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Proposal and Comment Information

Title: Proposed Third-Party Risk Management Guidance, OP-1881

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Submitter Information

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See uploaded comment letter.

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October 9, 2026

Office of the Comptroller of the Currency
Board of Governors of the Federal Reserve System
Federal Deposit Insurance Corporation
National Credit Union Administration

Re: *Proposed Third-Party Risk Management Guidance; OCC Docket ID OCC-2026-0793; Federal Reserve Docket No. OP-1881; FDIC RIN 3064-ZA58; NCUA Docket No. NCUA-2026-1684; RIN 3133-ZA54*

Ladies and Gentlemen:

Fenimore Kay Harrison LLP respectfully submits this letter in response to the *Proposed Third-Party Risk Management Guidance* issued by the Office of the Comptroller of the Currency, Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and National Credit Union Administration (collectively, the “Agencies”). Our comments focus principally on the *Joint Statement on Community Banks’ Engagement with Core Service Providers* issued on September 11, 2026 by the Board of Governors of the Federal Reserve System, Federal Deposit Insurance Corporation, and the Office of the Comptroller of the Currency (the “Core Provider Statement”), and on additional steps the Agencies could take in the final guidance or related supervisory resources to address the practical challenges community banks face in negotiating and administering core provider agreements. Although the National Credit Union Administration did not join the Core Provider Statement, we encourage it to consider comparable principles in connection with the final guidance.

Fenimore Kay Harrison LLP is a law firm dedicated to the banking industry. The firm provides corporate, transactional, regulatory, and operational advice to community banks and other financial institutions throughout the United States. We regularly represent community banks in negotiating core processing, digital banking, payment processing, technology, and other material service provider agreements. Through that work, we have observed the significant practical imbalance between the regulatory responsibilities imposed on community banks and their limited ability to negotiate with the relatively small number of providers that dominate the core services market.

We support the Agencies’ proposed shift toward a more tailored, risk-based approach to third-party risk management. We also commend the agencies that issued the Core Provider Statement for recognizing that certain core provider business practices and market conditions can impair a community bank’s ability to obtain information, negotiate appropriate terms, monitor performance, supplement services, and transition to another provider.



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Community Banks' Limited Bargaining Power

The concerns identified in the Core Provider Statement are consistent with our experience representing community banks. Core provider agreements are frequently presented on a substantially take-it-or-leave-it basis. Although a bank may technically have the option to select another provider, changing core providers can require substantial expense, lengthy preparation, significant operational resources, and the assumption of considerable conversion risk. The practical availability of another provider therefore does not necessarily create meaningful bargaining leverage.

Community banks may consequently be required to negotiate agreements containing long initial terms, automatic renewals, narrow termination notice periods, unilateral or insufficiently transparent pricing provisions, extended back-billing rights, limited audit and information rights, weak service-level remedies, restrictions on integrations with other providers, and liability limitations that do not correspond to the provider's control over critical bank operations.

These difficulties often become most pronounced when a bank seeks to terminate the relationship, engage a supplemental provider, dispute charges, or begin the deconversion process. We have experienced situations in which providers have relied on broadly drafted contract provisions to delay or complicate a transition, limit access to necessary information or integration assistance, impose charges that were not reasonably anticipated when the agreement was executed, or otherwise exercise contractual discretion in a manner inconsistent with the parties' reasonable expectations.

The result can place a community bank in an untenable position. The bank remains responsible for operating safely and soundly and complying with applicable law, but it may lack the contractual rights, information, technical access, or practical alternatives necessary to manage the risks created by a critical provider.

Recommended Additional Actions

We respectfully recommend that the Agencies take the following additional actions when finalizing the proposed guidance or developing companion supervisory resources addressing core providers.

1. Expand the list of presumptively concerning practices.

The Core Provider Statement identifies opaque pricing and billing practices, extensive back-billing windows, unsupported or contractually undefined deconversion fees, and excessive limitations on integrations with unaffiliated providers as contract terms and practices the agencies will consider in making supervisory resource allocation decisions. It separately addresses a provider's transparency regarding due diligence, service-level information, and operational and security incident information. We appreciate that recognition. In our experience, however, several additional terms and practices



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materially impair a community bank's ability to manage a core provider relationship and warrant similar supervisory attention.

We recommend that the Agencies expand this nonexclusive list to include:

- Unilateral fee increases without meaningful advance notice or corresponding exit rights;
- Deconversion fees that, even if defined in the agreement, are punitive or unrelated to the provider's reasonable costs;
- Early termination fees or liquidated damages that are unconscionable or otherwise not commensurate with the provider's actual costs or losses reasonably resulting from the termination;
- Automatic renewals coupled with unreasonably narrow or burdensome notice requirements;
- Withholding essential data or transition services during a good-faith billing dispute; and
- Liability limitations or exclusive remedies that eliminate meaningful provider accountability for its own material failures.

The Agencies need not prescribe mandatory contract language. We do, however, encourage the Agencies to clarify that these practices, together with those already identified in the Core Provider Statement, are relevant not only to supervisory resource allocation decisions but also to the Agencies' substantive assessment of core providers and of the risks those providers create for their client banks. Doing so would provide meaningful support for community banks seeking reasonable terms and would encourage greater consistency in the core services market.

2. Establish principles for deconversion and transition.

The Agencies should articulate baseline supervisory principles for the termination and deconversion of a core provider relationship.

The Core Provider Statement appropriately identifies unsupported or contractually undefined deconversion fees as a concern, particularly where the provider has breached contractual terms, provided inadequate services as measured by service levels, or violated applicable law. We recommend that the Agencies build on that recognition in two respects. First, a deconversion fee that is defined in the agreement should nonetheless bear a reasonable relationship to the provider's actual transition services and costs. Contractual definition alone should not insulate a punitive fee from supervisory scrutiny. Second, heightened scrutiny should also apply when a provider seeks substantial deconversion fees after failing to remediate a material operational or security deficiency.

The Agencies should also state that a core provider is generally expected to:

- Continue providing safe and reliable services during an orderly transition;
- Provide the bank's data promptly, completely, securely, and in a reasonably usable format;
- Cooperate with the bank and its successor provider;



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- Identify transition requirements, dependencies, timeframes, and charges in advance;
- Preserve the integrity and availability of bank and customer data; and
- Refrain from conditioning access to essential data or services on payment of amounts subject to a legitimate, good-faith dispute, consistent with the practice of concern identified in Recommendation 1 above.

3. Consider how providers administer their contracts.

The Core Provider Statement appropriately identifies certain contract terms as relevant to supervisory resource allocation. We encourage the Agencies to clarify that their review may also include the manner in which a provider exercises its contractual rights and discretion.

A contract provision that appears reasonable on its face may be administered in a manner that materially impairs the bank's ability to manage risk. Relevant supervisory considerations should include whether a provider engages in strategic delay, withholds reasonably necessary cooperation, imposes charges not reasonably contemplated by the agreement, obstructs integrations or transitions, or uses its control over systems and data to obtain unrelated commercial concessions.

Such conduct may not be adequately addressed by reviewing the written agreement alone. The provider's actual practices during renewal, billing disputes, termination, and deconversion should also inform the Agencies' supervisory assessment.

4. Establish a confidential reporting mechanism.

Community banks may be reluctant to report problematic provider conduct because they remain operationally dependent on the provider and may reasonably fear harm to a critical commercial relationship. The Agencies should establish a confidential interagency mechanism through which banks can report recurring or systemic practices involving pricing, billing, diligence information, service performance, integrations, termination, and deconversion. Aggregated reports could help the Agencies identify market-wide patterns that may not be apparent during the examination of an individual bank or provider.

5. Clarify potential supervisory consequences.

The Agencies should explain more clearly the potential consequences when a core provider repeatedly engages in practices that impede its bank clients' ability to manage risk. Depending on the circumstances and the Agencies' applicable authority, those consequences could include increased examination frequency, expanded examination scope, corrective action expectations, or consideration of enforcement authority. Greater clarity regarding potential consequences would reinforce that the matters identified in the Core Provider Statement are substantive supervisory concerns rather than aspirational commercial preferences.



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Relationship to the Proposed Guidance

These recommendations are consistent with the proposed guidance's emphasis on tailoring, proportionality, and informed residual risk acceptance. A bank should not be expected to obtain every possible contractual protection, and the inability to obtain a preferred term should not automatically result in an adverse supervisory conclusion.

At the same time, residual risk acceptance is meaningful only if the bank has sufficient information to understand the risk and a fair opportunity to negotiate, monitor, supplement, and exit the relationship. Regulators should consider whether a dominant provider has materially prevented the bank from taking reasonable steps to manage the relationship. The Agencies should also distinguish between a bank's reasoned acceptance of unavoidable residual risk and risk created or increased by a provider's refusal to furnish necessary information or reasonable cooperation.

Conclusion

We support the Agencies' efforts to replace an overly process-driven approach with a tailored framework focused on the magnitude and likelihood of actual harm. We also strongly support the Core Provider Statement's recognition that provider practices and market concentration can impede effective third-party risk management.

We respectfully request that the Agencies incorporate clearer core provider supervisory principles into the final guidance or related supervisory resources. The recommendations above are not intended to dictate commercial outcomes or require identical provisions in every agreement. Rather, they are intended to promote transparency, fair administration, operational continuity, and meaningful accountability in a highly concentrated market.

Thank you for considering our comments.

Respectfully submitted,

Fenimore Kay Harrison LLP