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October 18, 2021

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

Via Federal eRulemaking Portal – <https://regulations.gov>

Re: RIN 3064–ZA026; Docket No. OP-1752; Docket ID OCC-2021-0011

Greetings,

The following comments are submitted on behalf of the Independent Bankers Association of Texas (“IBAT”), a trade association providing a voice for the independent community banks included in the 375 state and national banks domiciled in Texas.

For Texas community banks, the ability to leverage third-party service providers has become essential to meet the needs of small and mid-sized communities. Utilizing third-party service providers has allowed community banks across the country to deliver enhanced customer service and products that otherwise would be prohibited by cost and or a lack of technological expertise.

Of the questions posed, the following are of particular interest to Texas community banks. As such, we will limit our comments accordingly:

- 1. To what extent does the guidance provide sufficient utility, relevance, comprehensiveness, and clarity for banking organizations with different risk profiles and organizational structures? In what areas should the level of detail be increased or reduced? In particular, to what extent is the level of detail in the guidance's examples helpful for banking organizations as they design and evaluate their third-party risk-management practices?***

The guidance should provide bifurcated management expectations based upon the engagement of the third-party service provider with the bank's customers. Does the relationship remain with the bank, meaning the bank deals directly and interacts with their customer base and is seen as the service provider? Or has the bank 'sponsored' the relationship and the third-party deals directly with the bank's customers and is seen as the service provider?

Also, it would seem appropriate to exclude certain relationships from the definition of 'third-party relationships.' For example, the guidance defines a 'third-party relationship' as 'any business arrangement between a banking organization and another entity, contract or otherwise.' For professional relationships such as outside auditors (CPAs) or legal representation, those engagements encompass fiduciary duties governed by ethical codes and regulations from outside professional associations and should be streamlined.

Additionally, clarification should be provided regarding the antitrust issues as to what could or could not be shared by banks before engaging a particular third-party service provider. While the footnotes mention that '...collaborative activities among banks must comply with antitrust laws' it does not address specifically what those collaborative activities are. For example, IBAT as a trade association provides endorsements of vendors after performing extensive due diligence. That does not replace a bank's own process but can be useful as a tool. In addition, trade associations may perform salary surveys, providing these are undertaken in a manner consistent with the antitrust laws and regulations.

3. In what ways, if any, could the proposed description of third-party relationships be clearer?

For clarity, the guidance should adopt a clear definition of 'Fintech.' For example, the U.S. Chamber of Commerce defines 'Fintech,' or financial technology, as the term used to describe any technology that delivers financial services through software, such as online banking, mobile payment apps or cryptocurrency. The definition should include IT services that make that technology or service available.

4. To what extent does the discussion of "business arrangement" in the proposed guidance provide sufficient clarity to permit banking organizations to identify those arrangements for which the guidance is appropriate? What change or additional clarification, if any, would be helpful?

For questions 3 and 4, the guidance should clearly define third-party service providers and address management expectations for both third-party service providers and their 'subcontractors.' Those subcontractors are often referred to as fourth party service providers and don't deal directly with the bank but may play a critical role in the ability of the third-party service provider to perform according to the engagement. There should be clear and reasonable due diligence expectations for both third-party service providers and their subcontractors that have only an indirect relationship with the bank.

The guidance should provide clear expectations for what a bank is required to review for third parties to demonstrate adequate oversight of its subcontractors. Many of the agreements between third-party service providers and their subcontractor contain confidentiality terms which can impede disclosure of these relationships to banks and makes oversight difficult. Banks should be able to explicitly rely upon independent audit and review of third-party service providers relationships with subcontractors as adequate evidence of oversight by the third-party service provider.

5. What changes or additional clarification, if any, would be helpful regarding the risks associated with engaging with foreign-based third parties?

The word 'foreign' should be better defined. Is the definition specific to international companies operating in the United States without a domestic office or presence? Does it apply to international companies with a domestic office or presence in the United States, or to interstate service providers?

6. How could the proposed guidance better help a banking organization appropriately scale its third-party risk management practices?

Third-party risk management practices should be scaled based upon what is being offered to consumers; how the service is being offered or marketed; who is offering it; and finally, what is the history and financial condition of the third-party service provider. The scope of third-party risk management should, based upon that scaled engagement, address the protection of confidential IT information, the avoidance of unethical practices (UDAAP) and business continuity plans of the third-party service provider.

Community banks are taking a risk-based approach to third-party screening and due diligence. As part of the onboarding process and on a regular basis, banks stratify their third parties into various risk categories based on the offered product or service, as well as the third-party's location, countries of operation, and other key factors. They then define the screening and due-diligence process based on the risk categories. The guidance should better address the use of a 'risk score' for third-party service providers based upon that scaled involvement in risk management.

The guidance should provide additional information and expectations regarding the role of the board in managing third-party service provider risk. While the guidance addresses dealing with contract negotiation and oversight and accountability, the guidance also states, "the board may use executive summaries of contracts in their review and may delegate actual approval of contracts with third parties that involve critical activities to a board committee or senior management." It would be helpful to have additional details as to the extent senior management may direct third-party due diligence and monitoring in lieu of full board involvement.

8. In what ways could the proposed description of critical activities be clarified or improved?

The OCC addresses that in Bulletin 2013-29, which should be made part of this guidance. 'Critical activities' include performing or assisting with bank functions (e.g., payments, clearing, settlements, and custody) or significant shared services (e.g., information technology) or other activities that:

- could cause a bank to face significant risk if the third-party fails to meet expectations.
- could have significant customer impacts.
- require significant investment in resources to implement the third-party relationship and manage the risk.
- could have a major impact on bank operations if the bank needs to find an alternate third-party or if the outsourced activity has to be brought in-house.

14. In what ways, if any, could the proposed guidance further address due diligence options, including those that may be more cost effective? In what ways, if any, could the proposed guidance provide better clarity to banking organizations conducting due diligence, including working with utilities, consortiums, or standard-setting organizations?

The agencies should allow for the sharing of exam results that are specific to the roles and responsibilities of a particular third-party service provider prior to a bank engaging that third-party service provider. The agencies should also make specific exam criticism of a third-party service provider available to other banks upon request. We realize that this change would necessitate amendments to other regulations. However, this is a critical tool that is not available now.

The agencies should also develop a shared infrastructure that would allow – or require by contract with a bank – third-party service providers to register with the agency, provide financial information to the agency, address marketing efforts, complaints received, and other relevant information. Creating this third-party profile would allow community banks to have greater access to information prior to engaging particular third-party service providers. It seems inconsistent that the agencies establish extensive qualifying criteria and registration for mortgage loan officers (MLOs) but not so much for banking service providers or the beneficial owners of those entities.

18. To what extent should the concepts discussed in the OCC's 2020 FAQs be incorporated into the guidance? What would be the best way to incorporate the concepts?

IBAT strongly supports the adoption by all the agencies of both the OCC 2013 Guidance and its 2020 FAQs reflecting any changes regarding the extension of the scope of applicability to banking organizations supervised by all three federal banking agencies. We recommend that these remain separate from the guidance, however.

The Independent Bankers Association of Texas appreciates this opportunity to submit comments on third-party risk management. There is certainly a need for additional guidance for the oversight, due diligence, and ongoing monitoring of third parties for the betterment of the banking industry and the communities we serve.

Sincerely,

A large black rectangular redaction box covering the signature of Christopher L. Williston.

Christopher L. Williston, CAE
President and CEO