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Federal Deposit Insurance Corporation, ZRIN 3064-ZA58
National Credit Union Administration, Docket No. NCUA-2026-1684

10 November 2026

PROPOSED INTERAGENCY GUIDANCE, 15 SEPTEMBER 2026 · THIRD-PARTY RISK MANAGEMENT

When a third party holds the bank's evidence

Comment on the Proposed Third-Party Risk Management Guidance: record dependence in risk assessment, complaints review, termination and indemnities

Respondent	King Yew Choo, London, United Kingdom
Capacity	Personal capacity
Interest	Founder, True Primary; declared at paragraph 16
Publication	No part is confidential. It may be published in full, with my name.
Responds to	The invitation to comment on all aspects; the questions in footnotes 9 and 15; sections B.1.iii, B.2.iii, B.2.iv and B.2.v
Structure	Numbered paragraphs 1 to 16, with a summary above and references below

WHAT I PROPOSE

1. **Name record dependence as a higher-risk characteristic.** In answer to footnote 15: a relationship can be higher risk where the bank relies on the third party for records needed to meet legal obligations to customers, with no copy or right of access that would survive the third party's exit or failure. The Board, FDIC and OCC named this risk in their 2024 joint statement on bank-fintech arrangements, which the final guidance would replace (paragraphs 1 to 6).
2. **Complaints review that reaches the records.** Under section B.2.iii, a review of customer complaints can include confirming that the bank can obtain and use the records behind them (paragraphs 7 and 8).
3. **Retention that covers transactions made before termination.** Under section B.2.iv, data retention can extend to records of earlier transactions for as long as disputes and record duties about them can arise. Under operational resilience, those records can count as critical data (paragraphs 9 to 11).
4. **Indemnities judged with the evidence they need.** Under section B.2.v, whether an indemnity mitigates risk can also depend on whether the bank can obtain the records that establish a claim, including in a dispute with the third party and after termination (paragraphs 12 to 14).

> Each proposal is one sentence in the guidance's own permissive language. If the agencies add one sentence only, the first carries the point. The other three show where it applies, and could sit in the explanation that accompanies the final guidance in place of its text.

Record dependence in the risk assessment

Section B.1.iii and footnote 15. Footnote 15 asks whether a list of characteristics that generally indicate a high-risk relationship would help, and which characteristics it should include.

1 I support the proposal's central step: oversight tailored to the magnitude and likelihood of the harm a relationship could cause.[1] This comment concerns one characteristic that can make a relationship higher risk under the proposal's own test, though the test does not name it. "Bank" follows the proposal's "banking organization", which includes insured credit unions. I call it record dependence: the bank relies on a third party for records it needs to meet a legal obligation to its customers, and has no copy, and no contractual right of access, that would survive the third party's exit or failure. A service with record dependence can run without interruption while the bank loses the means to explain, to a customer or an examiner, what the service did.

2 Three of the four agencies named this risk in 2024. The 2024 joint statement of the Board, FDIC and OCC on banks' arrangements with third parties to deliver deposit products listed "Lack of access to records" among the risks of those arrangements, because it "can impair the bank's ability to determine its deposit obligations". It tied insufficient oversight to Regulation E's requirements "to investigate and resolve certain payment disputes" within the required time limits.[2] The final guidance would replace that statement, with the rest of the supplemental resources. One sentence naming record dependence carries that lesson into the replacement without the statement's detail.

3 The test in section B.1.iii reaches the case directly. It says higher-risk relationships "could include" one that could cause the bank "to incur an actual non-trivial violation of law or regulation". The trigger is that the relationship is "disrupted, subjected to attack, conducted in breach of the terms of any applicable contract, or otherwise performed in a manner in which non-business-as-usual circumstances prevail". The same test covers a relationship that could "pose material harm to the financial condition" of the bank. A bank whose third party cannot supply a record in time can still meet a dispute deadline by deciding in the customer's favour. It then decides without the means to test the claim, and any recovery under payment-system rules or from the third party rests on evidence it lacks. Across enough disputes that can reach material financial harm; a bank that repeatedly waits for the record past the time Regulation E allows risks an actual non-trivial violation. The test's second limb, "a material likelihood", turns on how often customers dispute the third party's transactions and how likely the third party is to be late, incomplete or gone when a record is needed. Due diligence and monitoring inform both.

4 Consider a hypothetical bank that offers consumer deposit accounts through a fintech platform. The platform keeps the instruction records and submits customers' ACH payments for the bank. A consumer authorises one payment of $40 to a merchant. The platform misses the acknowledgement of the first attempt and submits an automatic retry as a second payment. The consumer sees two debits and reports the second as an error in writing. Under Regulation E, the bank must determine whether an error occurred within 10 business days of the notice. If it cannot finish in that time, it may take up to 45 days on the conditions in 12 CFR 1005.11(c)(2). Among them are provisional credit within the first 10 business days, notice of that credit to the consumer within two business days, and full use of the funds during the investigation. New accounts and some other transfers have longer periods. The record that links the retry to the first attempt sits with the platform, and the bank's answer depends on the platform's delivery. The duty sits with the bank: the rule says that "A financial institution shall investigate promptly".[3] Where the bank has no agreement with the payee, a review of its own records can suffice under 12 CFR 1005.11(c)(4), and the official interpretation lists information "within the control of the institution's third-party service providers" if the bank reasonably believes it could be dispositive.

5 On the question in footnote 15, a short list helps where each item is a characteristic a bank can observe when it enters a relationship, tied to the outcomes section B.1.iii names. Record dependence qualifies. At due diligence, a bank can establish which party will hold the records it needs to resolve customer disputes, and whether it will keep a copy or a right of access after the relationship ends. Core processing relationships are already "likely to be assessed by most banking organizations as higher risk", as section B.1.iii notes. Record dependence may raise the assessed risk of a payment platform or middleware relationship the bank would otherwise rate lower. I propose:

> **PROPOSED TEXT · FOOTNOTE 15 LIST, OR SECTION B.1.III**
>
> "A third-party relationship may present higher risk where the banking organization relies on the third party for records needed to meet legal obligations to customers, such as resolving disputes in time, without copies or access that would survive the third party's exit or failure."

6 Footnote 9 asks about applying the guidance only to third parties under a written agreement. That scope works for record dependence if the assessment follows the records. In some bank-fintech structures, the bank contracts with a middleware provider, and the transaction records are kept by that provider's subcontractor; the 2024 joint statement described records managed "through a subcontractor to another party".[2] The proposal says the use of subcontractors alone "does not typically create an independent third-party relationship". The bank's agreement with its direct provider is then where access to the subcontractor's records is settled, through the "contractual terms governing the use and oversight of subcontractors" the proposal already mentions.[1] Assessing record dependence at the direct relationship, with the subcontractor's records in view, keeps the written-agreement scope without losing that structure.

Complaints review

Section B.2.iii, ongoing monitoring, lists "customer complaints" among the issues monitoring may identify, and "reviews of customer complaints" among its examples.

7 Where a third party handles or prepares responses to complaints, the figures a bank usually reviews, such as counts, categories and closure times, can look sound while the bank lacks the evidence behind individual outcomes. In the $40 case, the platform can close the complaint after finding two successful payment messages. Whether those messages carry one authorisation or two is the question the customer raised, and a closure rate leaves it unanswered.

8 For a relationship with record dependence, a review of complaints can reach the records themselves: the bank obtains the records behind a few complaints through the agreed route and checks that its staff can reach a conclusion from them in time. Where the bank already holds complete copies, sampling its own copy is enough. I propose:

> **PROPOSED TEXT · SECTION B.2.III, AFTER EXAMPLE (5)**
>
> "Where a third party holds records the banking organization needs to resolve customer complaints, reviews may include confirming that those records can be obtained and used within the time the banking organization's obligations allow."

Data retention at termination

Section B.2.iv, termination, names "the likelihood of service or data access disruptions" and "data retention and destruction issues" among the factors in a termination decision.

9 Disputes about earlier transactions keep arriving after termination. A consumer's notice of error is generally timely up to 60 days after the institution sends the statement on which the error first appears, and Regulation E requires evidence of compliance to be kept for at least two years.[3] If the bank in the example moves its accounts to another platform after the $40 payment, the incoming platform holds the new transactions. The outgoing platform still holds the retry history for the old ones, and its contractual duties may end on the termination date.

10 In a relationship with record dependence, data retention at termination can therefore cover continued access to records of transactions completed before the switch, for the period in which disputes and record duties about them can arise, with the field definitions needed to read them. A retrieval of a few of those records through the post-termination route, before cutover, shows whether that access works. A schedule by record type lets the parties delete what is no longer needed. I propose:

> **PROPOSED TEXT · SECTION B.2.IV**
>
> "Data retention considerations may include continued access to records of transactions completed before termination, for as long as the banking organization may need them to resolve disputes or meet recordkeeping obligations."

11 A planned exit and a sudden failure differ. Post-termination access promised in a contract depends on the third party remaining able to perform. The proposal's discussion of operational resilience already gives, as an example, "maintaining critical data backed up at a physically and logically separated site". It says that, in certain circumstances, a demonstrated ability to "quickly and effectively resume operations and preserve relevant data" may significantly mitigate harm.[1] Where record dependence exists, the records needed to resolve customer disputes can fall within that critical data. A copy of the records needed for disputes, held by the bank or an independent custodian, covers the failure case, and whether the exposure justifies its cost remains the bank's judgement.

Indemnities

Section B.2.v, insurance, indemnification and other limitations on liability, treats "credible indemnification provisions" as a possible mitigant.

12 The proposal says a conclusion that such provisions mitigate risk may rest on, for example, "due diligence regarding the ability of the relevant party to meet any obligations". It may also rest on whether the bank "has the capacity to cover any costs associated with pursuing, filing, disputing, or litigating a claim".[1] That conclusion may also depend on evidence. Suppose the contract makes the platform responsible for losses caused by duplicate processing. To claim, the bank must show that the second debit was a retry. If the platform alone holds that record, the claim depends on evidence held by the party claimed against. An audit right, or later litigation or arbitration, can compel it, at a cost and on a timetable the bank does not control, and least readily during a dispute over fees or termination or after the platform's failure.

13 At scale, two further points follow. First, suppose a processing defect leaves the bank with $40,000 of reimbursements it cannot recover from payees under payment-system rules. An aggregate cap of $10,000 leaves $30,000 with the bank before investigation costs. The same defect can reach the platform's other bank clients at the same time, so ability to pay is best assessed against that common incident. Second, Regulation E sets the bank's timetable for provisional credit and correction, while recovery runs on the contract's timetable and the payment system's rules, and the bank funds the gap. The figures are illustrative; the indemnity is best tested against the incident it exists to cover.

14 The contract term that supports this is continued delivery of agreed records during a fee or liability dispute. Whether to seek that term stays with the bank, consistent with the proposal's statement that there are "no generally applicable expected contract terms" for third-party relationships.[1] I propose:

> **PROPOSED TEXT · SECTION B.2.V**
>
> "That conclusion may also depend on whether the banking organization can obtain the records needed to establish a claim, including during a dispute with the third party and after termination."

Scope of the proposals

15 The proposed sentences describe considerations a bank may weigh. They name no contract term a bank is expected to hold. The proposal's own statement that deviation from its examples "will not alone be a basis for supervisory action" applies to them as to the rest, subject to its reservation for violations and unsafe or unsound practices.[1] A bank that can already obtain and use the records in time, even after exit or failure, needs no new access terms. Where a bank lacks the bargaining power to secure access, section B.3 already lets it accept residual risk within its risk appetite and while operating safely and soundly, including where it cannot "negotiate customized contract terms". The legal duty stays, and a record of which records it cannot obtain makes that acceptance informed. Regulation E supplies the example because its deadlines are short and precise. The 2024 joint statement's own concern, the bank's ability to determine its deposit obligations, is a matter of safety and soundness, and the characteristic applies to it in the same way. Footnote 8 notes that consumer compliance considerations may be relevant but are not directly addressed in the guidance. The proposals restate no consumer compliance requirement, and ask only that third-party risk management recognise a dependency that consumer compliance, among other obligations, exposes.

Capacity and interest

16 I respond in a personal capacity. I founded True Primary, which builds infrastructure for the agent-initiated purchase of expert work, and declare its commercial interest in the safe adoption of agentic payments. The example in this comment is hypothetical. It describes no actual incident and makes no claim about any provider's systems.

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REFERENCES

Web addresses were accessed on 2 November 2026.

1. OCC, Board of Governors of the Federal Reserve System, FDIC and NCUA, Proposed Third-Party Risk Management Guidance, 91 Fed. Reg. 58536 (15 September 2026), FR Doc. 2026-18859. Section I, with footnote 2 (the supplemental resources), pages 58537 and 58538; section III: third-party relationships, with footnotes 8 and 9, page 58539; non-enforceable guidance, page 58540; section B.1.iii, pages 58540 and 58541, with footnote 15 on page 58541; section B.2.ii, page 58541; section B.2.iii, page 58542; section B.2.iv, pages 58542 and 58543; section B.2.v, pages 58543 and 58544; section B.3, page 58544. https://www.govinfo.gov/content/pkg/FR-2026-09-15/pdf/2026-18859.pdf
2. Board of Governors of the Federal Reserve System, FDIC and OCC, Joint Statement on Banks' Arrangements with Third Parties to Deliver Bank Deposit Products and Services, 25 July 2024, pages 2, 3 and 6 (Board SR Letter 24-5; FDIC FIL-45-2024; OCC Bulletin 2024-20). https://www.federalreserve.gov/newsevents/pressreleases/files/bcreg20240725c1.pdf
3. Regulation E, 12 CFR 1005.11(a)(1), (b)(1)(i), (b)(3) and (c)(1) to (4), procedures for resolving errors, with the 45-day conditions in (c)(2)(i) to (iv); Supplement I, comment 11(c)(4)-5; 12 CFR 1005.13(b)(1), record retention. https://www.ecfr.gov/current/title-12/chapter-X/part-1005