

Simmons Bank



JACOB CLIFTON

Senior Vice President and Assistant General Counsel

October 18, 2021

VIA EMAIL TO REGS.COMMENTS@FEDERALRESERVE.GOV

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

RE: Simmons Bank's comments on the "Proposed Interagency Guidance on Third-Party Relationships: Risk Management"; Docket No. OP-1752

Dear Sir or Madam:

Simmons Bank ("Simmons") appreciates the opportunity to submit the following comments in response to the request of the Board of Governors of the Federal Reserve System ("Fed"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of the Comptroller of Currency (the "OCC", along with the Fed and the FDIC referred to collectively herein as the "Regulators") for comments on the *Proposed Interagency Guidance on Third-Party Relationships: Risk Management*, published in the July 19, 2021 Federal Register (86 Fed. Reg. 38182) (the "Proposed Guidance").

Simmons Bank

Simmons is an Arkansas state-chartered bank headquartered in Pine Bluff, Arkansas, with total consolidated assets of approximately \$23.4 billion as of June 30, 2021. Simmons provides commercial and consumer banking services in markets located in Arkansas, Kansas, Missouri, Oklahoma, Tennessee, and Texas. Simmons First National Corporation's – the holding company of Simmons – common stock trades on the NASDAQ Global Select Market under the symbol SFNC.

Proposed Guidance on Third-Party Risk Management

Simmons would like to register its general support for additional interagency guidance on third-party risk management. We believe that establishing common expectations for all banks regarding managing third-party risk will facilitate an equitable competitive environment between banks and strengthen banks' negotiating positions when dealing with service providers. It is our view that the Proposed Guidance is generally robust, and the level of detail is helpful in communicating the Regulators' expectations without becoming prescriptive.

We offer the following comments, organized topically by question:

Question 7: In what ways, if any, could the proposed guidance be revised to better address challenges a banking organization may face in negotiating some third-party contracts?

Obligations regarding resellers

Banks purchase certain services and products – which often have a software component – from resellers. During contract negotiations, resellers will sometimes attempt to eliminate or limit certain contractual obligations intended to manage banks’ risk exposure (e.g. the ability to audit, indemnification, etc.) on the basis that such obligations do not comport with the underlying agreement they have with the service provider or product manufacturer. In many cases, resellers are unwilling or purportedly contractually prohibited from revealing the terms of the underlying agreement. In such instances, banks must choose whether to accept the risk, manage the risk in some other way, or find replacement products or services from other sources.

Simmons proposes that the Regulators clarify how and to what degree the Proposed Guidance applies to resellers. In particular, a clear statement concerning resellers and the fourth-party service providers or manufacturers would promote transparency by resellers and facilitate better risk management by banks.

Regulators’ authority to supervise third-party service providers

Simmons proposes that the Regulators supplement the discussion of their statutory authority to supervise certain third-party servicers that enter contractual arrangements with regulated financial institutions. Footnote 19 to the Proposed Guidance notes that: *“The agencies generally have the authority to examine and to regulate banking-related functions or operations performed by third parties for a banking organization to the same extent as if they were performed by the banking organization itself. See 12 U.S.C. 1464(d)(7)(D) and 1867(c)(1).”*

It is our experience that the Regulators’ authority in this regard is sometimes misunderstood by service providers; particularly by those service providers that may not provide services primarily to financial institutions. When fully grasped, however, it can be useful in discussions with third-party service providers and help manage risk in accordance with the principles set out in the Proposed Guidance. We therefore suggest that the Regulators emphasize this point with greater prominence.

Question 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?

Cloud computing service providers

Simmons proposes that the Regulators include question 3 of the FAQs in the Proposed Guidance, which outlines third-party risk management expectations when conducting business with a cloud computing service provider. Increasingly, banks are relying on cloud computing for information technology infrastructure and services; cloud service providers are not always as familiar as certain other vendors with the regulatory expectations for risk management applicable to banks. Including FAQ 3 as well as the related discussion of audits of cloud service providers in FAQ 14 will help banks communicate these expectations.

Fintech Companies

Simmons suggests that the discussion of issues related to Fintech companies be included in the Proposed Guidance. Services provided by Fintech companies will continue to be an important way in which banks supplement conventional banking services and provide new ways for customers to engage with their banks and their money. Emerging technologies and novel applications of existing technologies are sometimes driven by unseasoned startups which, as the FAQs note, cannot always provide the same level of financial and other due diligence information as more established service providers. Given our expectation that

Fintech companies will continue to be important to the banking industry, it is our view that the discussion from questions 10, 16, and 17 should be included in the Proposed Guidance.

Reliance on reports, certificates of compliance, and independent audits

We also put forward that the Regulators consider including the concepts from FAQs 11 & 14 regarding the extent to which banks may rely upon SOC reports, certificates of compliance and independent audits during banks' oversight of third parties and their subcontractors. The review of reasonably credible evidence of compliance – such as reports, certificates, and independent audits – by bank management with suitable expertise and experience should satisfy banks' obligations to verify that third-parties have effective oversight of their subcontractors.

Board involvement in contract approval

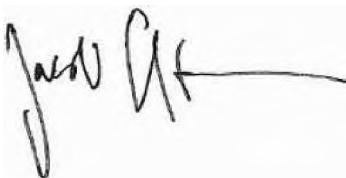
Simmons suggests that the Regulators include FAQ 26 in the proposed guidance to avoid ambiguity regarding expectations with respect to the board's involvement with contracts for critical activities. The proposed guidance appears to state that the board, or designated committee reporting to the board, should be aware of and approve contracts involving critical activities.¹ The delineation of board and management responsibilities echo this concept.² FAQ 26, however, which provides a more recent and in depth discussion regarding contracting for critical activities, makes clear that “this statement was not meant to imply that the board must read or be involved with the negotiation of each of these contracts.” It goes on to clarify that a board may delegate actual approval of contracts to senior management so long as the board receives sufficient information to understand the benefits and risks associated with engaging third-parties to provide critical services. To provide clarity, Simmons proposes that the concepts in FAQ 26 supplement or replace the current discussion in the contract negotiation section of the Proposed Guidance. A board, acting in accordance with the principles of FAQ 26, may find it appropriate to delegate actual approval of contracts to senior management.

Finally, Simmons believes that FAQs 5, 6, and 17 are helpful to understand how the Regulators' conceptualize the Proposed Guidance. We therefore ask you to consider incorporating these FAQs.

Simmons appreciates the Regulators' coordinated efforts to provide greater clarity regarding regulatory expectations for the management of third-party risk. We believe that interagency guidance will be beneficial on many fronts.

Please do not hesitate to let me know if I can clarify or further expound upon any of my comments above.

Sincerely,

A handwritten signature in black ink, appearing to read "Jacob Clifton", with a long horizontal line extending to the right.

Jacob Clifton
Assistant General Counsel

¹ 86 Fed. Reg. 38191 (2021).

² *Id.* at 38193 – 38194.