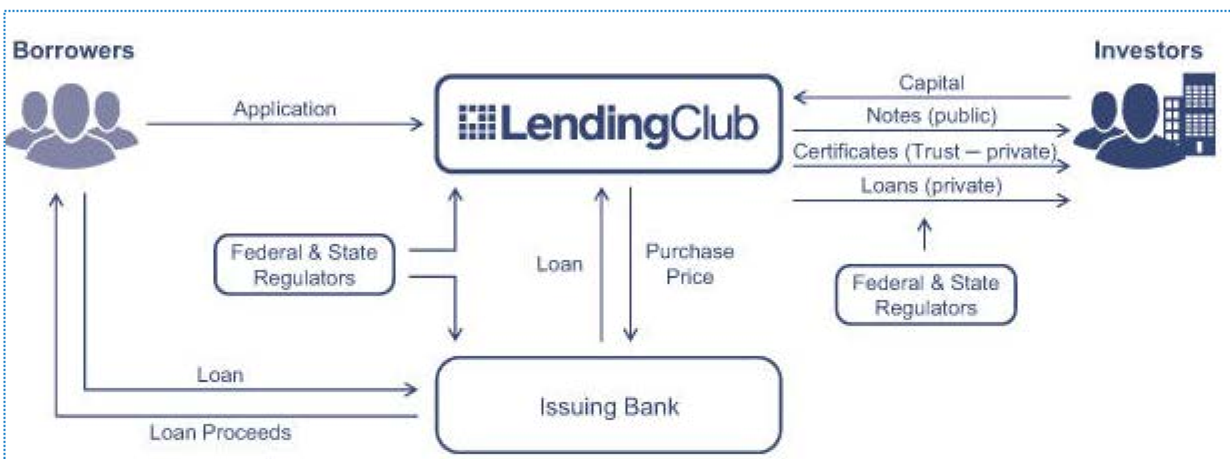
Above all else, the Guidance should establish a regulatory framework that emphasizes the impact of these lending activities upon consumers. This should be defined as the primary element of risk.

Third-Party Lending Definition and Scope of Guidance: The Proposed Guidance defines third-party lending as "a lending arrangement that relies on a third party to perform a significant aspect of the lending process." Does the proposed definition appropriately capture the various types of financial institution lending through relationships with third-parties?

Yes, there is a basis for each of the listed guidelines, and there is a need for a further expansion of the scope of the definition.

The Lending Club model is a perfect example of the most common model. In this model, the bank is not the underwriter or the initial point of contact with the consumer. These functions are performed by the non-bank. After coming to a decision to approve an application, the third-party lender then brings the loan to the insured institution. The insured institution then makes the loan. In turn, the insured institution may sell the loan.

Lending Club explains how its relationship with WebBank works:



WebBank, a Utah-chartered industrial bank, acts as the official originator of Lending Club loans. Thereafter, the loan is resold back to Lending Club.

> "WebBank retains ownership of loans facilitated through our marketplace for two business days after origination. As part of this arrangement, we have committed to

purchase the loans at par plus accrued interest, at the conclusion of the two business days. [1]"

This is a significant service. In our opinion, this is essentially a scenario where WebBank is exchanging its charter for an opportunity to earn risk-free interest and potentially some profit on the coupon price of the securitized portfolio. This should be considered as one of the definitions of a "lending arrangement."

To the question, we do believe that there are additional approaches that should be addressed by the Guidance. The following list includes a few examples:

- *Agreements to sell loans or pooled securitizations to a related business partner of the original non-bank lender*. Some non-bank lenders have formal commitments with banks to deliver asset-backed securitizations made up of those loans. The bank's capital creates liquidity for future loans. The bank's involvement is essential to the business model. For example, loans issued by Republic Bank for Elevate Credit are later sold by Republic to Elastic Special Purpose Vehicle ("Elastic SPV") via a credit sharing agreement with Victory Park Capital. Victory Park Capital is the leading investor in Elevate Credit. [2]
- *Referral agreements*: An insured institution partners with a non-bank to act as a referrer to the non-bank. The bank receives a referral fee. In many cases, the insured institution provides this service as a turn-down option for applicants that do not meet the bank's credit criteria.
- *Corporate lines of credit extended to non-banks in order to provide the necessary capital for a high-cost loan program*. Some insured institutions provide large lines of credit to non-bank third- parties. Later in this letter, we provide examples of this type of activity.
- *Service as the originating depository financial institution ("ODFI") for a non-bank*. If an insured institution provides access to the automated clearing house ("ACH") system for a third-party lender, the insured institution should be expected to protect consumers from unauthorized payment requests. Not only is this an activity that poses risk for harm to consumers, but it is also a significant role in the loan process. It is the rare instance when an online lender is not using an ODFI to receive repayments through the ACH system. [3]

Additionally, the definition should be written broadly enough to cover other types of loans originated by an insured institution on behalf of a third party. We recommend that regulators should include installment loans, P2P loans, invoice loans, personal lines of credit, small business lines of

[1] Lending Club Investor Relations. 10-K, February 22nd, 2016.
http://ir.lendingclub.com/doc.aspx?IID=4213397&DID=35479355

[2] Elevate Credit, Inc. S-1 Filing to the Securities and Exchange Commission. November 9th, 2015.
https://www.sec.gov/Archives/edgar/data/1651094/000119312515371673/d83122ds1.htm

[3] Lending Club reports that more than 99 percent of payments are made through ACH. Some lenders increase the interest rate and the origination fee to consumers who do not grant the lender access to their bank account via an ACH pull.

credit, debt consolidation, loans secured by business inventory, and merchant cash advance loans in the scope of their monitoring.

Is the scope of the definition (and therefore, the scope of the guidance) appropriate, too broad, or too narrow?

As suggested in our response to the previous question, we believe that the scope of the definition of lending activities may be too narrow.

The Guidance captures many of the situations where an insured institution plays a significant role in the origination of a loan. However, there are also cases where the insured institution may be facilitating the process by participating in activities on the back end of the loan process. The guidance would cover cases where a bank holds loans that it originated on behalf of a third party. However, it is still possible that an unrelated bank could form a contract to buy loans originated by the insured institution on behalf of the non-bank lender. Here are examples of how that might occur:

- Loans purchased by a non-originating insured institution after they were made through a peer-to-peer ("P2P") lending platform. In these scenarios, private (non-accredited and accredited) investors contribute to a pool of capital. The pooled capital is held in an account in the name of the platform lender at an insured institution. The insured institution makes the loan. Thereafter, the loans are packaged into a version of a securitization. In some cases, the securities may remain at the same insured institution. The insured institution would then act as the servicer to the consumer borrowers and the trustee to the consumer investors. But in other cases, banks use their own capital for the original supply of capital. Those loans may be pooled into a securitization and then sold to accredited investors. The list of accredited investors may include other "secondary" banks. This is currently a program at Lending Club (bank partner of WebBank). After origination in portfolios that have no claims from outside investors. In our opinion, if a secondary bank has an ongoing and exclusive arrangement with the originating bank to buy these loans, then the secondary bank should also be covered.
- Loans originated by a non-bank and then subsequently purchased by a related business entity of the non-bank, such as a private equity firm or a variable interest entity, and then sold back to the bank individually or in a tranche.

The proposed third-party lending definition also describes examples of services performed by a third party. Do those services appropriately reflect services being provided and may be reasonably expected to be provided in the future, by third parties?

Those proposed do reflect services currently being provided. However, the guidance should be expanded to also include the following services:

Access to the ACH System: We believe that the guidance should be extended to have enforcement authority for cases when banks offer their access to the ACH network for the collection of loans serviced by non-banks.

Generally, online third-party lenders must be able to debit their borrower's accounts using the ACH network. With new payments technologies, we think that granting access to the ACH system should be expanded to cover any service that allows a non-bank third party to tap a leveraged payment mechanism.[4]

We have this concern because we think that an unscrupulous non-bank could make requests for unauthorized payments. Thus, we believe that in addition to NACHA standards, insured institutions should be required to turn down pulls from non-bank lenders in cases where the rate of returned requests is too high. According to the CFPB, debt collection practices lead to more complaint filings to the CFPB's Complaint Database then does any other type of financial service. [5]

In their role as originating depository financial institutions ("ODFIs"), banks perform an essential service to online lenders. Lending Club reports that its customers make over ninety-nine percent of their loan payments through a recurring ACH withdrawal from a consumer's bank account.[6]Lending Club will cancel any application if a consumer does not provide their account and routing number for their checking account. While applicants can choose to repay their loan by check, the decision to not authorize an ACH pull from Lending Club via their ODFI triggers an automatic increase in the loan's APR and a higher origination fee.[7]

In Elevate's S-1 presentation to investors, the company emphasized the significance of ACH service:

> "These products also depend on the ACH system to collect amounts due by withdrawing funds from customers' bank accounts when the customer has provided authorization to do so. ACH transactions are processed by banks, and if these banks cease to provide ACH processing services or are not allowed to do so, we would have to materially alter, or possibly discontinue, some or all of our business if alternative ACH processors are not available.[8]"

We are not contending that the FDIC (or any other bank regulator) should prevent a bank from offering access to the ACH network for the purposing of processing a legal transaction. However, we support the idea that banks should be accountable for the integrity of ACH pull requests.

Lead generation: Lead generation is very significant, even though it is not lending. Lead generation is a practice that should provoke many of the risks listed by the Guidance.

Some insured institutions play a significant role in introducing customers to third-party lenders. There are cases that go both ways – either instances where the bank refers a consumer to a third-party lender or in cases where the third-party lender refers the applicant to a bank. Additionally, the

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[4] "Leveraged payment mechanism" is a term used by the CFPB to describe any process where an outstanding debt obligation is paid by a method where the lender can deduct funds from a consumer's account. The definition is written broadly in order to create the basis for covering any future iterations of payments technology.

[5] Comments from Director Richard Cordray to the Consumer Advisory Board of the CFPB. October 26th, 2016

[6] http://ir.lendingclub.com/doc.aspx?IID=4213397&DID=35479355 Lending Club relies upon Wells Fargo to access the ACH network.

[7] Lending Club

[8] Elevate. Preliminary Prospectus for the offering of common stock. 2015. https://www.sec.gov/Archives/edgar/data/1651094/000119312515371673/d83122ds1.htm#toc83122_22

Guidance should review cases where a third-party lender working in association with an insured institution sells information about a consumer to another third-party entity.

For example, Lending Club has an arrangement with a group of partner community banks. In this arrangement, community banks can contract to refer their customers to Lending Club. The community banks market the Lending Club loan as a turn-down service.

In our opinion, the community banks who are party to the agreement appear to do so only as a means of evading regulatory supervision. The participating community banks have the first right of refusal on loans made to their customers[9]. The community banks are able to buy the loans back. In essence, the community banks are seeking risk-adjusted interest rates that would otherwise be impossible to have while maintaining a compliant balance sheet. Presumably, this is intended to deflect the banks from safety and soundness concerns.

While we would applaud the instance where a third-party lender referred an applicant to a bank so that the consumer could receive a lower-cost loan with enhanced consumer protections, we are not in favor of a program where the arrangement moves consumers to sub-optimal products.

The factors that should trigger regulatory concern are that the referral relationship is formally defined, it is exclusive to the third party and the insured institutions, the bank receives a fee or pays a fee, and the insured institution ultimately receives some kind of remuneration for its role in the process.

This situation is outside of the previous definitions of lending arrangements. In this case, the insured institution is not the lender. The lender is the non-bank (Lending Club) whereas the insured institution is merely the referrer. Nonetheless, the lender is playing a significant role in the lending activity. The potential exists for several types of risk: compliance risk, reputational risk, vendor oversight, contract structuring, and ongoing risk management. Additionally, when an insured institution is offering a turn-down product, it bears watching to make sure that the Equal Credit Opportunity Act is not being violated.

The Proposed Guidance notes the numerous risks that may arise from the use of third-parties and outlines those that may be associated with third-party lending programs in particular. While recognizing that not all risks can be outlined, does the Proposed Guidance reasonably identify and describe the risks that warrant emphasis for third-party lending arrangements? If not, which additional risks should be addressed?

Compliance Risk, including fair lending compliance: Because P2P platforms convey a great deal of demographic information to consumer lender/investors, it naturally creates the basis for concerns related to racial equity. Even if underwriting is occurring on the platform of the non-bank, the partner insured institution should be responsible for compliance with the Equal Credit Opportunity Act.

[9] Ibid

Our opinion is supported by peer-reviewed research by academics of leading business schools. A 2009 paper from The University of Pennsylvania and Case Western Reserve demonstrated that "loan listings with blacks in the attached picture were 25 to 35 percent less likely to receive funding that those of whites with similar credit profiles." Additionally, the study concluded that the interest rates paid by black borrowers were 60 to 80 basis points higher than the rate paid by white borrowers with similar credit profiles.[10]

We believe that the complicated inferential underwriting algorithms utilized by online lenders pose fair lending concerns.

The Equal Credit Opportunity Act prohibits lenders from denying credit to applicants if the reason for doing so is derived from their status as a member of a protected class. In other words, while banks can deny a loan application from a senior or from a Latino applicant, they cannot deny credit solely because a person is a senior or a Latino (among other statuses).

Research has demonstrated that there can be biases in algorithms even if the model is built without harmful intent. "The amoral status of an algorithm does not negate its effects on society," wrote Amit Datta and Anupam Datta in their paper on outcomes of Google advertising. The authors evidenced many examples of outcomes that reflected bias:

- In comparing the search results received by women and men, Google algorithms returned "200K+" positions to men at rates six times greater than they did for women searchers.
- In separate research, only 11 percent of results from a Google images search for "CEO" featured a photograph of a woman, even though 27 percent of CEO positions are held by women.[11]
- Searches for "racially associated names" were more likely to produce an autocomplete with the word "arrested" for names with a minority association.[12]

In the Elevate/Republic Elastic Line of Credit, a team of 35 data scientists has developed its 11th generation of underwriting models[13]. Republic and Elevate share a common underwriting platform. The underwriting platform has been developed by staff at Elevate, but the loan is originated by Republic[14]. In the process of implementing their decision-making, Elevate may convey information

[10] Pope, Devin and Justin R. Sydnor. "What's in a Picture? Evidence of Discrimination from Prosper.com." 2009. https://www.ftc.gov/sites/default/files/documents/public_events/second-annual-microeconomics-conference/popeppr.pdf

[11] University of Washington. "Who's A CEO? Google image results can shift gender biases." https://www.eurekalert.org/pub_releases/2015-04/uow-wac040915.php

[12] Sweeney, Latanya. "Discrimination in Online Ad Delivery." Harvard University Data Privacy Lab. January 2013. http://dataprivacylab.org/projects/onlineads/1071-1.pdf

[13] Elevate S-1 filing to the Securities and Exchange Commission. 2015. https://www.sec.gov/Archives/edgar/data/1651094/000119312515371673/d83122ds1.htm#toc83122_22

[14] Elevate. S-1 filing to the Securities and Exchange Commission. 2015.

to Republic about customers that would otherwise be considered illegal if a bank asked for it directly. We are concerned even if these models do not directly take into account the status of a person, that they use derivative modeling techniques that effectively capture those perceptions. The FDIC should test these models to see if there are high levels of collinearity between the independent variables in these models and simple nominal definitions of race, gender, age, or other protected class groups.

Reputational Risk: We believe that the only reason that there is not widespread public concern over these arrangements is because there is little knowledge about their existence. We expect that if the public understood the extent to which insured depository institutions were using their charters to facilitate the origination of high-cost loans, it would immediately spark a negative reaction from many entities.

Third-Party Lending Risk Management Program: The Proposed Guidance outlines expectations for establishing a third-party lending risk management program, including expectations around strategic planning policy development, risk assessment, due diligence and ongoing oversight, model risk management, vendor oversight, and contract structuring and review. Are these the appropriate elements for an adequate risk management framework?

Yes, and vendor oversight is a significant concern. We see a need for more accountability in how products are marketed in retail settings. Banks should be held accountable for the retail-facing employees who market to consumers. We believe that these situations pose compliance risks, transaction risks, operational risks, credit risks, and reputational risks.

One important example is the current case where large lenders extend large lines of credit to otherwise undercapitalized non-bank lenders, usually for seasonal liquidity demands on the part of those third-party lenders.

There continue to be new innovations in delivery models in the tax product market. One current mode is through service bureaus. Banks develop relationships with tax preparation service bureaus – providing capital for products either directly to the bureaus or for the bureaus to offer to tax filers via intermediary relationships with tax preparers – to provide bank products. Sometimes the tax refunds are routed through preferred prepaid card issuers.

We are attaching an example of one entreaty made by a service bureau to tax preparers. This service bureau is offering advances on tax refunds. They are doing so because the loans are marketed as being free. In our opinion, this is deceptive. A better characterization of the cost would be that they are very expensive, but every tax filer served by one of this bureau's tax preparer clients is sharing equally in the cost of the deception.

This bureau specializes in serving preparers with low capital capacity. Because the costs to buy tax software can be high, some bureaus offer software for free but then recoup the expense through higher per-return fees. Effectively this allows the preparer to work with less startup capital.

Many preparers are offering free tax products, presumably to evade rules recently put in place to prevent lenders and preparers from offering high fee products. This excerpt shows how the new approach is actually not free; consumers are instead paying for costs that are hidden behind "service fees."

> "Increase Your Own Prep Fee - Here's how... We charge a small $44 service bureau fee that is deducted directly from the taxpayer's return for each bank product you file. With our free bank products, we're confident that even after this fee, your clients will save an average of $20 to $60 per return when compared to your current software provider's bank product fees, state bank fees, transmission fees, technology fees, and other junk fees. This is money you can stick directly into your own pocket by increasing your own prep fee $20 to $60 per return while keeping the overall cost to the client the same as last year. If you do 100 returns, that's an extra $2,000 to $6,000 in your pocket this season. Wouldn't you like more breathing room to increase your own prep fee?"[15]

This excerpt underscores how evasive practices may be taking place. We think that these advances should be defined as loans. If a bank offers these loans – even if they are free under a prima facie definition – the insured institution should be held accountable for all of the related compliance risks posed by the activity.

It speaks to two needs: first, training of consumer-facing agents should be reviewed for compliance. Secondly, the FDIC should verify that unfair and deceptive pricing practices are not taking place. Because the process must go through several intermediaries (from bank to bureau to tax preparer to tax filer), it seems possible that TILA, ECOA, Fair Credit Reporting Act and Bank Secrecy Act requirements are at risk of not being implemented.

Service bureaus interact with banks indirectly. Service bureaus offer bank products through their processor. In this case, Gannon uses Santa Barbara Tax Products Group. SBTPG is owned by Green Dot Corporation. Thus, the relationship between a bank and SBTPG is limited. Recipients of the proceeds of these bank products can use a prepaid card to do so. SBPTG's preferred provider is Green Dot Bank. We acknowledge that receipt of a payment is not enough to justify responsibility for these activities. But it is true that SBTPG is a related business enterprise to Green Dot Bank, and as a result, the question of evasion is relevant. If a non-bank subsidiary of a bank is issuing financial products, then the bank should be accountable for how the non-bank complies with lending regulations.

Supervisory Considerations: The Proposed Guidance outlines some of the risk management areas examiners will consider when reviewing third-party lending relationships. These considerations include credit underwriting and administration, loss recognition practices, the applicability of subprime lending guidance, capital adequacy, liquidity and funding, profitability and budgeting, accounting and allowance for loan and lease losses

[15] Gannon Service Bureau

maintenance, consumer compliance, programs for safeguarding customer information, and information technology. Are the considerations appropriate? Should additional considerations be addressed?

The considerations are appropriate but should be expanded.

Capital adequacy, liquidity, and funding:
The FDIC should monitor banks for their use of brokered deposits as a source of capital for these arrangements: The FDIC should be wary of cases where a small institution is using brokered deposits to make up for the lack of core deposits on its balance sheet. The FDIC should monitor for instances where a bank artificially inflates its balance sheet by purchased brokered deposits, and then uses those funds to originate loans on behalf of non-bank third parties. At the end of June 2016, WebBank held $192.6 million in brokered deposits on its balance sheet. By contrast, it reported de minimis deposit holdings from accounts held by individuals, partnerships, and corporations.[16] In total, more than 75 percent of WebBank's deposits are sourced through brokered contracts. We believe that were it not for its privilege of buying brokered deposits, then WebBank would be unable to originate these loans for third-party non-bank lenders.

Loan loss provisioning: Given that most participating banks hold these loans for a very short period of time, the use of loan loss provisioning may not be very impactful. At the same time, many of these products produce very high charge-off rates. For example, Elevate reported that charge-offs are equivalent to more than half of its revenues. So while there are significant issues with underwriting, it is not the partner banks that will be harmed. Instead, it is the consumer who is likely to bear the brunt of the lack of underwriting. This underscores how loan-loss provisioning should be integrated into a monitoring system. We believe that high rates of charge-offs should be interpreted as a risk to consumers.

Safeguarding consumer information: At CircleBackLending (loans issued through County Bank), the terms of use indicate that CircleBackLending can refer some applicants to other lenders. CircleBackLending insists that neither it nor County Bank are responsible for any of the actions of those partners. [17] This should not be the case. Both the non-bank and the insured institution should be responsible for information provided to them by an applicant, regardless of how the loan is reviewed.

The Proposed Guidance indicates defines "significant" third-party lending arrangements as those, for example, that have a material impact on revenues, expenses, or capital; involve large lending volumes in relation to the bank's balance sheet; involve multiple third parties; or present material risk of consumer harm. The Proposed Guidance also states that institutions that have significant arrangements with third- parties would be expected to

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[16] FFIEC Call Reports, (Schedule RC-E Parts 6 and 7).
[17] https://www.circlebacklending.com/terms-of-use

oversee the third-party lending arrangements on an ongoing basis. Is the definition of significant arrangements reasonable and it is appropriate to expect ongoing monitoring of these arrangements?

A definition that is influenced by financial measures is reasonable, but if coverage was only applied when the activity exceeded a fractional threshold it would have the effect of permitting activity to occur without supervision. If the numerical approach puts a balance sheet, a revenue, or an expense measurement in the denominator of a formula, the only effect will be to move these kinds of arrangements to large banks.

We do support the principle that in cases where a significant share of a bank's loans is made to these 3rd-parties, the bank should be monitored. Online lending is rapidly growing. According to a survey of 13 lenders conducted by the California Department of Business Oversight, the top online lenders issued $15.9 billion in loans in 2014, compared to slightly less than $2 billion as recently as in 2010. Going forward, the issue of the scale of lending relative to the size of partner banks will only become more pressing.

Definition of significant: Instead of focusing on the share of capital (revenue or assets) held by an insured institution that is going to a third-party relationship, the question of significance should turn on the degree that lending by an individual bank is serving as the source of capital for a non-bank lender's portfolio. If a significant portion of a bank's loan portfolio consists of loans it has originated as part of an arrangement (or arrangements) with a third-party non-bank lender, then the activity should be considered significant and then serve as a trigger for monitoring.

While WebBank is very small, it is one of the leading originators of loans for non-bank third-party lenders. WebBank originates loans for Avant, CAN Capital, and PayPal Working Capital. [18] These lenders made approximately $1 billion in loans in 2015. The average assets of WebBank during the quarter ending on December 31st, 2015 were only $327.9 million. Cross River Bank, the lender partner of Affirm, reported average assets of only $432.5 million during the same period.

Of particular concern would be the implications for the safety and soundness of any institution holding a significant sum of high-cost high-risk third party loans on its balance sheet. An examiner should give these loans a very low rating in factoring the capital adequacy of the bank.

Many of the loans made through third-party relationships bear very high rates of interest. Some have rates above 36 percent. Some fall just slightly below that level, perhaps in order to avoid some state usury caps. Some have very high origination fees.

[18] FFIEC, Call Report for WebBank. Quarter ending 6/30/2016.

- Prosper's peer to peer ("P2P") installment loans can have interest rates as high as 31.38 percent.[19] Prosper loans are made by WebBank.
- Loans issued by Celtic Bank through the Kabbage platform can have APRs of as high as 80 percent.
- Elevate's Elastic Lines of Credit, issued by Republic Bank, bear interest rates of between 80 and 120 percent.
- Small business loans and lines of credit issued by WebBank through its relationships with On Deck Capital have APRs of between 13 and 80 percent.
- Pave debt consolidation loans are originated by Cross River Bank. They bear interest rates of as high as 31.16 percent According to Pave, these loans can charge an origination fee of as much as 6 percent. [20]
- BorrowersFirst's unsecured personal loans are originated by Cross River Bank. They have bearing interest rates of as much as 29.99 percent. There is a non-refundable origination fee of up to 5 percent. [21]
- Lending Club P2P loans are issued by WebBank. APRs can be as high as 35.89 percent. [22]
- CircleBackLending's installment loans are issued by County Bank (Delaware). They have APRs of between 6.6 to 34.93 percent.
- PeerForm marketplace loans are issued by Cross River Bank. PeerForm loans can bear APRs of as high as 29.99 percent. [23]
- CAN Capital's small business loans and lines of credit are serviced by CAN Capital Asset Servicing and originated by WebBank. [24]
- Avant's unsecured consumer installment loans are originated by WebBank. The loans are ultimately securitized and sold to Avant investors. They bear interest rates from 9.9 percent to 36 percent. [25]
- Affirm's unsecured consumer installment loans are originated by Cross River Bank. Affirm loans bear an APR of between 10 and 30 percent. [26]
- Liberty Tax's Refund Advance loans (bearing no stated rate of interest) are issued by Republic Bank.

While we understand the importance of evaluating these arrangements for their impact upon the safety and soundness of insured institutions, we believe it is more important to assess their impact

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[19] Prosper. "Prosper Announces Pricing Change." October 25th, 2016. https://www.prosper.com/about-us/2016/10/25/prosper-announces-pricing-change/?bid=74&bname=Investor%20Updates

[20] https://www.pave.com/faqs
[21] https://www.borrowersfirst.com/
[22] https://www.lendingclub.com/landing/partner.action?partnerID=87277&param2=190405928
[23] https://www.peerform.com/
[24] https://www.cancapital.com/news-press/can-capital-secures-650-million-in-funding-from-a-dozen-leading-banks/
[25] Avant Loans Funding Trust 2015-A. Form ABS-15G filing to the Securities and Exchange Commission.
[26] https://www.affirm.com/faqs/ January 26, 2016.
https://www.sec.gov/Archives/edgar/data/1651723/000119312516438219/d75836dabs15g.htm

upon consumers. If the Guidance emphasizes the former, then it will only serve to push these activities toward depositories with larger balance sheets.

Evidence of consumer harm should be quantified by performance metrics that are sensitive to the experiences of borrowers. When a significant portion of the loans issued by an insured depository on behalf of a 3rd-party lender is charged-off, then it suggests that borrowers are being approved for loans without adequate underwriting that vets applications to ensure that a borrower has the ability to repay the loan. According to its S-1 filing, Elevate Credit charged-off loans with an outstanding balance equivalent to 51 percent of revenues for the 9 months ending September 30th, 2015, 43 percent in 2014, and 48 percent in 2013. [27] This is evidence of a third-party lending relationship that results in great risk to consumers.

Examination Procedures: The Proposed Guidance indicates that institutions engaging in significant activity will generally receive increased supervisory attention. In this regard, the Proposed Guidance establishes 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. Is this an appropriate examination interval for these types of arrangements?

We strongly support a 12-month examination cycle and strongly disagree with the use of an 18-month application cycle. Our opinion reflects our observation that the demand for non-prime small-dollar non-bank lending is frequently seasonal. Examples of seasonal industries include payday lenders, consumer installment lenders, pawn lenders, rent-to-own stores, tax refund lenders, buy-here-pay-here dealerships, and lenders providing installment loans for household furniture and electronics purchases.

A shorter period would mean that some examinations occurred over a period when lending was subdued or perhaps even non-existent. With an 18-month approach, the opportunity to intervene on behalf of consumers will be further delayed. This is particularly relevant given the level of innovation occurring in non-bank non-prime lending.

Regulators should "mystery shop" to determine if there are compliance concerns. A large scale mystery shopper program allows a regulator to determine if a compliance problem is unique to one salesperson or retail location, or if the non-compliance is widespread across many offices of a larger lender.

Additionally, we believe that prudential regulators of the banks engaged in these operations should include these practices in their Community Reinvestment Act evaluations. Examiners should

[27] Elevate Credit, Inc. S-1 Filing to the Securities and Exchange Commission. November 9th, 2015. https://www.sec.gov/Archives/edgar/data/1651094/000119312515371673/d83122ds1.htm

penalize banks when their lending activities bring harm to borrowers by giving them negative CRA credit on their evaluations.

Conclusion

For many years, some insured depositories have sought to chase yield by partnering with high-cost non-bank lenders. The current iteration is new, but the impact upon consumers is unchanged. These practices are mere evasions of strong state laws. Although the interest rates are now in double digits, whereas recent history includes examples of relationships that extended loans with three-digit rates, the costs are still usurious in many cases. We support the intention of the proposed guidance to rein in this activity. In some areas, we urge the FDIC to expand the scope of its monitoring. Most importantly, the impact upon the consumer should be of the utmost concern.

Above all else, the Guidance should establish a regulatory framework that emphasizes the impact of these lending activities upon consumers. This should be defined as the primary element of risk.

We applaud the FDIC's intention to enforce relevant federal laws as a part of their examinations of these relationships. These activities pose significant concerns for the Equal Credit Opportunity Act, the Federal Trade Commission Act, the Fair Credit Reporting Act, the Military Lending Act, and the Electronic Funds Transfer Act, the Truth in Lending Act.

Thank you for your concerns.

Sincerely,

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This letter is submitted by Reinvestment Partners and its partner consumer advocacy groups – The Woodstock Institute, the Maryland Consumer Rights Coalition, and the California Reinvestment Coalition. These four groups are longstanding partners of the Multi-State Collaborative.

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