

Arkansas Banks Face Increased Regulation Based on Asset Growth

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Banks in Arkansas and throughout the country have experienced substantial asset growth in recent years. The Annual Report of the Commissioner of the State Bank Department in 2017 listed 80 state-chartered banks with combined total assets of approximately \$85.2 billion (average of \$1.065 billion per bank). In June of last year, the annual report listed 74 state-chartered banks with total assets of \$147 billion (average of \$1.986 billion). With increased size comes additional oversight.

There are several asset-based thresholds at which banks and bank holding companies (“BHC(s)”) become subject to additional regulation. The following is a general overview of these thresholds and their accompanying regulatory requirements.

\$500 Million

Once a bank reaches \$500 million in assets, it is no longer generally exempt from certain corporate governance regulations pertaining to independent auditing, financial reporting, and internal controls implemented under Section 36 of the Federal Deposit Insurance Corporation Improvement Act (“FDICIA”).

BHCs with less than \$500 million in assets are not subject to risk-based capital requirements if they are not engaged in significant nonbanking activities and do not have a material amount of debt or equity registered with the Securities and Exchange Commission.

\$1 Billion

For banks with \$1 billion or more in assets, regulations require lenders to establish flood insurance escrow accounts for loans secured by residential real estate or mobile homes in certain flood areas.

Banks with assets of more than \$1 billion are also subject to stricter corporate governance regulations pertaining to certain independent auditing, financial reporting, and internal controls implemented pursuant to FDICIA.

Between \$1 and \$3 Billion

Community Reinvestment Act compliance examinations are more stringent when a bank reaches a \$1.322 billion threshold.

Banks with at least \$2.23 billion in assets are subject to a “high-priced mortgage threshold” meaning the bank must establish escrow accounts for mortgages with interest rates that exceed average rates by certain amounts.

\$3 Billion

Banks that are below \$3 billion in assets are eligible for the less frequent regulatory examination of once per 18 months, so long as certain criteria related to capital adequacy are met and scores received on previous examinations are adequate. Once a bank reaches \$3 billion in assets, federal bank regulators must conduct an on-site examination of the bank at least once in each 12-month period.

When banks exceed \$3 billion in assets, BHC’s are no longer subject to the Federal Reserve Small Bank Holding Company and Small Saving and Loan Holding Company Policy Statement. The Policy Statement permits BHCs with under \$3 billion in total assets to take on more debt in order to complete an acquisition, provided they meet certain other requirements concerning nonbank activities, off-balance-sheet exposures, and debt and equity outstanding.

Also, because BHCs over \$3 billion are no longer subject to the Policy Statement, they must meet the same capital requirements at the holding company level that depository subsidiaries face. As a result, the bank subsidiaries of BHCs with more than \$3 billion are

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required to be well-capitalized and comply with all capital requirements, and Basel III capital requirements are applied to the parent holding company.

Once BHCs exceed \$3 billion, they are no longer eligible for streamlined reporting requirements for purchase or redemption of their own securities or acquisition of another bank or eligible nonbank firm. Under the regulations implementing FDICIA, banks with more than \$3 billion also face additional requirements related to audit committee membership.

\$5 Billion

All banks must submit a report of condition and income to the federal bank agencies at the end of every financial quarter of the year (often referred to as the "call report"). Once a bank surpasses the \$5 billion asset threshold, they are no longer eligible for reduced reporting in the first and third quarters and can no longer use the shortest form of the call report.

\$10 Billion

The CFPB is the primary federal agency for consumer compliance supervision and enforcement at banks with more than \$10 billion in assets. The interchange fees that banks with over \$10 billion in assets receive when customers use debit cards to make purchases are capped by the Federal Reserve. Banks with less than \$10 billion in assets are exempted from Section 619 of the Dodd-Frank Act, often referred to as the Volcker Rule. The Volcker Rule generally prohibits banks from engaging in proprietary trading or sponsoring hedge funds or private equity funds.

Banks exceeding \$10 billion also have stricter mortgage escrow requirements, specific qualified mortgage rules, higher Community Bank Leverage Ratio requirements, and additional rules related to Management Interlock Restrictions and swap margin and capital requirements.

Our firm regularly advises bank and bank holding company clients on regulatory requirements and compliance. For more information or to contact our attorneys visit: [Banking & Finance Practice Group](#). Attorneys within this group include **Robert Smith**, **Bryan Duke**, **Taylor Stockemer** and **Madeline McElhanon**.

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