



San Francisco Region Bankers' Forum: Consumer Protection Hot Topics

June 6, 2013

Agenda

- Opening Comments
 - Regional Director Stan Ivie
- Third-Party Oversight
 - Review Examiner Tamarra Barnes
- Add-On Products
 - Review Examiner Matt Sheeren
- Social Media and Mobile Banking
 - Review Examiner Jolene Gleason
- Questions and Answers



Third-Party Oversight

Tamarra Barnes
Review Examiner

Agenda

- Overview
- Expectations and Best Practices
- Examination Trends
- Common Examination Findings
- Compliance Examination Considerations

Overview

- A third party is broadly defined to include all entities that have a business relationship with the bank
- Board and senior management are ultimately responsible for managing third party activity
- Common third-party arrangements frequently used by institutions
- Reliance on third-party relationships can significantly increase your institution's risk profile

Expectations & Best Practices

- Risk assessment
 - Ensure that the proposed relationship is consistent with the institution's strategic plan and overall business strategy
- Due diligence
 - Focus on the third party's financial condition, relevant experience, reputation, and the scope and effectiveness of its operations controls
- Contract structuring & review
 - Ensure that the specific expectations, obligations, and liability of both the bank and the third party are outlined and formalized.
- Oversight
 - Allocate sufficient resources to monitor and provide oversight

Examination Trends

- Credit card services
- Rewards programs
- Overdraft payment programs
- Prepaid cards
- Third party payment processors
- Add-on Products

Examination Findings

- Failure to implement a third party risk management process
 - Risk assessment
 - Due diligence
 - Written contract
 - Oversight
- Overreliance on trade association endorsement
- Overreliance on contract indemnification provisions
- Failure to provide ongoing due diligence

Compliance Examination Considerations

- Review of management's record and process of assessing, measuring, monitoring, and controlling risk
- Depth of examination review will depend upon the scope of activity conducted through or by the third party and the degree of risk associated with the activity and relationship
- The review of third party oversight contributes to the examiners overall evaluation of management and its ability to effectively control risk

Add-On Products

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Background of Add-on Products

- Credit Card Add-on Products
 - Debt Protection
 - Identity Theft Protection
 - Credit Score Tracking

Definitions of Unfair and Deceptive

Unfairness:

1. An act or practice is unfair if it causes or is likely to cause substantial injury to consumers
2. The injury is not reasonably avoidable by the consumer
3. The unfair act or practice is not outweighed by countervailing benefits to the consumers or competition

Note: Public policy may also be considered under the unfairness test

Definitions of Unfair and Deceptive

Deception:

1. A representation, or omission, or practice must mislead or be likely to mislead the consumer
2. The consumer's interpretation of the representation, omission, or practice must be reasonable under the circumstances
3. The misleading representation, omission, or practice must be material

Add-on Products and UDAP

- Unfair or Deceptive Practices Employed
 - Marketing of Product
 - Enrollment Without Affirmative Consent
 - Billed for Services Not Performed or Activated

Preventative Measures

- Third-Party Due Diligence and Oversight
- Review of Marketing Materials
- Review of Telemarketing Scripts/Procedures
- Monitor Sales and Customer Service Calls
- Monitor Product Cancellation Rates
- Employee Incentives or Compensation

Preventative Measures (cont.)

- Review and Tracking of Complaints
- Written Policies and Procedures
- Training of Applicable Staff
- Independent Audit of the Add-On Product

Social Media and Mobile Banking

Jolene Gleason
Review Examiner



Social Media

Types

- Micro-blogging Sites
 - Facebook
 - Google Plus
 - MySpace
 - Twitter
- Forms
- Blogs
- Social Games
 - FarmVille
 - CityVille
- Bulletin Boards
 - Yelp
- Photo and Video Sites
 - Flickr and YouTube
- Professional Networking Sites
 - LinkedIn
- Virtual Worlds
 - Second Life
- Customer Review Web Sites

Uses

- Marketing
- Providing Incentives
- Facilitating Applications for New Accounts
- Inviting Feedback from the Public
- Engaging with Existing and Potential Customers
 - Receiving and responding to complaints
 - Providing loan pricing

Applicable Regulations

- Deposit and Lending Products—Marketing and Originating New Accounts
 - Truth in Savings and Truth in Lending
 - Real Estate Settlement Procedures Act (RESPA)
 - Fair Lending Laws
 - Equal Credit Opportunity Act (ECOA) and Fair Housing

Applicable Regulations (cont.)

- Fair Debt Collection Practices Act
- Unfair or Deceptive Acts or Practices (UDAP)
- Regulation E – Electronic Funds Transfer Act
- Regulation CC – Check 21
- Advertisement of Membership—Deposit Insurance
- Nondeposit Investment Products
- CRA – Public File

Applicable Regulations (cont.)

- Gramm-Leach-Bliley Act (GLBA) Privacy Rules and Data Security Guidelines
- CAN-SPAM Act and Telephone Consumer Protection Act
- Children's Online Privacy Protection Act
- Fair Credit Reporting Act (FCRA)

Mobile Banking

Technologies

- Established retail payments channels remain the principal ways mobile payments accounts are funded and transactions settled
 - Automated Clearing House (ACH)
 - Credit/Debit Networks
 - Electronic Funds Transfers (EFT)
 - Intra-Account Transfers

Laws and Regulations

- Regulations That Apply to Mobile Payments Transactions
 - Electronic Funds Transfer Act / Regulation E
 - Truth in Lending / Regulation Z
 - Unfair or Deceptive Acts or Practices (UDAP)
 - Gramm-Leach-Bliley Act (GLBA)
 - Federal Deposit Insurance

Additional Considerations

- Accessibility of Disclosures on Mobile Devices
- Advertisement Compliance
- Compliance Management System Modifications
- Monitoring for Legal and Regulatory Changes

Additional Considerations (cont.)

- Training Regarding Compliance Implications
- Appropriate Third-Party Relationships Oversight
- Potential and Perceived Risks of Fraud

Questions and Answers

Press *1

or email

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Resources

Third-Party Oversight

- Financial Institution Letter-44-2008:
Guidance For Managing Third-Party Risk
<http://www.fdic.gov/news/news/financial/2008/fil08044.html>
- FDIC's Third-Party Risk Examination Procedures
<http://www.fdic.gov/regulations/compliance/manual/pdf/VII-5.1.pdf>
- Supervisory Insights – Summer 2007
Third-Party Arrangements: Elevating Risk Awareness
http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum7/article01_third-party.html

Resources (cont.)

Third-Party Oversight (cont.)

- Financial Institution Letter-127-2008:
Guidance on Payment Processing Relationships
<http://www.fdic.gov/news/news/financial/2008/fil08127.html>
- Financial Institution Letter-3-2012
Payment Processor Relationships Revised Guidance
<http://www.fdic.gov/news/news/financial/2012/fil12003.html>
- Supervisory Insights – Summer 2011
Managing Risk in Third-Party Payment Processing Relationships
<http://www.fdic.gov/regulations/examinations/supervisory/insights/sisum11/managing.html>

Resources (cont.)

Add-On Products

- CFPB Bulletin 2012-06

Marketing of Credit Card Add-on Product

http://files.consumerfinance.gov/f/201207_cfpb_bulletin_marketing_of_credit_card_addon_products.pdf

- Financial Institution Letter-44-2008:

Guidance For Managing Third-Party Risk

<http://www.fdic.gov/news/news/financial/2008/fil08044.html>

Resources (cont.)

Social Media

- FFIEC Press Release – January 22, 2013
Financial Regulators Propose Guidance on Social Media
<http://www.ffiec.gov/press/pr012213.htm>
- Proposed Guidance
Social Media: Consumer Compliance Risk Management
Guidance
<http://www.ffiec.gov/press/Doc/FFIEC%20social%20media%20guidelines%20FR%20Notice.pdf>

Resources (cont.)

Mobile Banking

- Supervisory Insights - Winter 2012

Mobile Payments: An Evolving Landscape

<http://www.fdic.gov/regulations/examinations/supervisory/insights/siwin12/>

- Supervisory Insights - Winter 2011

Mobile Banking: Rewards and Risks

<http://www.fdic.gov/regulations/examinations/supervisory/insights/siwin11/>

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