



Ensuring Your Vendor Management Program is Up to the Task

What Are Your Company's Legal & Regulatory Compliance Responsibilities?

July 18, 2023



1

Third-Party Service Providers & Regulatory Expectations

- Overview
- The CFPB's Expectations Regarding TPSP Oversight
 - CFPB Bulletins 2012-13 and 2016-02
 - Examination
 - Enforcement



2

The CFPB and TPSPs - Overview

- What is a “service provider?”
 - “any person that provides a material service to a covered person in connection with the offering or provision by such covered person of a consumer financial product or service.”



3

The CFPB and TPSPs - Overview

- The Dodd-Frank Act grants CFPB supervisory and enforcement authority over supervised service providers, which includes the authority to examine the operations of service providers on site



4

The CFPB and TPSPs - Overview

- While the CFPB understands need for reliance on TPSPs ...
 - "the mere fact ... [of] a business relationship ... does not absolve the supervised bank or nonbank of responsibility for complying with Federal consumer financial law to avoid consumer harm."



5

The CFPB and TPSPs - Expectations

- CFPB Bulletin 2016-02, Service Providers
 - Replaces and supersedes CFPB Bulletin 2012-03, Service Providers
- CFPB Supervision and Examination Manual



6

The CFPB and TPSPs - Expectations

- Board Expectations:
 - “Conduct comprehensive and ongoing **due diligence and oversight** of service providers consistent with the CFPB’s expectations to ensure that the institution complies with Federal consumer financial service laws”
 - “Exercise **oversight of service providers’ policies, procedures, internal controls, and training** to ensure consistent oversight of compliance responsibilities”



7

The CFPB and TPSPs - Expectations

- The Bureau expects that the depth and formality of the entity’s risk management program for service providers **may vary depending upon the service** being performed its size, scope, complexity, importance and potential for consumer harm - and the performance of the service provider in carrying out its activities in compliance with Federal consumer financial laws and regulations.



8

The CFPB and TPSPs - Expectations

- Take steps to:
 - Conduct thorough **due diligence** to verify that the service provider understands and is capable of complying with Federal consumer financial law;
 - Request and **review the service provider's policies, procedures, internal controls, and training materials** to ensure that the service provider conducts appropriate training and oversight of employees or agents that have consumer contact or compliance responsibilities;
 - Include in the **contract with the service provider clear expectations about compliance**, as well as appropriate and enforceable consequences for violating any compliance-related responsibilities, including engaging in unfair, deceptive, or abusive acts or practices;
 - **Establish internal controls and on-going monitoring** to determine whether the service provider is complying with Federal consumer financial law; and
 - Take **prompt action to address fully any problems identified** through the monitoring process, including terminating the relationship where appropriate



9

The CFPB and TPSPs – Exams and Enforcement

- Examination
 - The CFPB is here ... what now????
- Enforcement
 - The CFPB can't seek enforcement against me for my TSPS's actions ... right????



10

Third-Party Service Providers & Regulatory Expectations

- FDIC, OCC, & Other Prudential Regulators
- Interagency Guidance on Third-Party Relationships: Risk Management (June 2023)
- *In re Cross River Bank Teaneck, NJ* (FDIC Consent Order)
- State Regulatory Considerations



11

TPSP Oversight and Your Compliance Management System (CMS)

- Overview
- Implementation
- Creating a Risk-Based Approach



12

TPSP Oversight and Your Compliance Management System (CMS)

- Four Pillars of CMS
 - Board and management oversight;
 - Compliance program;
 - Response to consumer complaints; and
 - Compliance audit
- **PLUS third-party service provider oversight expectations**



13

TPSP Oversight and Your Compliance Management System (CMS)

- “Managing the Business”
 - Practical Realities of In-House Life
 - Early Engagement
 - Factual Accuracy of Diligence



14

TPSP Oversight and Your Compliance Management System (CMS)

- For Your Consideration:
 - A Three-Tiered Approach
 - Contracting
 - Due Diligence
 - Information Security
 - Issues Contracting with TPSPs and Regulatory Expectations



15

Industry-Specific TSPS Issues

- AI and “Big Data”
- Data Providers/Data Aggregators
- Servicing/Collections
- Lead Generation



16

Surprise, You're a TPSP!

- What to expect when your partners scrutinize YOU
 - Diligence and Onboarding
 - Monitoring and Audit
 - Current Regulatory Environment



17

Questions?



18