November 18, 2025

MEMORANDUM TO: Board of Directors

FROM: Ryan Billingsley, Director
Division of Risk Management Supervision

SUBJECT: Final Rule 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 final rule for approval and request authorization to publish it in the *Federal Register*.

The final rule updates 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 provides for future adjustments to most of those thresholds based on an inflation-based indexing methodology. The changes set forth in this final rule preserve the level of certain regulatory thresholds set forth in the FDIC's regulations in real terms, 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.

Discussion:

Concur:

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Mathew P. Reed
General Counsel

I. Background

The FDIC uses thresholds in its regulations to determine the scope of applicability of various requirements. In general, 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. Thresholds serve an important role in supporting a regulatory framework that can be appropriately tailored while also reducing regulatory compliance and undue burden for smaller financial institutions or activities 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.

II. Notice of Proposed Rulemaking

On July 15, 2025, the FDIC Board approved a notice of proposed rulemaking[1] (proposal) that would have updated certain regulatory thresholds in FDIC regulations to reflect inflation and provide for automatic adjustments to most of these thresholds according to pre-determined indexing methodology. The initial updates provided in the proposal were intended to help preserve the levels of certain thresholds in the FDIC's regulations in real terms and were intended to help to address the undesirable and unintended outcome where an institution

[1]Notice of Proposed Rulemaking on Adjusting and Indexing Certain Regulatory Thresholds, 90 FR 35449 (July 28, 2025).

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.

Under the proposal, certain dollar thresholds 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) since the effective date of any final rulemaking. The proposal also would have provided for threshold adjustments in any intervening year when the cumulative change in CPI-W exceeds 8 percent since the most recent adjustment.[2] Additionally, under the proposal, adjusted thresholds would generally have been 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 final rule, without notice and comment, in the *Federal Register*.

The proposal would have updated and indexed 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

III. Summary of Comments

The FDIC received over 100 comment letters on the proposal, predominantly from community banking institutions, but also from industry and trade groups representing the

[2] Under the proposed indexing methodology, the FDIC would not lower thresholds in any given year to reflect periods of deflation.

banking and financial services industry, accounting firms, public policy and public interest organizations, financial services firms, a law firm, a professional organization of financial regulators, and individuals. Commenters were generally supportive of the proposed updates to the thresholds as well as adjustments in future periods generally. In addition, many commenters specifically supported updates to the annual independent audit and reporting requirements in part 363 of the FDIC's regulations. While many commenters supported using inflation for the proposed indexing methodology, others advocated using different indexing methodologies. Some commenters suggested that certain thresholds, particularly those under part 363, initially be updated to higher amounts than the FDIC had proposed.

IV. Final Rule

FDIC staff carefully considered all comments received and recommends finalizing the threshold updates and indexing methodology for future adjustments as proposed, with a modification to the effective date of future adjustments. Additionally, FDIC staff recommend providing flexibility to insured depository institutions (IDIs) with respect to compliance with part 363, as described below.

In particular, under the final rule, certain regulatory thresholds in FDIC regulations are being updated to reflect inflation and the final rule provides for automatic adjustments to most of these thresholds according to a pre-determined indexing methodology using non-seasonally adjusted CPI-W.

FDIC staff recognizes there may be certain advantages of alternative approaches to periodically adjust thresholds, as recommended by commenters. However, the indexing methodology in the final rule provides for a consistent and predictable approach that specifically targets price levels to ensure dollar thresholds remain relatively consistent over time in real terms. The indexing methodology included in the final rule also enhances transparency and certainty by providing institutions with a pre-determined schedule for future threshold changes. Further, these automatic adjustments preserve thresholds' intended application and their alignment with intended policy objectives. More broadly, the indexing methodology contributes to a more durable regulatory framework and helps to avoid the undesirable and unintended outcome where the scope of applicability for a regulatory requirement changes due solely to inflation.

The final rule is effective on January 1, 2026. However, to provide immediate burden relief for certain IDIs, an IDI need not comply with the applicable part 363 requirements in effect as of December 31, 2025 if the IDI will not be subject to such part 363 requirements under the updated thresholds in effect as of January 1, 2026, as specified in the final rule.

To align the effective date with the start date of fiscal years for the majority of IDIs, the final rule provides an October 1 effective date for future threshold adjustments. Additionally, the final rule provides that if an IDI whose asset size is likely to be below a relevant threshold following a forthcoming threshold adjustment that is scheduled to occur during the IDI's current fiscal year, the IDI's appropriate Federal banking agency may exercise discretion to provide exemptive relief from part 363 to the IDI.

Conclusion: FDIC staff present to the FDIC Board the attached final rule for approval and request authorization to publish it in the *Federal Register*.

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