

Frequently Asked Compliance Question

June 1, 2015

Question

When dealing with vendor management, should we require Identity Theft provisions in all contracts where the vendor/service provider has access to our customers' accounts?

Short Answer

Not necessarily. Regulation V does not specifically require Identity Theft language in a contract nor are provisions required for all service providers with access to customers' accounts. The Regulation specifies that oversight is required for those service providers that perform an activity in connection with a covered account. Examiners expect institutions to take steps to ensure that these activities are conducted in order to detect, prevent, and mitigate the risk of identity theft.

Answer Details

12 CFR 222.90(e)(4) states that institutions must exercise appropriate and effective oversight of service provider arrangements. Appendix J provides guidelines for identity theft detection, prevention, and mitigation; Appendix J Part VI(c) specifically discusses the oversight of service provider arrangements. Oversight is required for those service providers that perform an activity in connection with one or more covered accounts. Given that qualification, institutions should first determine which of their accounts are considered covered accounts. They should then review their service providers and determine which service providers perform activities associated with those covered accounts. This analysis should include activities such as collecting applications, opening accounts, monitoring transactions, interacting with the customer or other activities. The resulting list of service providers identifies the ones that require additional oversight.

Part VI(c) discusses that an institution may enforce contract obligations that a service provider have policies or procedures to detect and report relevant red flags in order to comply with this section. A contractual obligation is not a requirement of the regulation, but is an example provided by the guidelines so institutions have the ability to perform alternative arrangements in place of a contract. Such as by obtaining a copy of the service provider's policies and procedures over Identity Theft Red Flags.

If you are interested in an audit or assistance with your Identity Theft Red Flags program, please contact Brian Shea at bshea@wolfandco.com or Erica Torres at etorres@wolfandco.com.