FDIC Advisory Committee on Community Banking

May 2, 2024

Supervision and Policy Updates

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FDIC Advisory Committee on Community Banking

May 2, 2024

Economic Growth and Regulatory Paperwork Reduction Act

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The Economic Growth and Regulatory Paperwork Reduction Act of 1996 (EGRPRA)

Section 2222 of the EGRPRA requires the FFIEC and the OCC, FRB, and FDIC to:

- Seek public comment on whether regulations contain outdated, unnecessary or unduly burdensome requirements;
- Conduct the review at least once every 10 years;
- Publish in the Federal Register (FR) a summary of the comments received, identifying and discussing the significant issues raised;
- Report to Congress on any significant issues raised by the public, the merits of such issues, and how burden can be addressed; and
- Eliminate unnecessary regulations to the extent that such action is appropriate.

FDIC Advisory Committee on Community Banking

May 2, 2024

Managing Commercial Real Estate Concentrations

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Advisory: Managing Commercial Real Estate Concentrations in a Challenging Economic Environment

FDIC issued Financial Institution Letter (FIL) – 64-2023 on December 18, 2023.

Replaces FIL-22-2008 issued on March 17, 2008.

Updates and builds upon previously issued guidance.

Highlights previous challenging economic environments.

Describes current challenging economic environment and real estate conditions.

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Advisory: Managing Commercial Real Estate Concentrations in a Challenging Economic Environment (continued)

Conveys six key risk-management actions to help institutions with C&D and CRE concentrations manage through changes in market conditions:

1. Maintain Strong Capital Levels
2. Ensure the Credit Loss Allowances are Appropriate
3. Manage C&D and CRE Loan Portfolios Closely
4. Maintain Updated Financial and Analytical Information
5. Bolster the Loan Workout Infrastructure
6. Maintain Adequate Liquidity and Diverse Funding Sources

Advisory: Managing Commercial Real Estate Concentrations in a Challenging Economic Environment (continued)

Institutions with significant CRE concentrations are advised to consider the risk management principles discussed in the joint *Guidance on Concentrations in Commercial Real Estate Lending, Sound Risk Management Practices* (issued December 6, 2006).

Encourages institutions to continue making CRE credit available in their communities using prudent lending standards that rely on strong underwriting and loan administration practices.

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May 2, 2024

FDIC Statement of Policy on Bank Merger Transactions

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Proposed Revision to the FDIC Statement of Policy on Bank Merger Transactions

On March 21, 2024, the FDIC Board of Directors approved the publication of a revised Statement of Policy on Bank Merger Transactions (proposed SOP) in the *Federal Register* for a 60-day comment period. The proposed SOP:

Updates, strengthens, and clarifies the FDIC's policies related to the evaluation of bank merger applications.

Reflects legislative and other developments that have occurred since the current SOP was last updated in 2008.

Considers comments submitted in response to the FDIC's March 2022 Request for Information and Comment on Rules, Regulations, Guidance, and Statements of Policy Regarding Bank Merger Transactions.

Proposed Revision to the FDIC Statement of Policy on Bank Merger Transactions

Proposes a principles-based overview of FDIC administration of responsibilities under the Bank Merger Act.

Describes the FDIC's expectations for application processing, emphasizing the pre-filing process and filing a substantially complete application.

Highlights other matters and considerations

- interstate mergers and
- the unique aspects of applications from
  - non-banks
  - operating non-insured entities and
  - banks that are not traditional community banks.

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Proposed Revision to the FDIC Statement of Policy on Bank Merger Transactions

Addresses each statutory factor separately.

Includes a declarative statement to highlight the Board's expectations for the evaluation of each factor and describes the analytical considerations.

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Proposed Revision to the FDIC Statement of Policy on Bank Merger Transactions

Anti-Competitive Effects

- FDIC assessment of competitive effects:
  - ➢ Expectation that a resulting insured depository institution (IDI) operates in a competitive environment in which consumers would retain meaningful choices.
  - ➢ Considers concentrations beyond those based on deposits.
  - ➢ Establish a policy against entering into or enforcing non-compete agreements.

Proposed Revision to the FDIC Statement of Policy on Bank Merger Transactions

Financial Resources, Managerial Resources, and Future Prospects

- Evaluates whether the resulting IDI will reflect sound financial performance and condition.
- Assesses management's capabilities to administer the resultant IDI's affairs in a safe and sound manner, and its ability to implement integration plans and strategies.
- Considers whether the resulting IDI will be able to operate in a safe and sound manner and maintain an acceptable risk profile on a sustained basis.
- Affirms long-standing FDIC practice that non-standard conditions should not be used as a means to find favorably on a statutory factor when material concerns are present.

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Proposed Revision to the FDIC Statement of Policy on Bank Merger Transactions

Effectiveness in Combatting Money Laundering Activities

- Articulates the evaluative considerations used to assess the effectiveness in combatting money laundering.

Convenience and Needs of the Community to be Served

- Expectation that a resulting IDI is positioned to ***better*** meet the convenience and needs of the community to be served.
- Will also consider public input. Hearings generally expected:
  - where resulting IDI will exceed $50 billion in assets or
  - where a significant number of CRA protests are received.

Proposed Revision to the FDIC Statement of Policy on Bank Merger Transactions

Risk to the Stability of the United States Banking or Financial System

- The Dodd-Frank Act amended the Bank Merger Act to include a statutory factor related to the risk to the stability of the United States banking or financial system.
- The assessment focuses on:
  - The size of the entities involved in the transaction;
  - The availability of substitute providers for any critical products or services to be offered by the resulting IDI;
  - The resulting IDI's degree of interconnectedness with the U.S. banking or financial system;
  - The extent to which the resulting IDI contributes to the U.S. banking or financial system's complexity; and
  - The extent of the resulting IDI's cross-border activities.
- A resulting institution with $100 billion or more in assets is more likely to present potential financial stability concerns, and thus will be subject to added scrutiny.

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Proposed Revision to the FDIC Statement of Policy on Bank Merger Transactions

Provides clarity for public and staff.

Enhances the effectiveness of the FDIC’s framework.

Changes intended to positively affect safety & soundness, financial stability, community accountability, & competitiveness of the banking system.

Publication for comment provides additional opportunity for public input.

The FDIC continues to coordinate with the OCC, Federal Reserve, and DOJ.

FDIC Advisory Committee on Community Banking

May 2, 2024

RMS: Operational Risk Updates

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May 2, 2024

Consumer Identification Program Rule

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Customer Identification Program Request for Information

Request for Information (RFI) and Comment on Customer Identification Program (CIP) Rule Taxpayer Identification Number (TIN) Collection Requirement

- Issued by the Financial Crimes Enforcement Network (FinCEN), in consultation with staff from:
  - Federal Deposit Insurance Corporation,
  - Board of Governors of the Federal Reserve System,
  - National Credit Union Administration, and
  - Office of the Comptroller of the Currency.
- Published on March 28, 2024, with a 60-day comment period.

Customer Identification Program Request for Information: Key Points and Comment Categories

Seeks information to understand the potential risks and benefits of:

1. **permitting the partial collection of a TIN directly from the customer, *and***
2. **using reputable third-party sources to obtain the remaining TIN digits prior to account opening.**

Emphasizes, this practice is <u>not</u> permissible for banks pursuant to the CIP Rule requirements, with the exception of establishing credit card accounts.

Reminds banks that they must continue to comply with the current CIP rule requirement to collect a full SSN for U.S. individuals *from the customer prior to account opening*.

FDIC Customer Identification Program Rule Advisory

FDIC Advisory: [Collecting Identifying Information Required Under the Customer Identification Program (CIP) Rule.]

The Advisory reminds FDIC-supervised financial institutions of the information to be collected from customers prior to account opening.

CIP procedures must include collecting certain information (i.e., customer's name, date of birth, address, and identification number) from the customer, prior to account opening, regardless of method used to open the account.

These requirements exist regardless of whether the bank establishes this relationship directly with the customer or through an intermediary.

FDIC Advisory Committee on Community Banking

May 2, 2024

Beneficial Ownership Information

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Corporate Transparency Act Beneficial Ownership Information

FinCEN was required to implement the Corporate Transparency Act (CTA) requirements through three separate, but related, rulemakings:

1. **Beneficial Ownership Information (BOI) Reporting Rule (issued September 30, 2022),**
2. **BOI Access Rule (issued December 21, 2023), and**
3. **Customer Due Diligence Rule update (modifications not yet proposed)**

BOI Reporting Timeframes

FinCEN launched the BOI E-Filing website on January 1, 2024.
The following BOI reporting timeframes apply:

- A reporting company created or registered before January 1, 2024, will have until January 1, 2025, to file its initial BOI report.
- A reporting company created or registered in 2024 will have 90 days to file after receiving notice that its creation or registration is effective.
- A reporting company created or registered on or after January 1, 2025, will have 30 days to file after receiving notice that its creation or registration is effective.

Over one million BOI reports have been filed since January 2024.

BOI Reporting Company Data Elements

A reporting company must provide the following information

- Legal name
- Any trade names, "doing business as," or "trading as" names
- Current street address of its principal place of business
- Jurisdiction of formation or registration
- Taxpayer Identification Number
- Each reporting company beneficial owner must provide:
  - individual's name
  - date of birth
  - residential address
  - identifying number

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BOI Access Framework

FinCEN is authorized to disclose BOI to six categories of authorized recipients.

- Recipients will be subject to specific security and confidentiality requirements, in line with the CTA, to protect the security and confidentiality of BOI.
- CTA makes it unlawful for any person to knowingly disclose or use BOI obtained from a report, unless such disclosure is authorized under the CTA.
- FinCEN will follow a phased approach to provide access to the BOI e-filing system. The anticipated dates for access under the various stages have not yet been announced by FinCEN.

FinCEN BOI Resources

Small Business Resources

Reference Materials

BOI Newsroom

Get FinCEN News Updates

Stay Informed with FinCEN Updates

Subscribe

BOI | BENEFICIAL OWNERSHIP INFORMATION

Many companies are required to report information to FinCEN about the individuals who ultimately own or control them. FinCEN began accepting reports on January 1, 2024. Learn more about reporting deadlines.

Prepare

- How do I file?
- Do I qualify for an exemption?
- How do I get a FinCEN ID?

File

- File a report using the BOI E-Filing System
- Create a FinCEN ID (optional)

FAQ Need More Information? View our FAQ page.

Need More Information? Chat With Us Here.

Stay Informed. Subscribe to FinCEN Updates.

FinCEN Small Business Resources

Small Entity Compliance Guide

Small Entity Compliance Guide

Frequently Asked Questions

BOI Frequently Asked Questions

Brochure Introduction to BOI Reporting

BOI Information Brochure

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FDIC Advisory Committee on Community Banking

May 2, 2024

Check Fraud

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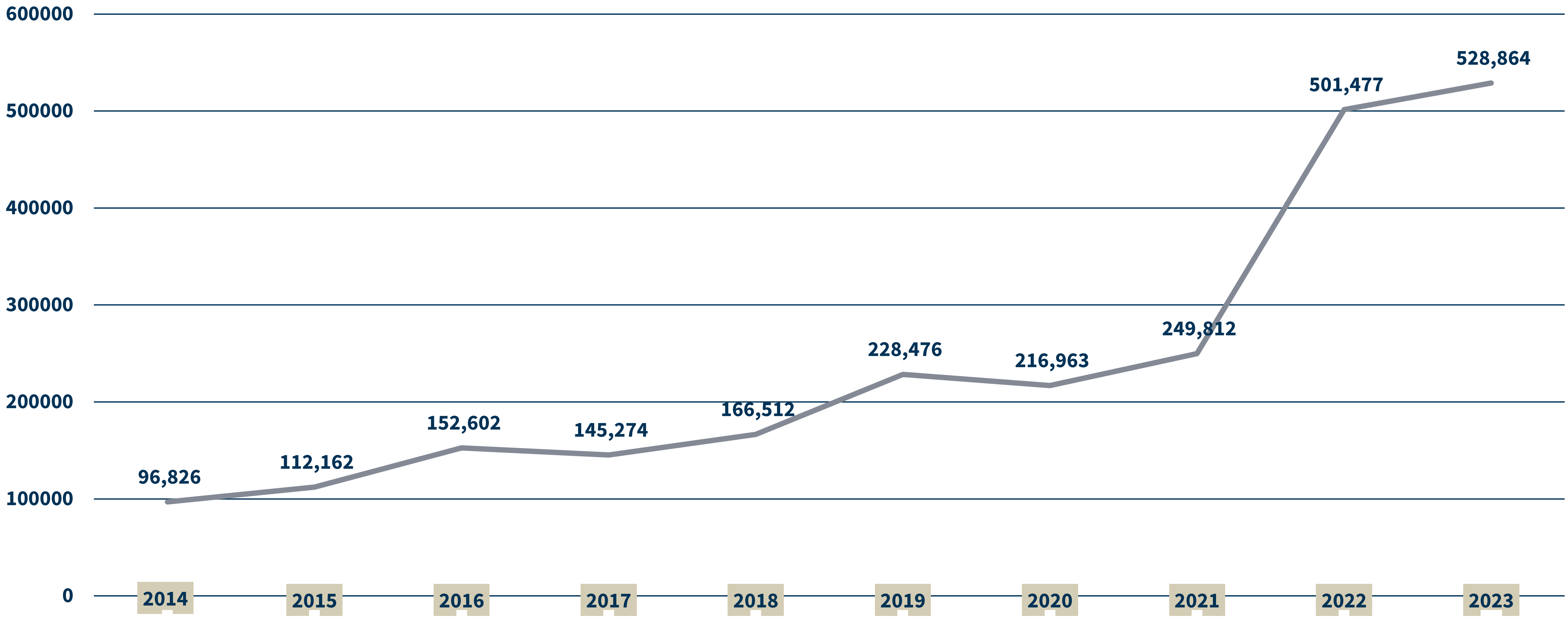
Check Fraud – Suspicious Activity Report Trends



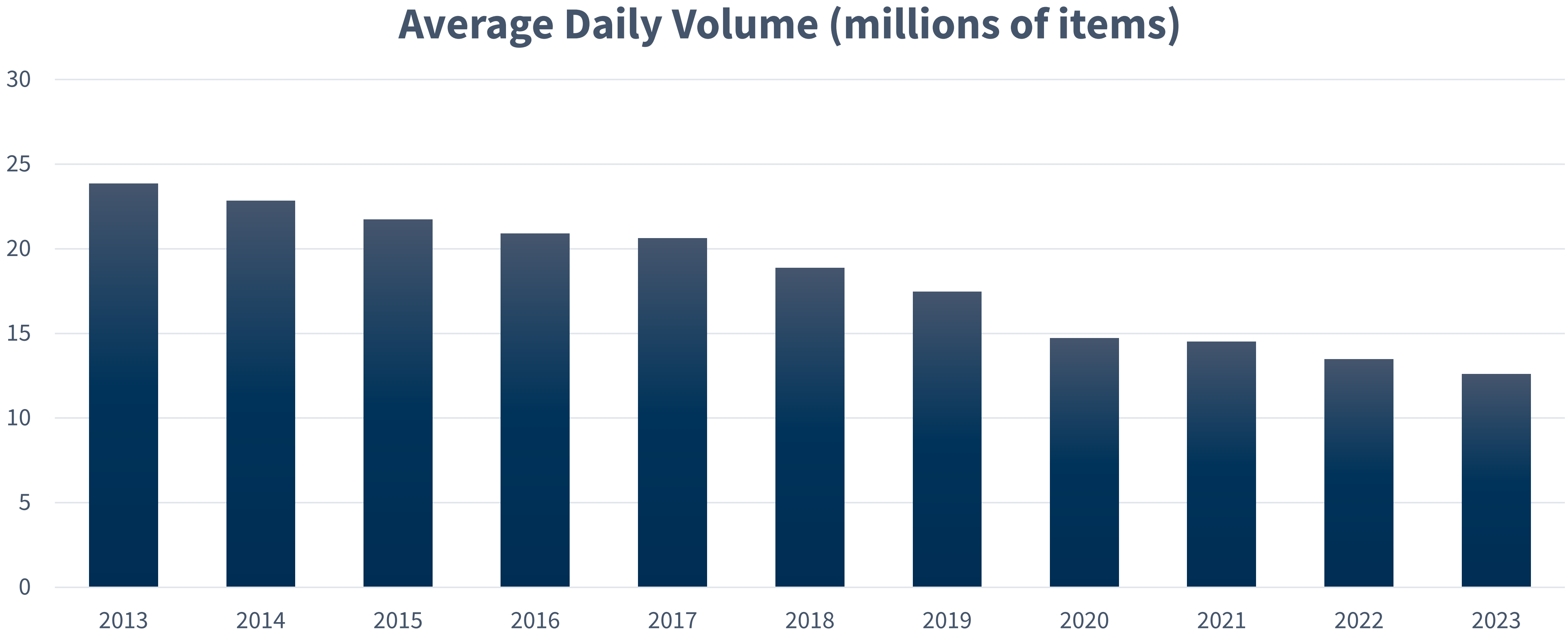
Source: FinCEN

Check Fraud

"With the decline in check usage, why are financial institutions and merchants seeing an increase in fraud losses related to checks? The simple answer is because checks are easy to counterfeit or alter."

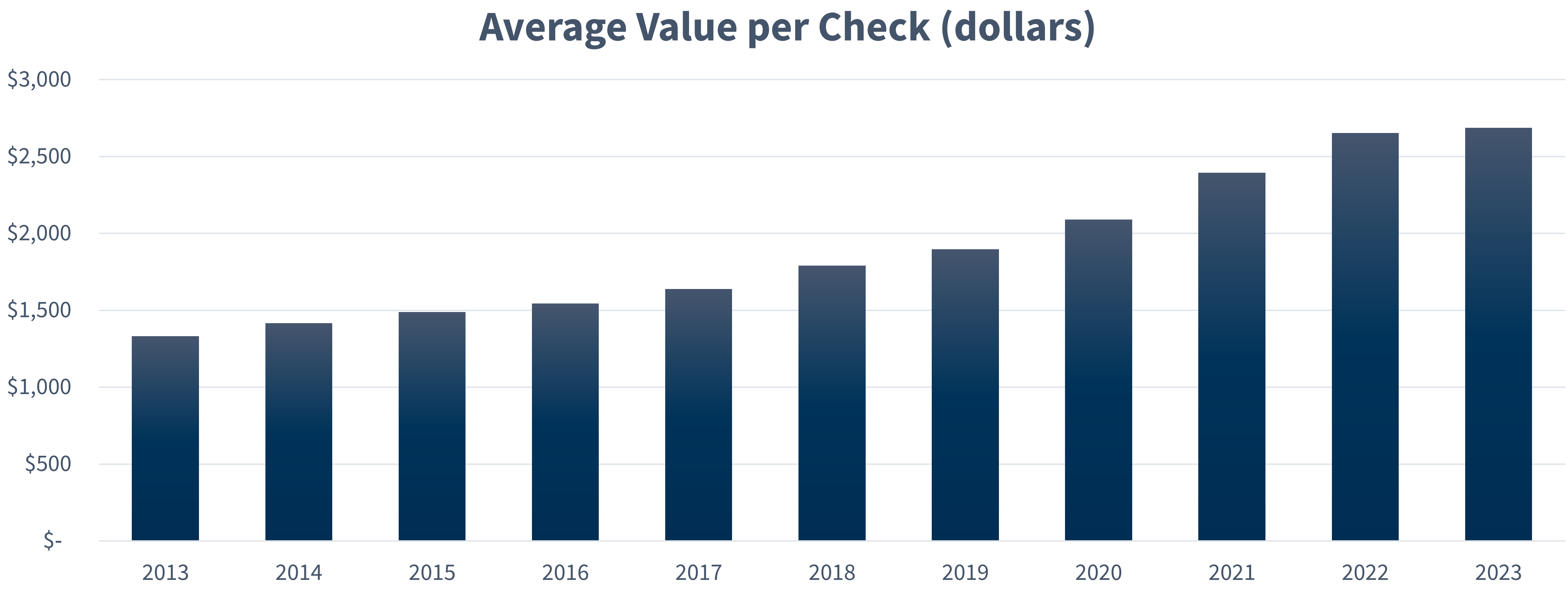
~ Take on Payments Blog
Retail Payments Risk Forum
Federal Reserve Bank of Atlanta

Check Usage



Source: Federal Reserve – Payments Systems Data

Check Fraud



Source: Federal Reserve – Payments Systems Data

Common Types of Check Fraud

Mail Theft	Criminals obtain real checks by stealing from U.S. postal boxes or other mail facilities.
Counterfeits	Fraudsters take information from real accounts and input onto a check template.
Double Presentment	Depositing a check into a drop account using mobile remote deposit capture and then going into a check cashing business to attempt to cash the check again.

Check Washing

***Check washing* is a process where information is chemically or electronically erased from a legitimate check and items such as the amount and payee are replaced.**

Check Washing

Check Fraud Mitigation Strategies

Customer Identification Program:

- Business rules built into automated workflows for new accounts to ensure the accuracy of inputs and verification processes.
- Periodic risk assessments.
- Addressed prior regulatory or audit findings.

Training and Resources:

- Frequency of training and covering emerging risks, such as check fraud.
- Adequate staffing levels based on current and expected fraud levels.

Check Fraud Mitigation Strategies

Suspicious Activity Reports:

- Accurate reporting.
- Purposeful data collection.

Regulation CC Exceptions:

- “Reasonable cause to doubt collectability.”
- Identify and document examples of actual check fraud from alerts and reviews.
- Provide regular training on identifying check fraud and properly utilizing Regulation CC exceptions.

Check Fraud Mitigation Strategies

ATM / Mobile Deposit Limits:

- Appropriate for offered products and services.
- Limits based on an analysis of typical transaction amounts.

Two-Factor Authentication:

- Inventory of bank products requiring two-factor or multi-factor authentication.

Corporate Governance:

- Tone at the Top.
- Monitoring and Reporting.
- Front-End Prevention versus Back-End Detection.

Check Fraud Mitigation Strategies

Consumer Education:

- Utilize social media, mailings, pamphlets, website, or mobile applications to promote consumer education related to check fraud.
- Partner with community or local non-profit groups to provide financial literacy and awareness training.

Positive Pay:

- Evaluate the cost/benefit based on volume and type of check fraud.
- Solicit and track the success of getting commercial customers signed up for positive pay solutions.
- Incentivize staff and customers to utilize solutions.

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Check Fraud Mitigation Strategies

Public-Private Information Sharing:

- NACHA – ACH Contact Registry.
- American Bankers Association – Check Fraud Claim Directory.

Behavioral-Based Detection:

- Analyzes check-based activity on an account and determines the potential for fraud.
- Assists the institution in identifying cases that require further review and action.

Automated Check Validation:

- Check Stock Validation.
- Automated Signature Verification.
- Alteration Detection.
- Writer Verification.

Check Fraud Mitigation Strategies

Dark Web Monitoring Software:

- Provides immediate information regarding the potential exposure of check images, account holder information, and personal information being sold online.
- Considerations:
    - o Frequency of reports.
    - o Sufficient resources to handle large volumes of data.
    - o Monitoring vectors.
    - o Multiple languages.

Resources

ABA Check Fraud Claim Directory.

ABA, "Fake Check Scams," August 31, 2018.

ABA and USPIS, "ABA and US Postal Inspection Service Announce Partnership to Combat Check Fraud," March 19, 2024.

BBB, "Don't Cash that Check: BBB Study Shows How Fake Check Scams Bait Consumers," September 2018.

BBB, www.bbb.org/scamtracker.

FDIC, "FDIC Consumer News: Beware of Fake Checks," August 2019.

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Resources (continued)

FinCEN, "FinCEN Alert on Nationwide Surge in Mail Theft-Related Check Fraud Schemes Targeting the U.S. Mail," February 27, 2023.

NACHA, "Sound Business Practices for Companies to Mitigate Account Takeover," 2017.

NACHA, "As Check Fraud Surges, NACHA's ACH Contact Registry – Yes, ACH – is the Leading Source for Check Contacts. Has Your Institution Entered Your Check Contacts?," July 18, 2023.

ReportFraud.ftc.gov.

FDIC Advisory Committee on Community Banking

May 2, 2024

Part 328 of the FDIC Rules and Regulations

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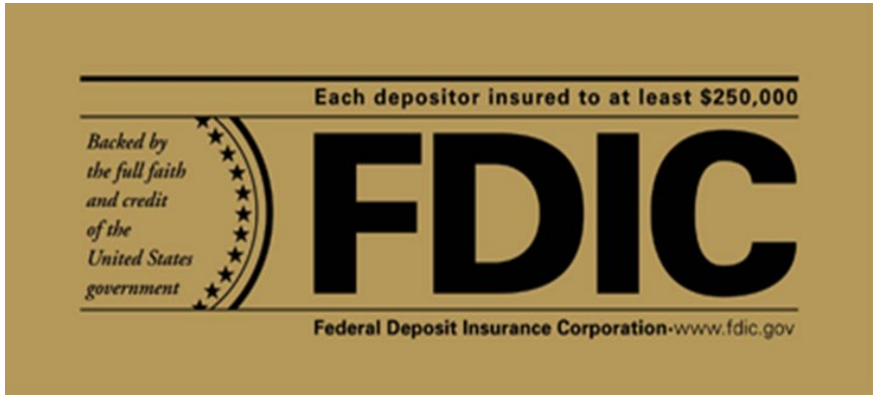
Maintaining a Public Confidence in our Banking System

The FDIC's mission is to maintain stability and public confidence in the nation's financial system by, among other priorities, insuring bank deposits.

The FDIC has helped to maintain public confidence in the nation's banking system in times of financial turmoil.

FDIC official sign and advertising statement requirements for insured banks date back to the Banking Act of 1935.



Developments in Consumer Access to Financial Products

Digital banking channels

For many consumers, an IDI's ATM, website, or mobile application effectively serves as a digital teller window.

Deposits and non-deposit products offered through same banking channel

Increasingly broad array of financial products offered through banking channels, including non-deposit products.

Bank branches

Layouts have evolved, including the use of electronically-staffed kiosks, interactive ATMs, and teller-less cafés where deposits can be accepted via tablets or ATMs.

Growth in fintech companies offering consumers new options for accessing financial products.

Can blur the distinction between IDIs and non-banks for many consumers, increasing the potential for confusion regarding FDIC deposit insurance.

Part 328 of the FDIC Rules and Regulations

The FDIC published a final rule amending Part 328.

Part 328:

- governs the use of the FDIC official sign and advertising statement, such as the display of the FDIC official sign where insured deposits are usually and normally accepted; and
- prohibits **any person** including banks, nonbank entities, and others, from making false or misleading representations about FDIC deposit insurance or misusing the FDIC name or logo.

Effective date is April 1, 2024, but the compliance date is January 1, 2025.

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Final Rule Objectives

Modernize the FDIC Official Sign and Advertising Rules to ensure they keep pace with significant changes that have taken place in the banking industry and that they reflect how consumers engage with banks today.

Address risk of consumer confusion by requiring clear disclosures that enable consumers to better understand when they are interacting with an IDI and when their funds are protected by the FDIC's deposit insurance coverage.

Clarify the FDIC's misrepresentation rules to address misconduct in internet banking channels by persons misusing the FDIC name or logo and inaccurately describing deposit insurance coverage.

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Official FDIC Sign: Updated Requirements

Branches **with** teller windows – If IDIs usually and normally receive deposits at teller windows or stations, IDIs are required to display the official sign at each teller window or station. <u>Status quo</u> – <u>Not a new requirement</u>.

- If non-deposit products **are not offered**, official signs visible from teller windows in branch could replace teller-based signs. <u>Provides flexibility</u>.

Other physical premises **without** teller windows (e.g., cafes) – Required to display the official sign in one or more locations in a size large enough to be legible anywhere in those deposit taking areas.

New FDIC Official Digital Sign

FDIC Official Digital Sign	FDIC *FDIC-Insured - Backed by the full faith and credit of the U.S. Government*
Bank websites and mobile apps	Must display the FDIC official digital sign clearly, continuously, and conspicuously, near the top of certain pages and in close proximity to the bank name.
ATMs and similar devices	If receives deposits and does not offer non-deposit products, may display physical official sign or official digital sign. If offers non-deposit products, must display official digital sign. Certain new ATMs must display official digital sign after January 1, 2025.

Non-Deposit Products Sign

At banking locations and on devices (e.g., branches, websites, apps, and ATMs) where both insured deposits and non-deposit products are offered, IDIs are required to use a “non-deposit sign” indicating **non-deposit products are not insured by the FDIC; are not deposits; and may lose value**:

- ***Branches and other physical premises***: at each location within the premises where non-deposit products are offered, must continuously, clearly, and conspicuously display non-deposit signs.
- ***Websites, apps, and ATMs***: on each page relating to non-deposit products, must clearly, conspicuously, and continuously display non-deposit signs.

Misrepresentations of Deposit Insurance

The FDIC has observed an increase in misleading representations about deposit insurance on the internet and other digital channels, which can result in consumer confusion and harm.

These types of misleading statements create uncertainty and could dilute and undermine the public confidence that underpins banks and our nation's broader financial system.

The final rule clarifies requirements regarding situations where consumers may be misled about deposit insurance.

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Misrepresentations of Deposit Insurance

Revisions clarify that the following actions violate Part 328:

1. A non-bank's use of either the official FDIC sign or the new FDIC official digital sign in a manner that **inaccurately states or implies the non-bank is FDIC-insured**;

2. A non-bank makes a statement regarding deposit insurance, **but fails to state** that it is **not FDIC-insured** and that deposit insurance applies **only if an insured bank fails;**

3. Use of the official advertising statement or FDIC-Associated Terms or FDIC-Associated Images, in a manner that **inaccurately states or implies that a person other than an insured bank is insured**.

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Misrepresentations of Deposit Insurance

Actions that violate Part 328 (continued):

4. A person makes statements regarding deposit insurance in a context that involves both deposits and non-deposit products in close proximity on a website, **but fails to state that non-deposit products: are not insured by the FDIC; are not deposits; and may lose value**.

5. A person makes statements regarding pass-through deposit insurance for its customers' funds, **but fails to state clearly and conspicuously that certain conditions must be satisfied** for pass-through deposit insurance coverage to apply.

6. A non-bank advertises a product as FDIC insured, **but fails to clearly and conspicuously identify the IDI(s) that may hold customer funds.**

Bank Policies and Procedures Requirement

Requires banks to establish and maintain written policies and procedures addressing compliance with Part 328:

- **provisions related to activities of persons (third parties) that provide deposit-related services to the bank or offer the bank's deposit-related products or services to other parties; and**
- **commensurate with the nature, size, complexity, scope, and potential risk of the deposit-taking activities of the bank.**

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Implementation Plans for Part 328

FDIC to host four live banker seminars in 2024 for Part 328 stakeholders.

Each seminar will be followed by a question and answer session.

FDIC staff responding to inquiries from bankers, the industry, and the public about the application of the final rule.

Developing Interagency Examination Procedures on Part 328.

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