

TB 46 was rescinded 3/18/03 by TB 82. Click [HERE](#) to link to TB 82.

Handbooks: Thrift Activities; EDP
Subjects: Internal Controls; EDP User and Servicer Control Guidelines

Sections: 110;
Administration
TB 46

May 1, 1990

Contracting for Data Processing Services of Systems

RESCINDED

Summary: This Bulletin supersedes TB 46 which is hereby rescinded. This Bulletin has been amended to reference the pertinent sections of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA). A provision also has been added recommending that an institution's legal counsel review EDP contracts prior to ratification. Finally, a provision has been added relating to contracting for EDP services, under which EDP vendors agree to submit to examination by the Office of Thrift Supervision (OTS).

For Further Information Contact:
Your District office or Compliance Programs, Office of Thrift Supervision, Washington, D.C.

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Background

Data processing activities have become essential to the efficient delivery of customer services and to the operation of most thrift institutions. Recent trends indicate that thrift institutions are finding data processing service organizations to be a cost effective alternative for many of their data processing needs rather than relying solely on in-house computer systems.

The provision of EDP services to financial institutions by service organizations entails certain risks and responsibilities. Contracts for EDP services and systems should appropriately define and balance those risks and responsibilities between the vendor and the institution.

Policy

Thrift institution management should carefully review any proposed data processing service contracts or agreements to minimize the institution's exposure to risk, and should follow the guidelines listed below prior to signing any contracts with vendors of EDP services. Furthermore, the institution's legal

counsel should review the draft contract to determine that the interests of the financial institution are adequately protected.

Guidelines

1. Consider the following points prior to entering into any EDP-related service arrangement:

- Alternative vendors and related costs;
- Financial stability of the vendor;
- Requirements for termination of service; and
- Quality of service provided.

2. Ensure that any contract specifies the duties and responsibilities of the financial institution and the vendor of EDP services.

3. Review the contract's penalty provisions for reasonableness in the areas of: length of contract, excessive fees, compensation of the servicer for loss of income, etc.

4. Ensure that the following items are included in the service contracts:

- The vendor agrees to submit to an examination by OTS, which will evaluate and monitor the soundness of the vendor in order to limit the institution's risk. The following language should be incorporated in the contract:

"By entering into this agreement the EDP services vendor agrees that the Office of Thrift Supervision will have the authority and responsibility provided to the other regulatory agencies pursuant to the Bank Service Corporation Act, 12 U.S.C. 1867(C) relating to services performed by contract or otherwise."

- The vendor provides the OTS District Director of the district in which the data processing center is located with a copy of the current third party review report when a review has been performed. (See PA-7-1A for guidance concerning third party review report requirements.)
- The vendor provides the OTS District Director of the district in which the data processing center is located with a copy of the vendor's current audited financial statements.
- The vendor agrees to release the information necessary to allow the institution to develop a disaster contingency plan which will work in concert with the vendor's plan.

In addition, institutions should be aware of the FIRREA-imposed restrictions on contracts as outlined in Thrift Bulletin 44, "Interagency Statement on EDP Service Contracts." Also, the provisions of 12 C.F.R. 563.17-1(d) and (e) outline reporting requirements for an institution that elects to maintain any of

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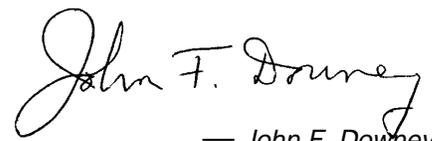
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its records by means of data processing servicers.

The attachment to this Bulletin provides further guidelines for a thrift institution initiating, renewing, or revising a contract or agreement for EDP services.

Attachment

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— John F. Downey
Acting Senior Deputy Director for Supervision

Contracting for Data Processing Services or Systems

While the provisions in an EDP service contract are not standardized across the industry, a number of items are included in most contracts. This attachment contains a list of various provisions which are usually incorporated in EDP servicing contracts. Neither the significant deviation from, or inclusion of, these items will render a contract unacceptable or acceptable. This is an outline and is not meant to be all inclusive.

Provisions contained in an electronic data processing servicing contract may include:

- A detailed description of the specific work to be performed by the servicer, and the frequency and general content of the related reports.
- A fee schedule which outlines development, conversion and processing cost, as well as charges for special requests.
- An outline of the training to be provided for institution personnel, including the type, number of employees to be trained, and the associated cost.
- Established time schedules for receipt and delivery of work.
- The availability of on-line communications, security over accesses and transmissions, and alternate data entry considerations.
- Audit responsibility, including the right of financial institution representatives to perform an audit.
- A definition of backup, contingency, and record protection provisions (equipment, software and data files) to ensure timely processing by the service center in the event of an emergency.
- A detailed description of liability for source documents while in transit to and from the service center. The responsible party should maintain adequate insurance coverage for such liabilities.
- Maintenance of adequate insurance for fidelity and fire liability, reconstruction of physical properties, data reconstruction, and resumption of normal operations, as well as for data losses from errors and omissions.
- Confidentiality of records.
- Ownership of software and related documentation.
- Ownership of master and transaction data files and their return in machine-readable format upon the termination of the contract or agreement.
- Price changes, cost and method of cancellation of the contract, or withdrawal from the servicing arrangement by either party.
- Processing priorities for both normal and emergency situations.
- Mandatory notification by the servicer of all systems changes that affect the institution.
- A requirement that the vendor be responsible for keeping the software current by incorporating regulatory changes and updates.
- Access to vendor's source code and maintenance of documentation via escrow agreements for turn-key operations.
- A guarantee that the servicer will provide necessary levels of transition assistance if the institution decides to convert to other automation alternatives.
- Cancellation, termination, and bankruptcy clauses.
- A requirement that the EFT facility provide for contingencies, integrity, security, and confidentiality of data.
- Financial information (audited) to be provided annually by the servicer to the financial institution.
- A detailed description of the disaster recovery contingency test results to be provided annually by the servicer to the financial institution.
- A prohibition against the assignment of the contract by either party without the consent of the other.