



Missouri Bankers Association

March 7, 2025

Board of Governors of the Federal Reserve System
20th Street and Constitution Ave. NW
Washington, D.C. 20551
Attention: Ann E. Misback, Secretary, Comments EGRPRA)
regs.comment@federalreserve.gov

Federal Deposit Insurance Corporation
550 17th Street NW
Washington, D.C. 20429
Attention: James P. Sheesley, Assistant Executive Secretary, Comments Legal
OED(EGRPRA)

Office of the Comptroller of the Currency
400 7th Street, SW, Suite 3E-218
Washington, D.C. 20219
Attention: Chief Counsel's Office, Comment Processing

RE: Dockets/Filing
Regulatory Publication and Review Under the Economic Growth and
Regulatory Paperwork Reduction Act of 1996

Federal Reserve Docket No. OP-1828
regs.comment@federalreserve.gov
FDIC RIN 3064-ZA39
<https://www.fdic.gov/resources/regulations/federal-register-publications/>
Docket ID OCC-2023-0016)
<https://regulations.gov/>

Dear Federal Supervisory Officials:

The Missouri Bankers Association is pleased to offer you our comments focused on two of the matters presented in your third round EGRPRA review: bank safety and soundness, and rules of procedure.

The FDIC quarterly profile for the last quarter of 2024 shows Missouri is home to 206 chartered banks. The Missouri Division of Finance reports 193 state bank charters. Missouri is home to the fourth largest number of bank charters in the fifty states. Our banks are diverse, from \$32 million in assets to over \$50 billion. We are home to regional banks and to single location banks.

12 CFR part 363 – FDICIA Requirements – Cost vs. Benefit – Reset the Thresholds

This regulation implements 12 USC 1831m of the Federal Deposit Insurance Corporation Improvement Act of 1991. The statute specifies a small institution exemption based on \$150 million in assets but vests the FDIC with authority to prescribe a higher threshold by regulation. The FDIC, in 1992, set the asset thresholds described below.

FDICIA Requirements for over \$500 Million in Assets

After a bank exceeds \$500 million in assets, the following additional FDICIA requirements will become effective:

- Comparative audited financial statements are due to the appropriate federal bank agency within 120 days after the fiscal year-end for non-public banking institutions. A bank that anticipates meeting the \$500 million threshold by the end of the current fiscal year, will want to consider having an audit completed in the prior year so that when the audit requirement is met next year, the bank will present comparative audited financial statements.
- Auditor independence rules also become more stringent once this asset level is reached. Among other items, auditors are no longer allowed to prepare the institution's financial statements as a non-attest service with the audit. Since the audited financial statements are required to be comparative, this also applies to the year before crossing the \$500 million mark. Management should evaluate if they have the resources internally to prepare the financial statements. If not, some institutions outsource this service to another accounting firm.
- Establish an audit committee with mostly independent outside directors.
- A statement of management's responsibilities for the following:
 - Preparing the institution's annual financial statements
 - Establishing an adequate internal control structure for procedures for financial reporting
 - Complying with laws and regulations relating to safety and soundness pertaining to insider loans and dividend restrictions

FDICIA Requirements for over \$1 Billion in Assets

In addition to the above requirements, the following FDICIA requirements also apply to banks that cross \$1 billion in assets:

- All members of the audit committee must be outside directors.

- Obtain a management report on the effectiveness of the internal control structure at the end of the fiscal year.
- Management must attest to the effectiveness of internal control over financial reporting. The auditor is also required to issue an opinion on the institution's internal control over financial reporting in addition to the opinion on the financial statements. This is generally the heaviest lift in terms of additional requirements under FDICIA. It requires significant additional personnel, time, documentation and costs. The process for evaluating the internal control framework, documenting policies and procedures, and testing should start well in advance of crossing the \$1 billion threshold to ensure the institution is ready for implementation. Some financial institutions outsource this function of their internal control process.

Cost vs. Benefit – Reset the Thresholds

Our community banks report that costs for meeting Part 363 requirements can be upwards of \$150,000 or more, annually. These requirements also demand management and board resources to administer and oversee. The \$1 billion threshold has always been costly, but a 2020 change to standards on attestation engagements in the auditing industry made it even more so.

A significant issue that negatively impacts on the quality of bank examinations is that examiners are often more focused on the *risk-management process* than *actual financial risk*. Part 363 reflects, in part, a “check the box” exercise that detracts from the substance and quality of bank examinations.

The asset thresholds need to be re-evaluated based on consideration of all risk factors and balanced so that bank money and management resources are allocated appropriately. The impact of inflation over the past 33 years must be considered for the asset thresholds to be truly reflective of the size, complexity, and operations of banks. The thresholds also need to account for changes in internal operations, in how banks resource and deliver services to customers, and how banking services are accessed by customers.

These thresholds are extremely impactful to banks in the middle of the United States. Missouri has 42 banks with assets between \$250 million and \$500 million. Missouri has 31 banks with assets between \$500 million and \$1 billion.

The median number of bank employees in the latter asset class is 101. The median compensation of a customer service representative is \$37,000. The median compensation for a chief operating officer, chief risk officer, or a chief financial officer ranges from about

\$155,000 to 165,000.¹ Thus, the impact on a bank that reaches the \$1 billion threshold under Part 363 is the equivalent of three front-line employees or one high level executive with oversight of operations, risk or financial reporting responsibilities.

The Missouri Bankers Association respectfully suggests that the asset thresholds described above be increased to at least \$1 billion and \$2.5 billion dollars respectively to ensure that the heightened audit and review requirements are appropriate to the size, scale, and risk profile of the bank.

Rules of Procedure

This comment is also directed at the guidelines and procedures of each agency for their respective Supervisory Appeals Review Committee procedures which also address contested agency actions.

On June 26, 2024, the U.S. Supreme Court issued a very important decision in *SEC v. Jarksey* that limit the matters that can be reviewed in administrative proceedings when an agency is seeking civil penalties. These are matters where a private party may be entitled to a trial by jury and the due process assured by an independent judicial decider.

The FDIC has reserved to itself the authority to find, and levy severe “level 3” penalties in the context of examination report *findings* – a practice that provides *no due process* to a bank.

Anytime the agencies levy fines or order restitution for alleged grievous conduct, due process requires notice and hearing. In addition, no person, business, or bank should be subject to sanctions for matters not proscribed by rule, law, or prior order. The agencies, and particularly the FDIC, have levied penalties by way of examination findings based only on opinion and judgment, with no express violation of rule, law, or prior order. No person should be deprived of property without prior notice of charges and an opportunity for hearing before an independent decider or judge.

Rules of procedure in the context of any administrative hearing are rules of due process. Rules of due process are a fundamental tenet of fairness. Government must always provide due process in matters that affect life, liberty, or property. This includes notice and opportunity to be heard, and to have a decision by a neutral decision-maker.

Effective due process practices also serve to temper the actions of government agencies and promote careful consideration of facts and law, that in turn promote sound judgment, practices, and conduct. When the bank supervisory agencies provide due process, the

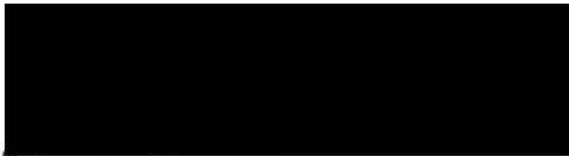
¹ 2024 MBA Compensation and Benefits Survey

stability of our banks and our entire financial system is strong. When due process is denied, stability is undermined and the relationship between regulators and bankers also suffers because the absence of fair and balanced judgment fosters ill will.

Thus, the review of rules of procedure should be with an eye to properly classifying matters appropriate for review under administrative actions as compared to judicial actions, as well as assuring that the rules of administrative procedure provide elemental due process and are in accord with the Administrative Procedures Act and applicable judicial case precedent.

On behalf of our members, the Missouri Bankers Association thanks you for your attention to these important matters. Our recommendations will provide significant relief from regulatory burdens that do not yield equivalent benefits, improve agency procedure, assure regulatory oversight, and decision-making are conducted in a manner that fosters positive engagement with banks.

Sincerely,



Jackson Hataway
President and CEO