



Bank Partnerships and Compliance: What Third Party Venders Need to Know

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What Banks Expect of Their Partners

- On June 6, 2023, the FDIC, Fed, and OCC issued final joint guidance on managing risks associated with third-party relationships (the “Guidance”). The Guidance notes the “significant benefits” of third-party partnerships, it also emphasizes the risks such relationships present. Links to the Guidance (and accompanying FDIC FIL) are set forth below:
- <https://www.fdic.gov/news/financial-institution-letters/2023/fil23029a.pdf>
- <https://www.fdic.gov/news/financial-institution-letters/2023/fil23029.html>
- This panel will walk you through some of the ins and outs of the Guidance and how service providers can proactively address points.

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What Banks Expect of Their Partners

- Background of the Guidance
 - For many years, third-party risk management has been an area of focus for regulators and banking organizations. Staff of the federal banking agencies issued guidance that elaborated each agency's supervisory expectations for how organizations should manage risks from third parties.
 - In 2021, the federal banking agencies issued proposed guidance to consolidate and update their various approaches to the issue.
 - The proposed guidance generally adopted the OCC's 2013 guidance on third-party risk management, which was considered by some to be the most comprehensive statement on supervisory expectations.
 - The agencies received 82 comment letters from banking organizations, fintech companies, and other stakeholders.

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What Third-Party FinTech Partners Can Do to Establish and Maintain Bank Partnerships

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Third-Party Selection/Due Diligence

- Conducting due diligence on third parties before selecting and entering into contracts or relationships is an important risk management activity.
- Due diligence provides management with necessary information on a third party's potential contribution to help achieving the banking organization's financial and strategic goals.
- The degree and scope of due diligence conducted by the banking organization should be commensurate with the level of complexity and risk of each third-party relationship.

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Third-Party Selection/Due Diligence

- Due diligence should include assessing a third party's ability to perform the activity as expected, adhere to a banking organization's policies, comply with all applicable laws and regulations, and operate in a safe and sound manner.
- Because fintech companies provide services for bank customers, these relationships may create additional risks.

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Contract Negotiation

- The Guidance directs Banks to focus on the following issues during contract negotiations and so FinTech partners, accordingly, should also be prepared to address the following areas:
 1. Nature and Scope of Arrangement
 2. Performance Measures or Benchmarks
 3. Responsibilities for Providing, Receiving, and Retaining Information
 4. The Right to Audit and Require Remediation
 5. Responsibility for Compliance with Applicable Laws and Regulations
 6. Costs and Compensation
 7. Ownership and License

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Contract Negotiation – Cont'd

8. Confidentiality and Integrity
9. Operational Resilience and Business Continuity
10. Indemnification and Limits on Liability
11. Insurance
12. Dispute Resolution
13. Customer Complaints
14. Subcontracting
15. Foreign-Based Third Parties
16. Default and Termination

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Vendor Oversight and Accountability

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Ongoing Monitoring of Service Providers

- Ongoing monitoring is an essential component of third-party risk management, occurring throughout the duration of a third-party relationship.
- The appropriate degree of ongoing monitoring is commensurate with the level of risk and complexity of the third-party relationship.
- More comprehensive monitoring is typically necessary when the third-party relationship involves higher-risk activities, such as critical activities.
- The Guidance identifies a number of factors that a banking organization should consider with respect to ongoing monitoring.

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Oversight and Accountability

- Effective oversight and accountability are important parts of third-party risk management, helping to minimize adverse financial and operational consequences.
- A banking organization's board of directors is ultimately responsible for overseeing its third-party risk management process and holding the management team accountable.
- The board should provide clear guidance on acceptable risk appetites, approve appropriate risk management policies, and ensure appropriate practices and procedures are established.
- It is then the job of management to develop and implement third-party risk management policies and procedures, commensurate with the banking organization's prescribed risk appetite and the complexity of its third-party relationships.

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Program Management

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Legal / Compliance

- Develop a Risk-Based Compliance Management System
- Hire a qualified compliance officer and support staff
- Generate policies for complying with relevant state, local and federal laws
- BSA/AML (FinCEN rules on banks)
- Data security
- Controls over your own third-party vendors (risk-based, categorize as critical, etc.)
- Engage board – develop a “culture of compliance” from the top down

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Business Operations

- Financial data and projections, including balance sheet strength and liquidity to satisfy contractual obligations such as purchase of loans and indemnification
- Product construct and design
- Servicing system
- Model risk management guidance (including CFPB guidance on specific reasons in adverse action notices for credit models)

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Development of Marketing and Other Customer-Facing Materials

- Review and sign-off by compliance and legal, as appropriate
- Process for controlling use of media, including distribution by third parties
- Review comparison sites and identify potentially false and misleading information

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Complaint Management

- Develop an appropriate processes for identifying, responding to and reporting complaints
- Ensure that your agreements with third-party service providers require them to share complaints from your customers and general complaint data
- Monitor social media and respond as appropriate
- Tracking and reporting litigation and arbitration
- Establish appropriate process for responding to “elevated complaints”
 - Regulatory and legislative inquires
 - Attorney letters

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Audit, Testing and Quality Control

- Establish formal process for independent review
- On a risk-basis, engage independent third party as appropriate
- Develop policy and practices for control of change management across enterprise
 - Program media
 - System settings
 - Risk models
- Prepare for regulatory exams and audits

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Monitor Changes

- Laws and regulations
- Litigation and regulatory enforcement
- Regulatory guidance

Compliance Training

- Provide initial and require ongoing compliance training for all levels of personnel appropriate to their job functions
- Partner with bank or third-party service providers to offer programs and track attendance

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Regulatory Enforcement and Examination

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Regulatory Enforcement and Examination

- **Actions in the Bank Partner Program Context**
 - Cross River Bank
 - Blue Ridge Bank
- **Bank Service Company Act (12 USC §§1861–1867)**
 - Who and what is covered?
 - What are the implications for service providers?
- **Institution-affiliated parties (12 U.S.C. § 1818, 12 U.S.C. § 1829)**

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