Wisconsin Bankers Association

Compliance Journal
February 2024

Special Focus

Agencies Release Examination Principles Related to Valuation Discrimination and Bias in Residential Lending

The Federal Financial Institutions Examination Council (FFIEC), on behalf of the Bureau of Consumer Financial Protection (CFPB), Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), Office of the Comptroller of the Currency (OCC), National Credit Union Administration (NCUA), and the State Liaison Committee, released principles for the examination of supervised institutions' (institutions) residential property appraisal and evaluation (collectively, valuation) practices.

The examination principles are meant to help mitigate risks that may arise due to potential discrimination or bias in valuation practices and to promote creditable valuations. In the context of consumer compliance, "discrimination" is used to refer to prohibited discrimination based on protected characteristics in the residential property valuation process. "Bias" is considered to mean a preference or inclination that precludes an appraiser or other preparer of the valuation from reporting with impartiality, independence, or objectivity in an assignment.

The agencies are concerned over discrimination and bias in valuation practices given how critical an underwriting component real estate valuations are in residential real estate (RRE) lending, both from a consumer compliance and safety and soundness perspective. As a result, the agencies have set forth examination principles for both consumer compliance examinations and for safety and soundness examinations.

Consumer Compliance Examination Principles

Under a consumer compliance examination, examiners are to consider whether the institution's risk management practices for RRE valuations are appropriate to identify and address valuation discrimination. In particular, examiners are to consider board and senior management oversight and the institution's consumer compliance program.

Regarding board and senior management oversight, examiners are to evaluate whether the board of directors and management ensure that the institution has implemented and maintains a compliance management system, including third-party oversight, which is commensurate with the institution's RRE lending risk profile. When evaluating an institution's third-party risk management, examiners are to evaluate the institution's oversight of RRE valuation of third-parties' consumer compliance-related policies, procedures, internal controls, and training.

Examiners will also evaluate an institution's due diligence and ongoing monitoring of third parties, including persons or entities that prepare valuation reports, third-party appraisers, and appraisal management companies, to assess compliance with consumer protection laws and regulations, including anti-discrimination laws.

Regarding an institution's consumer compliance program, examiners will: (a) assess an institution's policies and procedures to determine if its collateral valuation review function includes identifying potential discriminatory valuation practices or results; (b) assess whether its training program appropriately addresses identification of potential discrimination in RRE lending and collateral valuation programs, whether internally identified or from consumer inquiries or complaints; (c) assess whether the institution adheres to policies and procedures designed to identify and address potential discriminations; and (d) evaluate the institution's systems or processes for reviewing, documenting, tracking, addressing, monitoring, and managing collateral valuation complaints—including complaints that allege potential discrimination. The evaluation will include how an institution handles complaints from various channels and sources, such as letters, phone calls, in person, from regulators, third-party service providers, emails, and social media.

Safety and Soundness Examination Principles

Examiners will also review an institution's RRE collateral valuation program as a component of a safety and soundness examination. Consistent with an agency's risk-focused examination approach, examiners will take a number of matters into consideration. In particular, examiners are to consider consumer compliance examination findings and will review other examination planning information to identify consumer complaints, litigation, and other matters related to valuation discrimination or bias. From a risk assessment perspective, examiners will consider the materiality of RRE lending in relation to the institution's overall lending activities, size, complexity, and risk profile.

Examiners will also assess the institution's policies, processes, staff organization and resources, control system, and management information systems for RRE collateral valuations. This assessment will also include the institution's ability to identify and resolve incidences for potential valuation discrimination or bias. Examiners are to evaluate the institution's practices for selecting, retaining, and overseeing independent, qualified, and competent individuals (and applicable valuation models) that have the ability to render unbiased and credible opinions of collateral value and will evaluate the institution's oversight of valuation-related third parties. The evaluation will also include how an institution reviews how their third parties identify, monitor, and manage the risks related to valuation discrimination or bias.

Within a safety and soundness examination, examiners will also assess the institution's valuation review function for identifying potentially discriminatory or biased valuation results, assess the institution's credit risk review function for RRE loan portfolios for appropriate consideration of potentially discriminatory or biased valuations, and will assess the institution's training program meant to provide staff with the knowledge and skills to identify and resolve valuation discrimination or bias.

Conclusion

Given the principles outlined in the FFIEC statement, financial institutions should use the stated principles as a checklist to review current valuation policies and procedures to identify whether there are gaps and to create a plan for incorporating any missing principles into applicable policy and procedures, in preparation for examiner scrutiny.

For example, an institution should be prepared to explain in a consumer compliance examination how its policies and procedures include a means to review collateral valuations to identify potential discriminatory valuation practices or results, how such review is completed, and how matters are resolved. When an institution conducts valuation training, identify the portion of the training intended to educate staff on valuation discrimination or bias, how to watch for, identify, and report such practices, and how to resolve valuation discrimination or bias. Tracking such training will allow the institution to report how it has educated staff on the topic when asked in examinations. If an institution is utilizing a third party for valuations, the institution should be prepared to demonstrate how it monitors the third party for identifying, monitoring, and managing against valuation discrimination or bias. Having such measurement incorporated into the institution's management of its third-party valuation vendor(s) will help the institution demonstrate to examiners the institution is managing against risks involving valuation discrimination or bias.

The FFIEC interagency statement may be viewed at: https://files.consumerfinance.gov/f/documents/cfpb_ffiec-statement-on-exam-principles_2024-02.pdf

February 2024
Volume 29, Number 9

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FRB *Consumer Compliance Outlook* Lists Top 2022 Compliance Examination Violations

In its recently released Fourth Issue 2023 *Consumer Compliance Outlook*,® the Board of Governors of the Federal Reserve System (FRB) identified top compliance violations from its 2022 compliance examination data. Violations of the Electronic Fund Transfer Act (Regulation E), Real Estate Settlement Procedures Act (Regulation X), Fair Credit Reporting Act (FCRA), and Equal Credit Opportunity Act (Regulation B) were among the most cited. The following is a summary of FRB's findings.

Regulation E Violations

FRB reported that common violations of Regulation E included not promptly investigating, not providing provisional credit, and not conducting an adequate investigation. FRB examination data reflected that some financial institutions had not promptly initiated error resolution investigations after the consumer notified the institution of an error, in violation of §1005.11(c). FRB identified the errors typically occurred because bank staff did not recognize when consumers were making error resolution claims, did not know how to initiate investigations, or did not correctly identify all of the disputed transactions.

FRB also reported that examiners cited institutions for violating §1005.11(c)(2)(i) by not providing provisional credit for the amount of the alleged error within 10 business days of receiving an error notice when the institutions could not complete their investigation within 10 business days and took up to 45 days to investigate under §1005.11(c)(2). Examiners also cited institutions that provisionally credited accounts but failed to provide full access to and use of the funds during the investigation. FRB identified the errors occurred because the institutions lacked effective procedures, controls, monitoring, and/or training to ensure compliance with the regulation.

FRB compliance examination data also reflected that some institutions conducted inadequate investigations of error claims. Under Regulation E, an institution cannot deny a consumer's claim of an error without conducting a reasonable investigation, unless it corrects the error as alleged by the consumer. FRB explains that a reasonable investigation includes reviewing relevant information within the institution's records. If the review confirms the error, the claim cannot be denied. FRB further explained that when an alleged error is an unauthorized electronic fund transfer (EFT), the Electronic Fund Transfer Act places the burden of proof on the financial institution to establish the transaction was authorized. Therefore, if the institution cannot establish the disputed EFT transaction was authorized, FRB concluded the institution must credit the consumer's account. FRB stated it believes these types of errors occurred because staff either did not review or research all the transactions the consumer disputed or denied claims because of prior disputed transactions with the same merchant. FRB further reported that examiners identified root causes as not providing effective policies and procedures and not conducting adequate training and monitoring. FRB cited institutions for not explaining the results of an investigation and not providing notice to the consumer of the right to request the documents the institution relied on in making its determination. FRB reported the errors occurred primarily because staff did not adhere to the institution's policies and procedures.

Regulation X Violations

FRB's *Consumer Compliance Outlook* also reported violations of escrow account rules under Regulation X. In particular, FRB reported that examiners found bank staff inaccurately computed and disclosed the initial and annual escrow analyses. FRB stated incorrect system settings and payment amount issues typically caused the errors. For the system settings, FRB examiners found bank staff erroneously used the payment due date rather than the anticipated disbursement date as the disbursement date for escrow items on the initial and annual escrow analyses. Using the payment due date rather than the anticipated disbursement date resulted in computation and disclosure errors on the initial and annual escrow account analyses.

For the payment amount issue, examiners identified that bank staff itemized the incorrect number of payments from the escrow account on the initial and annual escrow account analyses, resulting in inaccurate initial and annual escrow computations and projections.

FRB reported that examiners also observed errors related to bank staff conducting annual escrow account analyses beyond the 12-month computation year, without issuing short-year statements as required under Regulation X. In these cases, examiners found bank staff conducted annual escrow analyses for all loans during the same month. If a loan was originated outside of this month, an annual escrow account analysis was not prepared until the loan aligned with the bank's escrow analysis schedule. The examination finding resulted in staff not conducting timely annual escrow account analyses, as §1024.17(c)(3) requires.

Fair Credit Reporting Act Violations

FRB also shared common examination violations under FCRA. In particular, FRB examiners cited violations for not providing an accurate or complete adverse action notice to affected applicants. FRB reported common violations included: (a) not including the range of possible credit scores under the scoring model used; (b) not providing an adverse action notice when taking adverse action based, in whole or in part, on information in a consumer report, and (c) taking adverse action based, in whole or in part, on a credit score, but not including the credit score disclosures specified in FCRA §609(f)(1) in the adverse action notice. As a reminder, the credit score does not have to the be primary reason adverse action is taken; the credit score disclosures are required whenever a score is used in the decision to take adverse action. FRB stated it believes the FCRA-related errors were due to inadequate training, controls, and procedures.

Regulation B Violations

The latest FRB *Consumer Compliance Outlook* also listed the most cited violations of ECOA under Regulation B. FRB examiners cited financial institutions that required individual, creditworthy applicants to obtain the signature of their spouse or another person as a condition of their loan in violation of the §1002.7(d).

Examiners also cited financial institutions for not appropriately providing applicants a copy of appraisals or valuations associated with a first-lien mortgage application in accordance with §1002.14(a). FRB also cited institutions for failing to mail or deliver a notice in writing of the applicant's right to receive a copy of all written appraisals or valuations developed in connection with the application within the time periods required under Regulation B. FRB stated inadequate training and inadequate procedures were identified as the root causes for the violations cited under Regulation B.

Sound Practices

For the compliance examination violations identified in the article, FRB provided recommendations of what it considers are sound practices to help mitigate compliance risks. The identified practices are meant to help institutions limit the type of violations listed and should be considered if an institution seeks improvements in a particular compliance procedure. The Fourth Issue 2023 FRB *Consumer Compliance Outlook* may be viewed at: https://emma-assets.s3.amazonaws.com/cky/ed16d88bfb810d65b1ad8d243b62c2bb/CCO_Issue_4_2023.pdf

Reporting HMDA Total Units and Cross-Collateralization

A version of this article previously appeared in the July 2022 edition of the WBA Compliance Journal. While there has been no new law and no new interpretations of existing law in this area, WBA and FIPCO continue to receive questions regarding the interplay of HMDA reporting for total units and cross-collateralization clauses within security agreements. As a result, this article has been updated for purposes clarity. In addition to the updated article, the final pages of this month's Compliance Journal include a brand-new HMDA Total Units Worksheet designed to help banks understand, identify, and report total units for covered loans.

Subject to certain exemptions, the Home Mortgage Disclosures Act (HMDA) requires covered financial institutions (banks) to report data on covered transactions. HMDA reporting banks must report data for covered transactions. The data to be reported is outlined under Regulation C section 1003.4. Some of those data points are optional for banks which qualify for a partial exemption. For the purposes of this article, only one data point is discussed. That data point requires reporting of the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan (total units). This data point is required by Regulation C section 1003.4(a)(31). Total units is not a field subject to optional reporting. Thus, total units must be reported by all covered banks, including those who qualify for a partial exemption.

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A version of this article previously appeared in the July 2022 edition of the WBA Compliance Journal. While there has been no new law and no new interpretations of existing law in this area, WBA and FIPCO continue to receive questions regarding the interplay of HMDA reporting for total units and cross-collateralization clauses within security agreements. As a result, this article has been updated for purposes clarity. In addition to the updated article, the final pages of this month's Compliance Journal include a brand-new HMDA Total Units Worksheet designed to help banks understand, identify, and report total units for covered loans.

Subject to certain exemptions, the Home Mortgage Disclosures Act (HMDA) requires covered financial institutions (banks) to report data on covered transactions. HMDA reporting banks must report data for covered transactions. The data to be reported is outlined under Regulation C section 1003.4. Some of those data points are optional for banks which qualify for a partial exemption. For the purposes of this article, only one data point is discussed. That data point requires reporting of the number of individual dwelling units related to the property securing the covered loan or, in the case of an application, proposed to secure the covered loan (total units). This data point is required by Regulation C section 1003.4(a)(31). Total units is not a field subject to optional reporting. Thus, total units must be reported by all covered banks, including those who qualify for a partial exemption.

The total units data point requires a reporting bank to enter, in numeral form, the number of individual dwelling units related to the property securing the covered loan. For example, if there are five (5) individual dwelling units, bank will enter 5 on the HMDA LAR. When a loan is secured by multiple properties, bank may need to consider each of those properties securing the loan to properly report this field. This includes property securing the loan by any means.

A loan could be secured by multiple properties as the result of future advance language or other cross-collateralization clauses. For example, the WBA 451 Business Note contains cross-collateralization language which provides broad coverage in support of the bank's position as lender. This language provides in part that the note is secured by all existing and future security agreements and mortgages by the borrower, by any indorser or guarantor, and by any other person providing collateral security. Lenders must carefully consider this language, and its relationship with the borrower, including guarantors and other parties, in order to determine those properties which secure the loan. This type of broad cross-collateralization language is most common on business notes.

As a consumer example, when taking a loan secured by a WBA 428 Real Estate Mortgage, the mortgage document states that the mortgage will secure certain future advances. However, in general, most WBA consumer notes disclaim dwellings as collateral, unless the dwelling is specifically described in the note or agreement. So, a pre-existing mortgage on a dwelling does not secure a future consumer note or agreement unless the note or agreement specifically identifies the dwelling.[1]

Lenders need to review their notes and security agreements for these types of clauses, and similar language. While understanding the language within a bank's notes and security agreements is important for a number of reasons, this article strictly discusses the significance of such language as it relates to reporting HMDA total units. To that extent, the question becomes: for a covered loan, what data must a bank report for total units when that loan is secured by multiple properties by virtue of cross-collateralization?

When reporting total units, HMDA provides an answer to this question within its commentary. Comment 1 to section 1003.4(a)(31) makes a cross-reference to section 1003.4(a)(9) comment 2 regarding transactions involving multiple properties with more than one property taken as security (comment 2). Various HMDA data points require a bank to report certain information on the property securing the covered loan. When a covered loan is secured by multiple properties, questions arise as to which property the bank is to report on. Comment 2 provides clarity regarding this question. Thus, comment 2 is critical to the understanding of how to report total units. Specifically, comment 2 draws distinctions between those data points which require reporting for a single property (selected by the lender), and those which must be considered for every property securing the loan (in addition to that single property selected by the lender). Another way to look at it is that some data points require bank to report information on multiple properties, while others only require bank to report on one property. Comment 2 provides a list of each data point which is reported for a single property, and those which are reported for every property securing the loan.

The data reported for total units is one of those which must be reported for every property securing the loan.[2]

Because the commentary includes total units as one of those categories for which information must be reported applicable to the covered loan, and not that which relates only to the single property identified under 1003.4(a)(9), then the lender must report total units based upon every property which secures the loan. As a result, lenders must consider whether the loan is secured by multiple properties. Lenders must review their language specifically to make this determination, but as a final point of distinction, note that the effect of cross-collateralization clauses is to secure the loan with multiple properties. When a loan is secured by multiple properties, bank must report total units as including every property securing the loan. Meaning bank must report all properties which are cross-collateralized.

While this is not a new rule, it is recommended that banks review the above HMDA sections as a refresher. From there, banks should review their contracts and HMDA reporting procedures to ensure that all applicable fields are being reported for all applicable properties. It may be that additional monitoring systems need to be put into place to account for multiple properties securing a loan, and part of that monitoring should include how bank will identify and report every

1 The reason this language is included is for purposes of flood rules. For further discussion on cross-collateralization as it relates to flood requirements, please review the *WBA Compliance Journal* from February, 2022.

2 Comment 2 provides in relevant part: "...for aspects of the entries that do not refer to the property identified in § 1003.4(a)(9) (i.e., § 1003.4(a)(1) through (4), (7), (8), (10) through (13), (15) through (28), (31) through (38)), Financial Institution A reports the information applicable to the covered loan or application and not information that relates only to the property identified in § 1003.4(a)(9)."

property securing a HMDA covered loan for the total units data point. Banks should conduct this review in advance of any upcoming compliance exam and prepare accordingly.

In summary, if a loan is secured by multiple properties, those properties must be included for purposes of reporting total units. As a result, lenders must review their notes and security agreements to understand the extent of how their loans are secured. This is a contractual matter which can vary from note to note, and from one loan relationship to the next. As such, each loan relationship must be reviewed to determine HMDA reporting requirements. A HMDA Total Units Worksheet is included at the end of this *Compliance Journal* designed to help banks understand, identify, and report this sole data point. Lastly, as mentioned above, this article, and the included worksheet, is specific to the implications of cross-collateralization clauses in relation to reporting of total units for HMDA purposes only. However, cross-collateralization clauses are important to understand for reasons beyond HMDA reporting.

For any questions on this matter or others, please contact WBA's legal team at wbalegal@wisbank.com or 608-441-1200.

Regulatory Spotlight

Agencies Publish Final CRA Rule and Trade Associations Sue Claiming Agencies Exceeded Statutory Authority.

The Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) (collectively, the agencies) adopted final amendments to their regulations that implement the Community Reinvestment Act (CRA) to update how CRA activities qualify for consideration, where CRA activities are considered, and how CRA activities are evaluated. The final rule is effective **04/01/2024**, except for amendment nos. 29, 52, and 75, which are effective **04/01/2024**, through **01/01/2031**. Amendment nos. 7, 11, 18, 20, 25, 35, 39, 43, 45, 49, 58, 62, 66, 68, and 72, are delayed indefinitely. The agencies will publish a document in the *Federal Register* announcing an effective date for the delayed amendments. Sections II.12 through II.15, II.17 through II.30, and II.42(a); the data collection and maintenance requirements in II.42(c) through (f); and appendices A through F of the common rule text as adopted by the agencies are applicable **01/01/2026**. Section II.42(b) and (g) through (i) and the reporting requirements in II.42(c) through (f) of the common rule text as adopted by the agencies are applicable **01/01/2027**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-02-01/pdf/2023-25797.pdf. *Federal Register*, Vol. 89, No. 22, 02/01/2024, 6574-7222.

The American Bankers Association, U.S. Chamber of Commerce, Independent Community Bankers of America, Texas Bankers Association, Independent Bankers Association of Texas, Amarillo Chamber of Commerce, and Longview Chamber of Commerce filed a lawsuit in the Northern District of Texas against the Board of Governors of the Federal Reserve System (FRB), Federal Deposit Insurance Corporation (FDIC), and Office of the Comptroller of the Currency (OCC) for exceeding their statutory authority and acting arbitrarily and capriciously with their recent amendments to the Community Reinvestment Act (CRA) Rules. The announcement may be viewed at: https://www.aba.com/about-us/press-room/press-releases/cra-joint-trades-lawsuit.

Agencies Adjust CMPs for Inflation.

The Bureau of Consumer Financial Protection (CFPB) issued a final rule to adjust for inflation the maximum amount of each civil penalty within CFPB's jurisdiction. The adjustments are required by the Federal Civil Penalties Inflation Adjustment Act, as amended by the Debt Collection Improvement Act, and further amended by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. The inflation adjustments mandated by the Inflation Adjustment Act serve to maintain the deterrent effect of civil penalties and to promote compliance with the law. See the final rule for the specific adjustments. The final rule is effective **01/15/2024**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2024-01-11/pdf/2024-00456.pdf. *Federal Register*, Vol. 89, No. 8, 01/11/2024, 1787-1789.

The Board of Governors of the Federal Reserve System (FRB) issued a final rule to amend its rules of practice and procedure to adjust the amount of each civil money penalty (CMP) provided by law within its jurisdiction to account for inflation as required by the Federal Civil Penalties Inflation Adjustment Act Improvements Act. See the final rule for the

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Compliance Journal
January 2024

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FDIC Revises Part 328 Regarding Advertising of FDIC Membership and Use of Official Sign

The Federal Deposit Insurance Corporation (FDIC) issued a final rule in late December which amends its regulations governing use of the official FDIC sign and insured depository institutions' (IDIs') advertising statements (Part 328) to reflect how depositors conduct business with IDIs today, including through digital and mobile channels. Part 328 includes requirements for the use of the official FDIC sign and IDI's advertising statements, as well as misrepresentations of insured status and misuses of the FDIC name or logo. The amendments made by the final rule are effective **April 1, 2024**; with an extended compliance date of **January 1, 2025**.

FDIC's Part 328, entitled Official Signs, Advertisements and Membership, False Advertising, Misrepresentation of Insurance Status, and Misuse of FDIC's Logo, consists of two parts. Subpart A provides definitions and requirements for the required use of the FDIC official sign and the advertisement of membership. Subpart B of Part 328 provides definitions and prohibitions against false advertising, misrepresentation of insured status, and misuse of FDIC's name or logo. The final rule revised both subparts.

The following is a section-by-section summary of the revisions to Subpart A of Part 328 and an overview summary of the revisions to Subpart B regarding false advertisements, misrepresentation of insurance status, and misuse of FDIC logo.

Subpart A Definitions and Requirements

Subpart A of Part 328 describes the official sign and advertising statement and prescribes their use by IDIs, as well as other signs to prevent customer confusion in the event non-deposit products are offered by an IDI.

Part **328.1** provides definitions for terms used within Subpart A Part 328, including the following:

Branch has the same meaning as the term "domestic branch" as set forth under section 3(o) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(o).

Corporation means the Federal Deposit Insurance Corporation.

Deposit has the same meaning as set forth under section 3(l) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(l).

Digital deposit-taking channel means websites, banking applications, and any other electronic communications method through which an IDI accepts deposits.

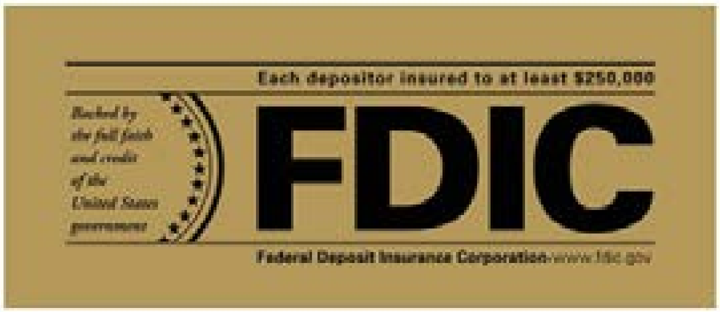
Hybrid product means a product or service that has both deposit product features and non-deposit product features. A sweep account is an example of a hybrid product.

Insured depository institution has the same meaning as set forth under section 3(c)(2) of the Federal Deposit Insurance Act, 12 U.S.C. 1813(c)(2).

Non-deposit product means any product that is not a "deposit", including, but not limited to: insurance products, annuities, mutual funds, securities, and crypto-assets. For purposes of this definition, credit products and safe deposit boxes are not non-deposit products.

Part **328.2** provides FDIC's official sign and symbol.

FDIC will continue to use the existing design of its official sign. Except as otherwise provided in this section, FDIC's official sign must be 7" by 3" in size, with black lettering and gold background, and has the following design:



FDIC will also continue the use of its existing "symbol" which is that portion of the official sign consisting of "FDIC" and the two lines of smaller type above and below "FDIC."

An IDI may procure the official sign from FDIC for official use at no charge. Information on obtaining the official sign is posted on FDIC's website at: https://www.fdic.gov. Alternatively, an IDI may, at their expense, procure from commercial suppliers, signs that vary from the official sign in size, color, or material. FDIC has also continued its existing procedure that it may require an IDI, upon at least thirty (30) days written notice, to change the wording or color of the official sign in a manner deemed necessary for the protection of depositors or others.

Signs in Bank Premises

Part 328.3 provides requirements for signage within the premises of IDIs and the offering of non-deposit products within the premises of IDIs.

FDIC has revised its current rule for the display of its official sign to address changes in some branch structures, including café-style locations where deposits are accepted in an open area rather than at a teller window or station. As a general rule, each IDI must continuously, clearly, and conspicuously display the official sign at each place of business where consumers have access to or transact with deposits.

For deposits received at teller windows or stations, FDIC has retained the current rule to require the display of the official sign at each teller window or station where insured deposits are usually and normally received, in a size of 7" by 3" or larger with black lettering on a gold background as described in section 328.2 above.

FDIC has created a new provision meant to allow flexibility with respect to the display of the official sign when the IDI usually and normally receives deposits at teller windows and stations and only offers insured deposit products on the premises. If the IDI does not offer non-deposit products on the premises, the official sign may be displayed at one or more locations visible from the teller windows or stations in a manner that ensures a copy of the official sign is large enough so as to be legible from anywhere in that area. Whether the display is "large enough to be legible from anywhere in that area" means that the average customer can easily see and read the sign from a reasonable distance from that area. This may depend on factors specific to the layout of the IDI's physical premises. For example, if an IDI's place of business has two teller windows right next to each other

January 2024
Volume 29, Number 8

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and it posts one official sign between the teller windows that is large enough to be legible to depositors at both teller windows, that approach would meet the standard.

If insured deposits are usually and normally received in areas of the premises other than teller windows or stations (e.g., café-style locations), the IDI must display the official sign in one or more locations in a manner that ensures a copy of the official sign is large enough to be legible from anywhere in the deposit-taking areas.

An IDI may display the official sign in locations at the institution other than those required by this section, except for areas where non-deposit products are offered as further outlined below. FDIC will also continue to allow an IDI to display signs that vary from the official sign in size, color, or material at any location where display of the official sign is required or permitted. However, any such varied sign that is displayed in locations where display of the official sign is required must not be smaller in size than the official sign, must have the same color for the text and graphics, and include the same content.

Under the final rule, if non-deposit products are offered on the IDI premises, the non-deposit products must be physically segregated from areas where insured deposits are usually and normally accepted. The IDI must identify areas where activities related to the sale of non-deposit products occur and clearly delineate and distinguish those areas from the areas where insured deposit-taking activities occur. Examples include, that IDIs could conduct non-deposit related activity in separate areas or in areas that are not in close proximity to where deposits are taken by using a desk, cubicle, partitions, railings, planters, a separate room, or other indicator that the area is distinct and separate from the deposit-taking area.

In addition, at each location within the premises where non-deposit products are offered, an IDI must continuously, clearly, and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. The signage may not be displayed in close proximity to the official sign. FDIC has not created a standardized design or model form for the non-deposit sign; IDIs will need to create their own signage.

In limited situations where physical considerations present challenges to offering non-deposit products in a distinct area, an IDI must take prudent and reasonable steps to minimize customer confusion.

FDIC will permit IDIs to use electronic media to display the official sign and non-deposit sign as required by the rule, so long as the display meets the continuous, clear, and conspicuous display standard. FDIC stated in its preamble to the rule that a rotating display will not satisfy the "continuous" requirement applicable to the display of the official sign and non-deposit sign.

Signs for ATMs and Other Remote Electronic Facilities

Part 328.4 governs signage for IDIs' automated teller machines (ATMs) and other remote electronic facilities that receive deposits. An IDI's remote electronic facility that receives deposits and is labeled an interactive teller machine or (ITM) instead of an ATM is subject to Part 328. However, if the ITM does not receive deposits, it is not subject to the rule. This section is separate from online and mobile banking channels, which are referred to as "digital deposit-taking channels" described further in the next section.

As a general rule, an IDI's ATM or like device that receives deposits for an IDI and does not offer access to non-deposit products may comply with the official sign requirement by either: (1) displaying the physical official sign as described above in section 328.2 on the ATM by attaching or posting it to the ATM; or (2) displaying the FDIC official digital sign which is discussed in the digital deposit-taking channel section below. However, IDI's ATMs or like devices that accept deposits and are put into service after **January 1, 2025**, must display the official digital sign.

If an IDI is satisfying the requirements of displaying FDIC's official sign on its ATM or like device by physically attaching or posting it to the ATM, IDIs need be mindful that if the physical sign were to become degraded or defaced, the physical sign would not meet the "clearly, continuously, and conspicuously" standard. As a result, an IDI should monitor the condition of any physically attached posted official sign to ensure it does not become too bad of condition and replace it as necessary.

An IDI's ATM or like device that receives deposits for an IDI and offers access to non-deposit products must clearly, continuously, and conspicuously display the FDIC official digital sign on its home page or screen and on each transaction page or screen relating to deposits. An IDI that offers access to non-deposit products, must clearly, continuously, and conspicuously display electronic disclosures indicating that such non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. These disclosures must be displayed on each transaction page or screen relating to non-deposit products by **January 1, 2025**. Such signage may not be displayed in close proximity to the FDIC official digital sign.

Signs for Digital Deposit-Taking Channels

Part 328.5 governs signage for digital deposit-taking channels, including IDIs' websites and web-based or mobile applications that offer the ability to make deposits electronically and provide access to deposits at IDIs.

An IDI must clearly, continuously, and conspicuously display the FDIC official digital sign on its digital deposit-taking channels on the following pages or screens:

1. Initial or homepage of the website or application;
2. Landing or login pages; and
3. Pages where the customer may transact with deposits.

Under the final rule, the FDIC official digital sign shall be clearly legible across all IDI deposit-taking channels. The official digital sign must also be clearly and conspicuously placed. An official digital sign continuously displayed near the top of the relevant page or screen and in close proximity to the IDI's name would be considered clear and conspicuous by FDIC.

The official digital sign required under this section must have the following design:

FDIC *FDIC-Insured - Backed by the full faith and credit of the U.S. Government*

The "FDIC" in the official digital sign shall be displayed with a wordmark size of 37.36 x 15.74px, in navy blue (hexadecimal color code #003256), and the "FDIC-Insured – Backed by the full faith and credit of the U.S. Government" shall be displayed in regular 400 italic (12.8px) and with black (hexadecimal color code #000000) lettering.

The entire official digital sign must be displayed in Source Sans Pro Web. If the FDIC official digital sign in these colors would be illegible in a digital-taking channel, due to the color of the background, the entire official digital sign must be displayed in white (hexadecimal color code #FFFFFF).

The "digital symbol" of FDIC is that portion of the FDIC official digital sign consisting of "FDIC" and the one line of smaller type to the right of "FDIC.

If a digital deposit-taking channel offers both access to deposits at an IDI and non-deposit products, the IDI must clearly and conspicuously display signage indicating that the non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. This signage must be displayed continuously on each page relating to non-deposit products. The non-deposit signage may not be displayed in close proximity to the FDIC official digital sign display.

If a digital deposit-taking channel offers access to non-deposit products from a non-bank third party's online platform, and a logged-in bank customer attempts to access such non-deposit products, the IDI must provide a one-time per web session notification on the IDI's deposit-taking channel before the customer leaves the IDI's digital deposit-taking channel. The notification must be dismissed by an action of the bank customer before initially accessing the third party's online platform and it must clearly, conspicuously indicate that the third party's non-deposit products: are not insured by the FDIC; are not deposits; and may lose value. An IDI is not precluded from including additional disclosures in the notification that may help prevent consumer confusion, including, for example, that the bank customer is leaving the IDI's insured website.

Similar to signs within an IDI's premises, FDIC may require an IDI, upon at least thirty (30) days written notice, to change the wording, color, or placement of the FDIC official digital sign and other signs for digital deposit-taking channels when it is deemed necessary for the protection of depositors or others or to ensure consistency with this section.

Official Advertising Statement

Part 328.6 governs the requirement of how FDIC's official advertising statement is to be used. Currently, IDI must include the official advertising statement in all advertisements that promote deposit products. The term advertisement means a commercial message in any medium that is designed to attract public attention or patronage to a product or business. The definition includes advertising published through social media channels.

The current official advertising statement under Part 328 is "Member of the Federal Deposit Insurance Corporation."

IDIs are also currently allowed to use the short title "Member of FDIC," "Member FDIC," or a reproduction of the symbol of FDIC. Under the final rule, IDIs may now also use the short title, "FDIC-Insured."

The existing requirements regarding the size and print of the official advertising statement, use of the official statement in advertisements, list of advertisements which do not require the official advertising statement, restrictions on the use of the statement when advertising non-deposit products, and use of the official advertising statement in non-English language remain in place and are not impacted by the final rule.

Prohibition Against Receiving Deposits at Same Teller Station as Non-Insured Institution

Part 328.7 sets forth the general prohibition against an IDI receiving deposits at same teller station or window as any non-insured institution receives deposits or similar liabilities. The section currently has an exception in that the prohibition did not apply to deposits received at an ATM or other remote electronic facility that receives deposits for an IDI. The section was revised to include in the exception deposits facilitated through a digital deposit-taking channel.

Policies and Procedures

Part 328.8 sets forth a new requirement that IDIs must establish and maintain written policies and procedures to achieve compliance with Part 328. The policies and procedures must be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the IDI. The policies and procedures must also, as appropriate, include provisions related to monitoring and evaluating activities of persons that prove deposit-related services to the IDI or offer the IDI's deposit-related products or services to other parties.

Subpart B: False Advertising, Misrepresentation of Insured Status, and Misue of the FDIC Name or Logo

FDIC issued Subpart B to Part 328 in May 2022 which established the process by which FDIC identifies and investigates conduct that may violate Section 18 of the Federal Deposit Insurance Act which prohibits any person from misusing the name or logo of the FDIC and from engaging in false advertising or making knowing misrepresentations about deposit insurance. Amendments were made to Subpart B to expressly address situations where consumers may be misled. The section now includes a non-exhaustive list of conduct that violates part 328.

The final rule also revises the definition of "non-deposit product" under the Subpart to state that crypto-assets are not a "deposit." The revised definition also states safe deposit box services are not non-deposit products. The revisions are meant to clarify that IDIs are not required to display the non-deposit sign in areas where IDIs provide safe deposit boxes and offer no other non-deposit products.

Summary

FDIC has revised Part 328 regarding the use of the FDIC official sign and IDI's advertising statements to reflect digital and mobile channels. The final rule generally: (a) modernizes and amends the rules governing the display of the official sign in branches; (b) requires the display of the FDIC official digital sign on bank websites, mobile applications, and certain IDI ATMs and other like devices; (c) requires the use of disclosures differentiating deposits and non-deposit products across all banking channels, including digital channels; (d) clarifies FDIC's rules regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where information provided to consumers may be misleading; and (e) amends the definition of "non-deposit product" to include crypto-assets and specifically address safe deposit box services.

The final rule also requires IDIs to adopt a Part 328 policy and create procedures regarding the use of the FDIC official sign and advertising statement, including monitoring, and evaluating any third-party servicer, as applicable. The policy and procedures need be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the IDI. IDIs also need to review ATMs, ITMs, and other remote service devises to ensure any required statements are properly placed, including whether a non-deposit product statement is necessary. IDIs will also need to review any deposit-taking channels to ensure each have the necessary FDIC signage and non-deposit product statement, as applicable.

The amendments made by the final rule are effective **April 1, 2024**; with an extended compliance date of **January 1, 2025**. The final rule may be viewed at: https://www.fdic.gov/news/board-matters/2023/2023-12-20-notice-dis-b-fr.pdf

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2024 Adjusted State and Federal Regulatory Thresholds and Limits

Happy New Year! As we start afresh into a new year, several thresholds have been adjusted by both state and federal regulators which go into effect now that the new year has arrived. Below is a collection of thresholds effective **January 1, 2024**, including a link to pull each publication for reference.

Regulation Z, TILA

• The exemption threshold for Regulation Z (Truth in Lending Act) will increase to **$69,500,** up from $66,400. https://www.govinfo.gov/content/pkg/FR-2023-11-29/pdf/2023-25048.pdf

• The exemption threshold under Regulation Z for HPML appraisals will increase to **$32,400**, up from $31,000. https://www.govinfo.gov/content/pkg/FR-2023-11-29/pdf/2023-25047.pdf

• The asset-size threshold under Regulation Z which exempts creditors from the requirement to establish an escrow account for HPMLs will be:
  - o For creditors and their affiliates that regularly extended covered transactions secured by first liens, the asset-size threshold is adjusted to **$2.640 billion**, up from $2.537 billion; and
  - o The exemption threshold for certain insured depository institutions with assets of $10 billion or less is adjusted to $11.835 billion, up from **$11.374 billion.** https://www.govinfo.gov/content/pkg/FR-2023-12-21/pdf/2023-28076.pdf

• The dollar amount thresholds under Regulation Z for HOEPA and QM-related loans have been adjusted as follows:
  - o For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages will be **$26,092**.
  - o The adjusted points-and-fees dollar trigger for high-cost mortgages will be **$1,305**.
  - o For QMs under the General QM loan definition in § 1026.43(e)(2), the thresholds for the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) will be:
    - • 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to **$130,461**;
    - • 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to **$78,277** but less than **$130,461**;
    - • 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than **$78,277**;
    - • 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than **$130,461**;
    - • 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to **$78,277**; or
    - • 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than **$78,277**.

products across all banking channels, including digital channels; (d) clarifies FDIC's rules regarding misrepresentations of deposit insurance coverage by addressing specific scenarios where information provided to consumers may be misleading; and (e) amends the definition of "non-deposit product" to include crypto-assets and specifically address safe deposit box services.

The final rule also requires IDIs to adopt a Part 328 policy and create procedures regarding the use of the FDIC official sign and advertising statement, including monitoring, and evaluating any third-party servicer, as applicable. The policy and procedures need be commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the IDI. IDIs also need to review ATMs, ITMs, and other remote service devises to ensure any required statements are properly placed, including whether a non-deposit product statement is necessary. IDIs will also need to review any deposit-taking channels to ensure each have the necessary FDIC signage and non-deposit product statement, as applicable.

The amendments made by the final rule are effective **April 1, 2024**; with an extended compliance date of **January 1, 2025**. The final rule may be viewed at: https://www.fdic.gov/news/board-matters/2023/2023-12-20-notice-dis-b-fr.pdf

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• The asset-size threshold under Regulation Z which exempts creditors from the requirement to establish an escrow account for HPMLs will be:
  - o For creditors and their affiliates that regularly extended covered transactions secured by first liens, the asset-size threshold is adjusted to **$2.640 billion**, up from $2.537 billion; and
  - o The exemption threshold for certain insured depository institutions with assets of $10 billion or less is adjusted to $11.835 billion, up from **$11.374 billion.** https://www.govinfo.gov/content/pkg/FR-2023-12-21/pdf/2023-28076.pdf

• The dollar amount thresholds under Regulation Z for HOEPA and QM-related loans have been adjusted as follows:
  - o For HOEPA loans, the adjusted total loan amount threshold for high-cost mortgages will be **$26,092**.
  - o The adjusted points-and-fees dollar trigger for high-cost mortgages will be **$1,305**.
  - o For QMs under the General QM loan definition in § 1026.43(e)(2), the thresholds for the spread between the annual percentage rate (APR) and the average prime offer rate (APOR) will be:
    - • 2.25 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to **$130,461**;
    - • 3.5 or more percentage points for a first-lien covered transaction with a loan amount greater than or equal to **$78,277** but less than **$130,461**;
    - • 6.5 or more percentage points for a first-lien covered transaction with a loan amount less than **$78,277**;
    - • 6.5 or more percentage points for a first-lien covered transaction secured by a manufactured home with a loan amount less than **$130,461**;
    - • 3.5 or more percentage points for a subordinate-lien covered transaction with a loan amount greater than or equal to **$78,277**; or
    - • 6.5 or more percentage points for a subordinate-lien covered transaction with a loan amount less than **$78,277**.

o For all categories of QMs, the thresholds for total points and fees will be:
- 3 percent of the total loan amount for a loan greater than or equal to **$130,461**;
- $3,914 for a loan amount greater than or equal to **$78,277** but less than **$130,461**;
- 5 percent of the total loan amount for a loan greater than or equal to **$26,092** but less than **$78,277**;
- $1,305 for a loan amount greater than or equal to **$16,308** but less than **$26,092**; and
- 8 percent of the total loan amount for a loan amount less than **$16,308**.

o For open-end consumer credit plans under TILA, the threshold that triggers requirements to disclose minimum interest charges will remain unchanged at **$1.00**. https://www.govinfo.gov/content/pkg/FR-2023-09-21/pdf/2023-20476.pdf

Regulation C, HMDA

• The asset-size threshold to be exempt from collecting HMDA data in 2023 is adjusted to **$56 million**, up from $54 million. https://www.govinfo.gov/content/pkg/FR-2023-12-21/pdf/2023-28079.pdf

Community Reinvestment Act (CRA)

• The Board of Governors of the Federal Reserve System (FRB) and Federal Deposit Insurance Corporation (FDIC) CRA regulations have adjusted the asset-size thresholds used to define “small bank” and “intermediate small bank” to be:

o Small bank means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than **$1.564 billion**; and

o Intermediate small bank means a small bank with assets of at least **$391 million** as of December 31 of both of the prior two calendar years and less than **$1.564 billion** as of December 31 of either of the prior two calendar years. https://www.govinfo.gov/content/pkg/FR-2023-12-20/pdf/2023-27934.pdf

• The Office of the Comptroller of the Currency (OCC) made the identical adjustments to the asset-size thresholds used to define “small bank or savings association” and “intermediate small bank or savings association.” https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-40.html

Required Escrow Rate under Wisconsin Law

• The Wisconsin Department of Financial Institutions (WDFI) has established the interest rate that must be paid on required escrow accounts under section 138.052(5) of the Wisconsin Statutes. The new rate is **0.18%**. https://dfi.wi.gov/Pages/FinancialInstitutions/BankingSavingsInstitutions/EscrowNotice.aspx

Other Regulatory Thresholds and Limits

• The dollar amount of the maximum allowable charge for disclosures by a consumer reporting agency to a consumer pursuant to Fair Credit Report Act (FCRA) section 609 for the 2024 calendar year is **$15.50**. https://www.govinfo.gov/content/pkg/FR-2023-11-15/pdf/2023-25172.pdf

• The exemption threshold for Regulation M (Consumer Leasing Act) will increase to **$69,500,** up from $66,400. https://www.govinfo.gov/content/pkg/FR-2023-11-29/pdf/2023-25049.pdf

• The FDIC Designated Reserve Ratio remains **2 percent** for 2024. https://www.govinfo.gov/content/pkg/FR-2023-11-22/pdf/2023-25814.pdf

• The OCC is maintaining the general assessment, independent trust, and independent credit card fee schedules from 2023. There will be no inflation adjustment to assessment rates. OCC is increasing the hourly fee for special examinations and investigations to $170 from $161. The increase is to ensure adequacy in recovering the cost of conducting special examinations and investigations. https://www.occ.treas.gov/topics/supervision-and-examination/examinations/assessments-and-fees/notice-of-fees-semiannual-assessment.html

Special Focus

• Contribution limit for employees who participate in 401(k), 403(b), most 457 plans, and the federal government's Thrift Savings Plan is increased to **$23,000**, up from $22,500. The limit on annual contributions to an IRA increased to **$7,000**, up from $6,500. www.irs.gov/newsroom/401k-limit-increases-to-22500-for-2023-ira-limit-rises-to-6500

• Multifamily loan purchase caps for Fannie Mae and Freddie Mac will be **$70 billion** for each enterprise, for a combined total of $140 billion. The caps reflect current market forecasts. FHFA will continue to require that at least 50 percent of Fannie's and Freddie's multifamily business be mission-driven affordable housing. https://www.fhfa.gov/Media/PublicAffairs/PublicAffairsDocuments/2024-Multifamily-Caps-Fact-Sheet.pdf

• The conforming loan limit values for mortgages to be acquired by Fannie Mae and Freddie Mac in 2024 for one-unit properties will be **$766,550** an increase from $726,200. https://www.fhfa.gov//Media/PublicAffairs/Pages/FHFA-Announces-Conforming-Loan-Limit-Values-for-2024.aspx

• New loan limits for FHA's Single Family Title II Forward and Home Equity Conversion Mortgage (HECM) insurance programs, based upon property size and location, range from **$498,257** to **$3,317,400**. https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_265

• Beginning January 1, 2024, the standard IRS mileage rates for the use of a car (also vans, pickups or panel trucks) will be as follows. The rates apply to electric and hybrid-electric automobiles, as well as gasoline and diesel-powered vehicles.

- o **67** cents per mile driven for business use, up 1.5 cents from 2023;
- o **21** cents per mile driven for medical or moving purposes for qualified active-duty members of the Armed Forces, a decrease of 1 cent from 2023; and
- o **14** cents per mile driven in service of charitable organizations; the rate is set by statute and remains unchanged from 2023. https://www.irs.gov/newsroom/irs-issues-standard-mileage-rates-for-2024-mileage-rate-increases-to-67-cents-a-mile-up-1-point-5-cents-from-2023

Regulatory Spotlight

Agencies Issue 2024 CRA Asset-Size Thresholds.

The Board of Governors of the Federal Reserve System (FRB) and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) issued a final rule to amend their Community Reinvestment Act (CRA) regulations to adjust the asset-size thresholds used to define "small bank" and "intermediate small bank." As required by the CRA regulations, the adjustment to the threshold amount is based on the annual percentage change in the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W). Under the final rule, "small bank" means a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.564 billion. "Intermediate small bank" means a small bank with assets of at least $391 million as of December 31 of both of the prior two calendar years and less than $1.564 billion as of December 31 of either of the prior two calendar years. The final rule is effective **01/01/2024**. The final rule may be viewed at: https://www.govinfo.gov/content/pkg/FR-2023-12-20/pdf/2023-27934.pdf. *Federal Register*, Vol. 88, No. 243, 12/20/2023, 87895-87897.

The Office of the Comptroller of the Currency (OCC) announced revisions to the asset-size threshold amounts used to define "small bank or savings association" and "intermediate small bank or savings association" under the Community Reinvestment Act (CRA) regulations. The adjusted threshold amounts are based on the annual percentage change in a measure of the Consumer Price Index. For CRA purposes, beginning **01/01/2024**, a bank that, as of December 31 of either of the prior two calendar years, had assets of less than $1.564 billion is a "small bank or savings association" and a "small bank or savings association" with assets of at least $391 million as of December 31 of both of the prior two calendar years and less than $1.564 billion as of December 31 of either of the prior two calendar years is an "intermediate small bank or savings association." The thresholds, which apply to any national bank, federal savings association, or state savings association, are effective **01/01/2024**. The bulletin may be viewed at: https://www.occ.gov/news-issuances/bulletins/2023/bulletin-2023-40.html.