



FDIC WARNS OF GAPS IN TECHNOLOGY SERVICE PROVIDER CONTRACTS

On Tuesday, the Federal Deposit Insurance Corporation ("FDIC") issued a financial institution letter alerting individuals responsible for bank operations of gaps observed by examiners in FDIC-supervised financial institutions' contracts with technology service providers. See FIL-19-2019 (Apr. 2, 2019). The contractual gaps related to business continuity and incident response. If gaps exist, the FDIC reminded financial institutions that they must assess the risks created by the gaps and implement controls to mitigate the risks.

More specifically, FDIC examiners have observed that some contracts with technology service providers do not clearly define the rights and responsibilities of the parties regarding business continuity and incident response. Further, some contracts reviewed by examiners do not require the service provider to maintain a business continuity plan, establish recovery standards or define contractual remedies if the technology service provider misses a recovery standard. The FDIC noted that long-term contracts or automatic renewal contracts have a higher risk of coverage gaps.

The financial institution letter also reminded depository institutions of their obligation under the Bank Service Company Act to notify their respective federal banking regulator in writing of contracts or relationships with technology service providers that perform certain functions. The FDIC has an optional notification form that a financial institution can file with its FDIC regional office.

While the financial institution letter applies only to FDIC-supervised institutions, the Federal Financial Institutions Examination Council ("FFIEC"), comprised of the Board of Governors of the Federal Reserve System, the FDIC, the National Credit Union Administration, the Office of the Comptroller of the Currency and the Consumer Financial Protection Bureau, has published, among other guidance, an IT Examination Handbook, a Business Continuity Planning Booklet and a Supervision of Technology Service Providers Booklet. These resources provide guidance on risk management for outsourcing technology services. Any regulated financial institution should take the FDIC's letter under advisement and review its agreements with technology service providers. Periodic review of third party contracts to reflect changes in regulatory expectations is advisable for other concerns such as cybersecurity as well. We can

assist in such reviews. ☐

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