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September 16, 2019

The Honorable Jelena McWilliams
Chairman
Federal Deposit Insurance Corporation
550 17th Street, NW
Washington, D.C. 20552

Dear Chairman McWilliams:

The Independent Community Bankers of America (ICBA)¹ urges the FDIC to amend its regulations concerning annual independent audits and reporting requirements under 12 CFR part 363 to raise the thresholds under those regulations. Specifically, ICBA requests that only institutions with total assets of \$1 billion or more (currently, the asset threshold is \$500 million) be subject to the part 363 requirements regarding audited financial statements. Furthermore, we propose that institutions with total assets of \$5 billion or more (currently, the asset threshold is \$1 billion) be subject to the requirement of having internal control assessments by management and external auditors. Section 36 of the Federal Deposit Insurance Act grants the FDIC the authority to raise these asset thresholds by regulation.²

Often referred to as the “FDICIA reporting requirements,” part 363 requires each covered institution to submit to the FDIC and other appropriate Federal and state supervisory agencies an annual report that includes audited financial statements, a statement of management’s responsibilities, assessments by management of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, and an auditor’s attestation report on internal control over financial reporting. In addition, part 363 provides that each covered institution must establish an independent audit committee of its board of directors comprised of outside directors who are independent of management of the institution.

ICBA believes that consolidation in the banking industry and the effects of inflation warrant a significant adjustment to these thresholds. While the FDIC did raise the asset size threshold from \$500 million to \$1 billion in 2005 for internal control assessments, it has not changed the

¹ *The Independent Community Bankers of America®*, the nation’s voice for more than 5,700 community banks of all sizes and charter types, is dedicated exclusively to representing the interests of the community banking industry and its membership through effective advocacy, best-in-class education and high-quality products and services. With 52,000 locations nationwide, community banks employ 765,000 Americans, hold \$4.9 trillion in assets, \$3.9 trillion in deposits, and \$3.3 trillion in loans to consumers, small businesses, and the agricultural community. For more information, visit ICBA’s website at www.icba.org.

² *Section 36 grants the FDIC discretion to set the asset size threshold for compliance with the statutory requirements, but it states that the threshold cannot be less than \$150 million.*

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asset size threshold for the other requirements of part 363 since 1993 when the regulation was issued. If the \$500 million asset size threshold was changed to \$1 billion, part 363 would still cover approximately 94 percent of the assets of insured institutions. Furthermore, if the asset size threshold requirement for internal control assessments was raised to \$5 billion, it would still cover approximately 87 percent of the assets of insured institutions. These percentages significantly exceed the coverage when the part 363 regulation was issued.³

We also believe that since the regulatory agencies have recently raised the asset size threshold for the Small Bank Holding Company and Savings and Loan Holding Company Policy Statement (Federal Reserve Regulation Y, appendix C) from \$1 billion to \$3 billion and have raised the asset size threshold to \$3 billion for bank institutions qualifying for an 18-month exam cycle, it is important that the part 363 thresholds should also be adjusted to reflect the consolidation in the banking industry. More importantly though, we believe the recent proposal by the Securities and Exchange Commission to raise the asset threshold for a non-accelerated SEC filer from \$75 million in market capitalization to \$700 million in market capitalization requires the FDIC to make these adjustments to part 363. Since non-accelerated SEC filers will be exempted from the SEC internal control auditor attestation requirements, we believe part 363 should be adjusted accordingly to accommodate a banking institution with a market capitalization of \$700 million which we estimate to be a banking institution with approximately \$3 billion to \$5 billion in assets.

The audit and reporting requirements of part 363 have become more burdensome and costly, particularly for smaller nonpublic covered institutions. For instance, the SEC estimates that the direct and indirect costs involved in an audit with internal control attestation runs about \$210,000 per year for SEC filers. Furthermore, there is plenty of anecdotal evidence to suggest that many community banks are intentionally trying to stay under the part 363 asset size thresholds (i.e., either \$500 million or \$1 billion) because of the additional audit and other regulatory costs involved in complying with that regulation.

When Section 36 of the Federal Deposit Insurance Act was enacted, Congress' intent was to facilitate the early identification of problems in financial management at insured depository institutions posing the greatest risk to the FDIC's Deposit Insurance Fund. We believe raising these asset thresholds under part 363 will achieve meaningful burden reduction without sacrificing safety and soundness.

Sincerely,
/s/Christopher Cole

Christopher Cole
Executive Vice President and Senior Regulatory Counsel

³ When part 363 was issued in 1993, the FDIC noted that by selecting \$500 million in total assets as the size threshold, approximately 1,000 FDIC-insured institutions would be subject to the regulation. These covered institutions held approximately 75 percent of the assets of insured institutions at that time.