

October 18, 2021

Via eRulemaking Portal

Ann Misback
Secretary
Board of Governors of the
Federal Reserve System
20th Street and Constitution Avenue NW
Washington, DC 20551

Chief Counsel's Office
Attention: Comment Processing
Office of the Comptroller of the Currency
400 7th Street SW
Suite 3E-218
Washington, DC 20219

James P. Sheesley
Assistant Executive Secretary
Attention: Comments RIN 3064-ZA26,
Legal ESS
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Comments Regarding the Proposed Interagency Guidance on Third-Party Relationships – Fed Docket No. OP-1752; FDIC RIN 3064-ZA26; Docket ID OCC-2021-0011

To Whom It May Concern:

On behalf of the Electronic Transactions Association (“ETA”), we appreciate the opportunity to share our thoughts with the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the “Agencies”) on the proposed guidance on managing risks associated with third-party relationships.

As discussed below, third-party relationships play an important role in many functions of ETA’s member companies and is of significant interest to a wide range of functions and disciplines within those companies and ETA supports establishing a uniform standard that provides a floor for sound risk management principles without applying a too prescriptive framework. A robust third-party risk management system is essential to not only protecting the integrity and security of the financial system but enabling responsible innovation and modernization throughout the industry as well. In addition, ETA encourages the Agencies to harmonize any risk-management across the agencies, clearly define “critical activities”, coordinate with the Bureau of Consumer Financial Protection (“CFPB”) throughout their process of implementing Section 1033 of the Dodd-Frank Act, and distinguish the difference between third-parties and fourth parties and allowing financial institutions to manage those relationships without the Agencies being too rigid in their standards.

Who We Are



ETA is the world's leading advocacy and trade association for the payments industry. Our members span the breadth of significant payments and fintech companies, from the largest incumbent players to the emerging disruptors in the U.S and in more than a dozen countries around the world. ETA members make commerce possible by processing more than \$21 trillion in purchases worldwide and deploying payments innovation to merchants and consumers.

Comments

Defining Critical Activities

It is imperative financial institutions be given the appropriate discretion to identify, categorize and manage the risk portfolio of their various third-party partners. ETA cautions against the Agencies taking an overly prescriptive approach to this and supports an industry-led and principles-based framework to define critical activities. An activity that may be critical for one financial institution may not be comparable for another and financial institutions should not universally take the same approach for this. Not all relationships present the same level of risk to financial institutions, even if identical activities are being compared, the nature of if those activities are critical are fact and circumstance specific to be addressed by the individual financial institution.

A clear understanding of the term *significant* will help financial institutions to appropriately identify, rank and managed risks and tailor internal protocols to properly address these concerns. ETA suggests the Agencies clarify the meaning of the word “significant” in the context of critical activities because activities that could have significant customer impacts are extremely broad.

Harmonization of Guidance Across Agencies

Third-party relationships play a critical role in the modernization of the financial services ecosystem. While the proposed guidance provides a comprehensive list of factors institutions should take into consideration as they continue or begin to engage with various types of vendors, and discretion in certain aspects of these relationships is absolutely paramount in minimizing arbitrary or burdensome barriers to innovate, ETA also supports the harmonization of guidance across the Agencies as it creates a single standard and reference document for third-party risk management.

For additional clarity, the Agencies should clarify that certain “typical” risk management practices are not suited for every situation – actions should be both relevant to the nature of the third-party relationship and warranted by the risks posed. The Agencies should establish a control framework to set reasonable risk management principles for each class of entity. This framework should be implemented to address the risk profile of each entity and set a reasonable industry standard approach. It should be done in such a way that allows flexibility to combat future risks and technical flexibility to allow innovation in implementation of the framework.

Coordination with Section 1033 of Dodd-Frank

Additionally, as the Agencies consider comments from pertinent stakeholders, ETA encourages coordination with the CFPB as they develop regulations to implement Section 1033 of the Dodd-Frank Act because the number and usage of products and services that rely upon consumers’

ability to authorize companies that have no business (or other) relationship with a financial institution access to their financial data has grown in recent years. This growth in authorized data has been accompanied by expansion in the number of use cases including: personal finance management, making and receiving payments, and small business loan underwriting.

ETA encourages direct supervision of data aggregators by the CFPB. While data aggregators play a critical role in the authorized data ecosystem by acting as consumers' agents and carrying out consumer desires to share data, once data is passed to an aggregator, financial institutions organizations lose the power to control how it is managed or which company the consumer instructs the aggregator to send the data to. CFPB supervision will make it clear that aggregators are responsible for the data when it's in their possession and are likewise responsible for oversight of which companies receive the data and how it is provided to them. Appropriate supervision and regulation would provide helpful oversight and assurances to the financial data ecosystem. Moreover, the guidance should make clear when financial institutions have the right (due to safety and soundness obligations) to override a consumer's Section 1033 rights and impose restrictions tailored to those obligations on access by data aggregators or other third parties to a financial institutions organization's system.

Third-Parties vs Fourth Parties and Difference of Treatment

As the Agencies have acknowledged throughout the proposed guidance, financial institutions require the adequate flexibility based off their size, complexity, and risk appetite to make certain determinations in relation to facilitating third-party relationships.

In relation to fourth parties, subcontracted by the financial institutions third-party partners, the guidance discusses the potential of an absence of a direct relationship that may affect an institution's ability to adequately assess risk. However, many of these risks can be or are actively addressed in contract negotiation where it may be determined when it is appropriate or inappropriate to subcontract certain activities. For example, fourth party subcontractors, that do not play a role in any material or critical activity between the financial institution or third-party partner inherently pose less risk and would be inappropriate to require enhanced due diligence on these subcontractors.

Services that are material to critical or significant activities provided to the financial institution should undergo a higher degree of scrutiny and should be evaluated to determine if it is appropriate to have a fourth party involved in such an activity. If the financial institution does in fact allow a fourth party to be involved in such critical activity, increased transparency and a higher degree of information sharing is necessary to ensure the activity is being conducted as anticipated and ensure the financial institutions is not being exposed to any additional unnecessary risks. ETA believes financial institutions should be given the discretion in determining how to manage these types of relationship without having an overly prescribed standard set by the Agencies.

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Thank you for your consideration of this request. If you have any questions, please contact me or ETA's Senior Vice President of Government Affairs, Scott Talbott, at stalbott@electran.org.

Sincerely,



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