July 15, 2025

MEMORANDUM TO: Board of Directors

FROM: Ryan Billingsley, Acting Director
Division of Risk Management Supervision

SUBJECT: Notice of Proposed Rulemaking regarding Adjusting and Indexing Part 363 and Certain Other FDIC Regulatory Thresholds

SUMMARY: Federal Deposit Insurance Corporation (FDIC) staff present to the FDIC Board of Directors (FDIC Board) the attached notice of proposed rulemaking (proposal) for approval and request authorization of its publication in the *Federal Register*.

The proposal would update certain thresholds in the FDIC's regulations that are used to determine applicability of various regulatory requirements, including those set forth in 12 CFR part 363 related to annual independent audit and reporting requirements, and adjust most of those thresholds in the future based on a proposed indexing methodology. Specifically, the proposal would generally update the thresholds to reflect inflation from the date of initial implementation or the most recent adjustment and provide for future adjustments pursuant to an indexing methodology. The changes set forth in this proposal would provide a more durable regulatory framework by helping to preserve, in real terms, the level of certain regulatory thresholds set forth in the FDIC's regulations, thereby avoiding the undesirable and unintended outcome where the scope of applicability for a regulatory requirement changes due solely to inflation rather than actual changes in an institution's size, risk profile or level of complexity.

Concur:

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Matthew P. Reed
Acting General Counsel

Recommendation: FDIC staff present to the FDIC Board the attached proposal for approval and request authorization of its publication in the *Federal Register* with a 60-day public comment period.

Discussion:

I. Background

The FDIC uses thresholds within its regulations to determine the scope of applicability of various requirements. In general, the use of applicability thresholds allows the FDIC to differentiate and tailor regulatory requirements based on an institution's size, risk profile and level of complexity. For example, FDIC regulations commonly use total assets as a threshold to determine application of standards to larger financial institutions that would be inappropriate to apply to smaller financial institutions. Additionally, asset-based size thresholds can be combined with other thresholds that serve as proxies for an institution's risk profile or level of complexity. Thresholds therefore serve an important role in supporting a regulatory framework that can be appropriately tailored to the size, risk profile and complexity of financial institutions while also reducing regulatory compliance/undue burden for smaller financial institutions or activities involving exposures that do not warrant additional or heightened requirements.

Under the FDIC's regulations, most thresholds are static, with no mechanism for periodic adjustments over time. However, static dollar-based thresholds without periodic adjustments to reflect inflation do not preserve threshold levels in real terms, leading to unintended policy consequences. For example, smaller and mid-size institutions can become subject to requirements originally intended for relatively larger institutions, thereby increasing burden for reasons unrelated to changes in their inflation-adjusted size or risk profile. The adjustments provided for in this proposal are intended to help preserve, in real terms, the levels of certain thresholds in the FDIC's regulations. The proposal would help to address the undesirable and unintended outcome where an institution becomes subject to additional or more stringent regulatory requirements due solely to inflation rather than actual changes in the institution's size, risk profile or level of complexity.

The proposal would be the first of a multi-phase effort to reevaluate thresholds within the FDIC's regulations. The thresholds selected for this initial phase are thresholds that (1) appear within regulations issued only by the FDIC, (2) are not set by statute, and (3) are relatively straightforward to adjust.

II. Description of the Proposal

The proposal would initially update certain regulatory thresholds within FDIC regulations in consideration of historical inflation and other factors since the threshold was implemented or most recently updated. Additionally, staff is proposing to provide for automatic adjustments to most thresholds in the below-referenced regulations, according to pre-determined indexing methodology. Staff believes properly structured, predictable inflation-based adjustments promote a more durable regulatory framework that preserves the level of the thresholds in real terms and provides transparency and certainty to regulated institutions.

Under the proposal, certain dollar thresholds in the regulations above would be adjusted every consecutive two-year period based on the cumulative percent change of the non-seasonally adjusted Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W) index since the effective date of any final rulemaking. The FDIC would also adjust thresholds in any intervening year when the cumulative change in CPI-W exceeds 8 percent since the most recent adjustment. Under the proposed indexing methodology, the FDIC would not lower thresholds in any given year to reflect periods of deflation. Additionally, thresholds adjusted under the indexing methodology would be rounded, as appropriate, based on the size of the threshold (e.g., thousands, millions, billions), generally, to the nearest number with two significant digits. Adjusted thresholds would be effective April 1 of the year in which the adjustment is made, and the FDIC would amend thresholds in the Code of Federal Regulations by publishing a direct final rule, without notice and comment, in the *Federal Register* under delegated authority from the FDIC Board.

The proposal would initially update and index to inflation certain dollar-based thresholds used in the following regulations:

Part 303 – Filing Procedures

Part 335 – Securities of Nonmember Banks and State Savings Associations

Part 340 – Restrictions on Sale of Assets of a Failed Institution by the Federal Deposit Insurance Corporation

Part 347 – International Banking

Part 363 – Annual Independent Audits and Reporting Requirements

Part 380 – Orderly Liquidation Authority

The proposal would provide for a 60-day comment period, and request comment on all aspects of the initial threshold updates and the indexing methodology for future adjustments.

III. Alternatives

FDIC staff considered alternative approaches for updating current thresholds and for adjusting thresholds in future periods. These included alternative indices to measure inflation and other indices that could be used as a basis for updates or adjustments, such as measures of economic or banking industry activity. Staff also considered different ways in which the indexing methodology could be applied, such as applying the methodology consistently across all FDIC regulations identified in the proposal versus tailoring an indexing approach to the factors and considerations specific to each FDIC regulation. Finally, staff considered alternatives for the frequency and manner in which adjustments should be made. The proposal also would seek comment on these alternatives.

Conclusion:

FDIC staff presents to the FDIC Board the attached Notice of Proposed Rulemaking for approval and request authorization of its publication in the *Federal Register* with a 60-day public comment period.

Staff Contacts:

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