From: Andres Chovil
To: Comments
Subject: [EXTERNAL MESSAGE] RIN 3064-AG15
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Attachments: Better Markets Comment Letter FDIC Regulatory Thresholds.pdf

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September 26, 2025

Jennifer M. Jones
Deputy Executive Secretary
Attention: Comments—RIN 3064-AG15
Federal Deposit Insurance Corporation
550 17th Street NW
Washington, DC 20429

Re: Adjusting and Indexing Certain Regulatory Thresholds; Document No. 2025-14132; RIN 3064-AG15; 90 Fed. Reg. 35449 (July 28, 2025)

Dear Ladies and Gentlemen:

Better Markets[1] appreciates the opportunity to comment on a proposed rule ("Proposal") from the Federal Deposit Insurance Corporation ("FDIC" or "Agency") to adjust certain regulatory thresholds to reflect inflation.[2]

All Americans are familiar with comparisons of the prices of common household items from years ago to prices today, to demonstrate the power of inflation and distortions that are caused by it. For example, a gallon of milk in 1995 cost about $2.50, while a gallon of milk in 2025 cost about $4.00,[3] reflecting 60% inflation in 30 years. Similarly, the average price of a gallon of gas in 1995 was about $1.15, while in 2025, a gallon of gas cost about $3.30,[4] reflecting about 100% inflation in 30 years.

This Proposal is based on a similar concept—the fact that inflation has also affected money held at banks. Banks' total assets, like other goods and services, have increased over time because of inflation. However, thresholds within banking rules and regulations that were implemented

1 Better Markets is a non-profit, non-partisan, and independent organization founded in the wake of the 2008 financial crisis to promote the public interest in the financial markets, support the financial reform of Wall Street, and make our financial system work for all Americans again. Better Markets works with allies—including many in finance—to promote pro-market, pro-business, and pro-growth policies that help build a stronger, safer financial system that protects and promotes Americans' jobs, savings, retirements, and more.

2 Adjusting and Indexing Certain Regulatory Thresholds, 90 Fed. Reg. 35449 (July 28, 2025), https://www.federalregister.gov/documents/2025/07/28/2025-14132/adjusting-and-indexing-certain-regulatory-thresholds.

3 Federal Reserve Bank of St. Louis FRED; U.S. Bureau of Labor Statistics, Average Price: Milk, Fresh, Whole, Fortified (Cost per Gallon/3.8 Liters) in U.S. City Average [APU0000709112]; https://fred.stlouisfed.org/series/APU0000709112 (last visited Sept. 22, 2025).

4 Federal Reserve Bank of St. Louis FRED; U.S. Bureau of Labor Statistics, Average Price: Gasoline, Unleaded Regular (Cost per Gallon/3.785 Liters) in U.S. City Average [APU000074714]; https://fred.stlouisfed.org/series/APU000074714 (last visited Sept. 22, 2025).

years and even decades ago have not changed with inflation, resulting in rules becoming increasingly outdated over time. Community banks have been most affected by this phenomenon, as rules and regulations that did not initially apply to smaller banks now increasingly ***do apply*** as smaller community banks grow larger.

This Proposal would recalibrate certain static dollar-based thresholds that define and determine the applicability of several bank regulations that the FDIC controls. These regulations—which set the framework for things like audit, internal control, audit committee composition, and related reporting requirements—are based on dollar amounts that were written into regulations. Many of these regulations have not been updated for years. The Proposal would also add prospective regular adjustments to rules and regulations, to create a more durable regulatory framework that does not become outdated simply with the passage of time and inflation.

Such adjustments—when done well—would strengthen, reinforce, and promote the stability of the banking system, benefiting all Americans. However, if done wrong, these adjustments could lead to inefficiencies, regulatory weaknesses, and uncertainties that would distract both banks and banking regulators and increase risks in the financial system.

We support the basic premise of the Proposal as it is clear that the applicability of certain rules has expanded far beyond the initial intended scope, given the inflation that has occurred over the past years and decades. At the same time, there are several facets of the Proposal that require change, including:

- Inflation adjustments occurring every two years, or potentially every year in some economic environments with above-average inflation. Adjusting regulatory thresholds for inflation every other year would take considerable regulatory resources. Moreover, it would add to the uncertainty for banks as the rate of inflation fluctuates over time. Instead, using an ***adjustment interval of at least three years***, as the FDIC suggests in the Proposal, would eliminate some of the uncertainty and reduce regulatory costs, while still meeting the goal of timely rightsizing of regulations.

- No adjustments made for deflation. If the FDIC plans to adjust its rules and regulations for inflation, it should commit to a balanced approach and factor in adjustments for times—albeit extremely rare—when there is deflation.

- No consideration of broader measures of bank complexity, beyond asset size. Asset size is only one measure of a bank's complexity and potential risk to the banking system or financial stability. In recognition of this, the FDIC has developed and continues to employ a robust community bank definition.[5] The FDIC's Community Bank definition considers factors such as business line and geographic scope, in addition to total assets, to comprehensively determine whether a bank's operations and structure qualify it as a

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5 Federal Deposit Insurance Corporation, Community Banking Research Program Reference Data, https://www.fdic.gov/community-banking-research-program/reference-data (last visited Sept. 22, 2025).

community bank or whether it is more complex or specialized. It is unclear why the FDIC is ignoring its own robust analysis and well-conceived definition and instead choosing to solely focus on asset size for the Proposal.

BACKGROUND

Inflation steadily erodes the relevance of static, dollar-based limits or thresholds. For instance, Part 363 of the FDIC's regulations requires banks with total consolidated assets of $500 million or more to submit an annual report and audited financial statements to the FDIC and other federal or state regulators. At the time that this regulation was implemented, in 1993,[6] it applied to about 1,000 of the largest banks in the country.[7] As banks have increased in size over time, this rule has applied to more and more banks, and now it applies to about 1,800 banks. However, if the initial threshold of $500 million is inflation-adjusted, as called for in the Proposal, it would increase to about $1 billion, exempting many banks from the requirements of the rule.

The applicability of many banking rules and regulations, written by the FDIC and other regulators, is based on the asset size of banks or the dollar size of banking products, such as loans. In most cases, these dollar-based thresholds are used as a proxy for the complexity of a bank or its activities, the amount of risk it presents to the economy or financial system, and the need to spend public resources—in the form of banking regulators' time and staff—to control or limit the risky activities. However, asset size or dollar amount alone is insufficient as the sole measure of a bank's or banking activity's risks and potential threat to the financial system. Other factors, such as the type of lending or other business activities at an institution, or its geographic scope, are also important determinants of overall complexity and risk.

SUMMARY OF THE PROPOSAL

This Proposal is the first step in a multi-phase effort to reevaluate and adjust thresholds in banking regulations. This first step is relatively narrow, adjusting thresholds in rules that:

(1) appear within regulations issued only by the FDIC,

(2) are not set by statute, and

(3) are relatively straightforward to adjust.[8]

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6 Annual Independent Audits and Reporting Requirements, 58 Fed. Reg. 31332 (June 2, 1993), https://www.federalregister.gov/citation/58-FR-31332.

7 Adjusting and Indexing Certain Regulatory Thresholds, *supra* note 2, at 35454.

8 *Id.*, at 35451.

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The current Proposal would change the following FDIC regulations:[9]

- 12 CFR Part 303—Filing Procedures for Section 19 of the FDI Act relating to the dollar amounts of fines for certain criminal offenses that prevent an individual from being hired by a bank.

- 12 CFR Part 335—Securities of Nonmember Banks and State Savings Associations relating to the dollar amount of loans to insiders that banks must disclose.

- 12 CFR Part 340—Restrictions on Sale of Assets of a Failed Institution by the Federal Deposit Insurance Corporation and 12 CFR Part 380—Orderly Liquidation Authority, which relate to and define what is considered a "substantial loss" that a person would have to cause to prevent them from buying additional failed bank assets from the FDIC.

- 12 CFR Part 347—International Banking regulations that set forth requirements for bank investments in foreign organizations, limit foreign financial activities, loans, or extensions of credit, and establish required FDIC recordkeeping.

- 12 CFR Part 363—Annual Independent Audits and Reporting Requirements related to the asset size of banks that are required to submit independent audits and other internal controls reporting to the FDIC.

For each of these regulations, the dollar thresholds will be raised by the inflation adjustment process. The FDIC expects to follow this Proposal with additional proposals that would address interagency rules or those that are more complex.

COMMENTS

As explained earlier in this letter, we understand and agree with the basic premise underlying the Proposal that the applicability of certain rules has expanded far beyond the initial scope, given the inflation that has occurred over the past years and decades. It is vital to also recognize, however, that taken together, these adjustments will have a substantial deregulatory effect, loosening the reporting requirements and protections that control risk within the banking industry. Not only would these many rules and protections all be lifted at once, but this would happen on top of other deregulatory actions, such as reducing capital requirements for the largest

[9] *Id.*, at 35452-57.

banks,[10] weakening stress testing for the largest banks,[11] cutting supervisory oversight for the largest banks,[12] and loosening protections against mergers and consolidations of power in the banking industry.[13] Any reasonable person can see that the cumulative effect of this wave of deregulation will disproportionately benefit the banking industry, with less oversight by regulators, and hurt the economy and the American people, who will be left holding the bag when future bailouts are needed.

The Proposal will, in fact, loosen regulatory oversight on hundreds of banks. More specifically, for example, it will:

- Increase the size of what would be considered a *de minimis* fine that would be ignored by banks that hire individuals with past criminal offenses;

- Increase the size of loans made by banks to bank insiders that would not need to be reported to the FDIC;

- Increase the size of monetary loss that is considered "substantial" enough to prevent an individual from buying other failed bank assets from the FDIC;

- Increase the size of foreign investments, loans, or extensions of credit that are permissible for banks; and

- Increase the size of banks that must submit independent audits and other internal controls reports to the FDIC.

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[10] *See, e.g.*, Better Markets, Comment Letter, *Regulatory Capital Rule: Modifications to the Enhanced Supplementary Leverage Ratio Standards for U.S. Global Systemically Important Bank Holding Companies and Their Subsidiary Depository Institutions; Total Loss-Absorbing Capacity and Long-Term Debt Requirements for U.S. Global Systemically Important Bank Holding Companies* (Aug. 26, 2025), https://bettermarkets.org/wp-content/uploads/2025/08/Better-Markets-Comment-Letter-eSLR.pdf; Better Markets, Comment Letter, *Regulatory Capital Rule: Large Banking Organizations and Banking Organizations With Significant Trading Activity* (Jan. 16, 2024), https://bettermarkets.org/wp-content/uploads/2024/01/Better-Markets-Comment-Letter-Regulatory-Capital-Rule-1-16-24.pdf; Better Markets, Comment Letter, *Regulatory Capital Rule: Risk-Based Capital Surcharges for Global Systemically Important Bank Holding Companies* (Jan. 16, 2024), https://bettermarkets.org/wp-content/uploads/2024/01/Better-Markets-Comment-Letter-Risk-Based-Capital-Surcharges-for-GSIBS-1-16-24.pdf.

[11] *See, e.g.*, Better Markets, Comment Letter, *Modifications to the Capital Plan Rule and Stress Capital Buffer Requirement* (June 23, 2025), https://bettermarkets.org/wp-content/uploads/2025/06/Better-Markets-Comment-Letter-FRS.pdf.

[12] *See, e.g.*, Better Markets, Comment Letter, *Revisions to the Large Financial Institution Rating System and Framework for the Supervision of Insurance Organizations* (Aug. 14, 2025), https://bettermarkets.org/wp-content/uploads/2025/08/Better-Markets-Comment-Letter-Large-Bank-Ratings.pdf.

[13] *See, e.g.*, Shayna Olesiuk, *Bank Mergers Require Robust Scrutiny to Ensure that Consumers' Interests Are Not Sacrificed for Wall Street's Profits*, BETTER MARKETS (May 12, 2025), https://bettermarkets.org/wp-content/uploads/2025/05/Better-Markets-Merger-Fact-Sheet-5.12.2025.pdf.

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While loosening the standards for any one bank may not introduce a financial stability risk, it is quite possible and even likely that loosening the standards for hundreds of banks could increase aggregate risk. We recommend that the FDIC monitor and report on the actual impact that comes from adjusting regulatory thresholds so that additional changes can be made if needed.

Moreover, there are several parts of the Proposal that require changes. Therefore, we recommend:

- Increase the cadence of inflation adjustments to at least every three years. Making inflation adjustments every other year would take considerable regulatory resources. Moreover, it would add to the uncertainty for banks as inflation fluctuates over time. In its Proposal, the FDIC recognizes this, stating:

  > [A]djusting regulatory thresholds too frequently and in the absence of meaningful inflation can result in inefficiencies, as institutions may incur cost to frequently realign their balance sheet management practices to reflect adjusted thresholds.[14]

  Using an adjustment interval of every three or every five years, as the FDIC suggested as alternatives in the Proposal[15] would eliminate some of this uncertainty and reduce regulatory costs, while still meeting the goal of timely rightsizing of regulations.

- Adjust for deflation as well as inflation. In recent economic history, deflation has been a rare occurrence. However, the FDIC should commit to adjusting for the total price increase, including both increases and decreases in the price level, to preserve the integrity of its rules and regulations. Only adjusting for inflation, which is typically deregulatory and favors the banks at the expense of the public and consumers, and ignoring deflation, which would tend to broaden the scope of regulations, is unfair and wrong.

- Utilize the FDIC's Community Bank definition, or other comprehensive measures of bank or banking activity complexity, rather than simply adjusting for asset size in regulations. As detailed earlier in this letter, the FDIC developed and continues to employ a robust community bank definition.[16] This definition considers a broad set of indicators, in addition to total assets, to arrive at a comprehensive determination of a bank's operations and complexity. It is unclear why the FDIC is ignoring its own robust analysis and well-conceived definition and instead choosing to solely focus on asset size for the Proposal.

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14 Adjusting and Indexing Certain Regulatory Thresholds, *supra* note 2, at 35451.

15 *Id.*, at 35461.

16 FEDERAL DEPOSIT INSURANCE CORPORATION, *supra* note 5.

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CONCLUSION

We hope these comments are helpful to the FDIC as it protects the banking system and the American people from risk.

Sincerely,

[redacted]

Shayna M. Olesiuk
Director of Banking Policy
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