Third Party Payment Processors Association
20 F Street NW, 7th Floor
Washington, DC 20001
(888) 662-0888

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Subject: Proposed Interagency Guidance on Third-Party Relationships: Risk Management TPPPA Response (Docket No. OP-1752)

Submitted via email

To Whom It May Concern:

The Third Party Payment Processors Association (TPPPA) greatly appreciates the joint efforts of the Board, the FDIC and the OCC to consolidate and standardize third-party risk management guidance. Efforts like this that simplify regulatory guidance by standardizing and eliminating redundant guidance and the potential for misinterpretation, greatly supports the compliance efforts of the participants in the payments industry. We particularly appreciate that third-party risk management is a priority in these efforts, as many of the third parties, including third-party payment processors and merchant processors, work with various banks supervised by the different agencies. Clear and standard guidance will have a positive impact on the efficiency and quality of the payments industry.

The TPPPA is a national not-for-profit association representing third-party payment processors (TPPPs) and banks that sponsor TPPPs in various payments networks. The TPPPA was formed in the summer of 2013 to advocate on behalf of our members and the payments industry, and to create, foster and promote industry best practices in compliance in the payment processing space. The TPPPA's best practices are known as the TPPPA Compliance Management System (TPPPA CMS). The TPPPA CMS considers payment processors of all types (Card, ACH, Check, etc.) to be third-party service providers of the banks that sponsor them into the payments networks. This concept is consistent with the Third-Party Risk Management guidance of the Federal Banking Regulators and is articulated in some of the payment system rules. As such, the TPPPA CMS is built upon a foundation of bank guidance including OCC Bulletin 2013-29, "Third-Party Relationships: Risk Management Guidance," OCC Bulletin 2017-43 New, Modified, or Expanded Bank Products and Services: Risk Management Principles, as well as bank and corporate guidance by the Consumer Financial Protection Bureau's (CFPB) and the Department of Justice's (DOJ) related to Compliance Management System Guidance.

The TPPPA's responses to requests for comment derive from the opportunities and obstacles inherent in the rapidly evolving environment in which our members operate. Unquestionably, there has a been a significant shift over the past 10-15 years from person-to-person payments to electronic/digital payments conducted over the internet. The COVID-19 Pandemic dramatically accelerated this evolution. The pace of this shift to digital transactions over the internet continues to escalate and is not likely to recede. Consumers and businesses have embraced, and have come to expect the convenience, speed and greater access to products and services enabled by the internet. The purchase of goods and services in digital form over the internet is essential to facilitate interstate commerce in a digital age. Banks alone, would not have the capacity to fulfil these needs without the partnerships they have formed with payment processors.

The TPPPA agrees with the agencies' proposal to adopt the OCC's guidance, as it has proven to be the most detailed, informative, and comprehensive guidance. This guidance organizes information into separate controls that are all relevant and critical to building and sustaining effective compliance management systems. As such, the TPPPA, from the start, based its industry best practices on this guidance provided by the OCC.

There are a few areas that the TPPPA believes could be made more clear. These are articulated below:

Critical Activities:
Payments are a core function of banks. Therefore, any third party that is engaged in the processing of payments should be considered as critical. This includes subcontractors of payment processors that process payments.

Business Arrangements:
By contract, "or otherwise" is problematic and confusing, as the guidance itself expects a written agreement. "Or otherwise" is vague and left up to interpretation and does not reenforce the bank's requirement to have written agreements with its third-party relationships that address the specific requirements of the bank.

Additionally, the statement that "third-party business arrangements generally ***exclude*** a banking organization's customers" is particularly problematic for banks that have business arrangements with payment processors that are indeed customers of the bank, as they are required to have depository accounts with the bank through which to settle payments. The TPPPA would suggest that the guidance drop this statement.

Subcontractors:
Subcontractors are very prevalent in payment processing. Frequently, payment processors offer their services to other payment processors that do not have a direct relationship with the sponsoring/originating bank. These subcontractors have many different names such as Independent Sales Organizations (ISOs), Nested Third-Party Senders, Independent Software Providers (ISVs) that have built in payment options, etc. The TPPPA suggests that the guidance

or FAQs should clearly articulate that these downstream payment processors must undergo the same level of scrutiny in the form of due diligence, periodic review and monitoring that the primary third-party is subject to by its bank. This should be clearly articulated in the guidance and/or FAQs, particularly since payments are critical activities of the bank. This is even more critical when the payments are from consumers and they? must adhere to consumer protection requirements.

The TPPPA suggests that if the bank does not itself conduct the due diligence and monitoring of subcontractors, that it conducts extensive due diligence on the compliance management system and third-party risk management policies and controls of the primary payment processor. This should be performed in a manner to ensure that due diligence, periodic review, and ongoing monitoring requirements of subcontractors align with the responsibilities of the bank related to these activities and this guidance.

Frequently Asked Questions (FAQs):
The TPPPA suggests that the FAQs include an example of a payment processing relationship and include the requirement for subcontractors of payment processors, whom themselves process payments, to be subject to the same level of scrutiny by either the bank directly or by the primary payment processor. This is of particular importance to those chains of relationships involved in processing consumer payments to ensure that the bank's obligations to consumer protection are met.

The TPPPA and its members thank the agencies for the opportunity to respond to this request for comment.

Sincerely,

[redacted]

President
Third Party Payment Processors Association (TPPPA)
mjones@tpppa.org