



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, D.C. 20429-9990

**Financial Institution Letter**  
**FIL-119-2005**  
**November 28, 2005**

## **ANNUAL INDEPENDENT AUDITS AND REPORTING REQUIREMENTS**

### **Amendments to Part 363**

**Summary:** The FDIC has amended Part 363 of its regulations by raising the asset-size threshold from \$500 million to \$1 billion for internal control assessments by management and external auditors. For institutions between \$500 million and \$1 billion in assets, only a majority, rather than all, of the members of the audit committee, who must be outside directors, must be independent of management. The final rule is effective December 28, 2005.

#### **Distribution:**

FDIC-Insured Institutions With \$500 Million or More  
in Total Assets

#### **Suggested Routing:**

Chief Executive Officer  
Chief Financial Officer  
Board of Directors  
Audit Committee

#### **Related Topics:**

Federal Deposit Insurance Act Section 36  
Part 363 of the FDIC's Regulations

#### **Attachments:**

- Final Rule Amending Part 363
- Part 363 Annual Reports

#### **Contact:**

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#### **Note:**

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#### **Highlights:**

- The FDIC has amended its annual audit and reporting requirements, including the audit committee requirements, which apply to insured institutions with \$500 million or more in total assets ("covered institutions").
- As amended, for covered institutions with between \$500 million and \$1 billion in total assets, management is no longer required to assess and report on the effectiveness of internal control over financial reporting, the external auditors are no longer required to examine and attest to management's internal control assertions, and only a majority of the outside directors on the audit committee must be independent of management.
- The amendments provide relief from these requirements to covered institutions with total assets of less than \$1 billion only for purposes of Part 363. These covered institutions must continue to fully comply with the remaining provisions of Part 363, including the annual financial statement audit requirement.
- The amendments do not relieve public covered institutions from their obligations to comply with the provisions of the Sarbanes-Oxley Act and the Securities and Exchange Commission's implementing rules on internal control reporting by management and external auditors and, if applicable, audit committee independence.
- The amendments take effect December 28, 2005, and apply to institutions whose fiscal years end on or after September 30, 2005.

## PART 363 ANNUAL REPORTS

Section 36 of the Federal Deposit Insurance Act (FDI Act) and Part 363 of the FDIC's regulations impose annual audit and reporting requirements on insured depository institutions with \$500 million or more in total assets. Given the current amendments to Part 363, which apply to annual reports for fiscal years ending on or after September 30, 2005, the following information is intended to clarify what must be included in a Part 363 annual report for (1) institutions with \$500 million or more but less than \$1 billion in assets and (2) institutions with \$1 billion or more in assets. Also discussed are other requirements that are applicable to all institutions subject to Part 363. With certain exceptions, the Part 363 annual reporting requirements may be satisfied by an institution's holding company if services and functions comparable to those required of the institution are provided at the holding company level. An institution's total assets are measured as of the beginning of its fiscal year.

**Institutions With \$500 Million or More but Less Than \$1 Billion in Total Assets**

Section 36 of the FDI Act and Part 363 of the FDIC's regulations, as amended, require insured depository institutions with at least \$500 million but less than \$1 billion in total assets to file an annual report that must include the following:

1. Audited comparative annual financial statements;
2. The independent public accountant's report on the audited financial statements;
3. A management report that contains:
  - a. A statement of management's responsibilities for:
    - i. Preparing the annual financial statements;
    - ii. Establishing and maintaining an adequate internal control structure over financial reporting; and
    - iii. Complying with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency; and
  - b. An assessment by management of the institution's compliance with the designated laws and regulations during the year.

Institutions that have assets between \$500 million and \$1 billion and that are also public companies or subsidiaries of public companies subject to the provisions of Section 404 of the Sarbanes-Oxley Act must continue to comply with the requirement to file other reports issued by the independent accountant as set forth in Section 363.4(c) of the FDIC's regulations. More specifically, these institutions must file a copy of the independent accountant's report on the audit of internal control over financial reporting that is required by Section 404 of the Sarbanes-Oxley Act with the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor within 15 days after receipt. These institutions are also encouraged to submit a copy of management's

Section 404 report on internal control over financial reporting together with the independent public accountant's internal control report.

### **Institutions With \$1 Billion or More in Total Assets**

Section 36 of the FDI Act and Part 363 of the FDIC's regulations, as amended, require insured depository institutions with at least \$1 billion in total assets to file an annual report that must include the following:

1. Audited comparative annual financial statements;
2. The independent public accountant's report on the audited financial statements;
3. A management report that contains:
  - a. A statement of management's responsibilities for:
    - i. Preparing the annual financial statements;
    - ii. Establishing and maintaining an adequate internal control structure over financial reporting; and
    - iii. Complying with the laws and regulations relating to safety and soundness that are designated by the FDIC and the appropriate federal banking agency; and
  - b. Assessments by management of:
    - i. The effectiveness of the internal control structure over financial reporting as of the end of the fiscal year; and
    - ii. The institution's compliance with the designated laws and regulations during the year; and
4. The independent public accountant's attestation report concerning the institution's internal control structure over financial reporting.

### **Other Requirements – All Institutions With \$500 Million or More in Total Assets**

For purposes of Part 363, financial reporting encompasses both financial statements prepared in accordance with generally accepted accounting principles and those prepared for regulatory reporting purposes.

Each institution subject to Part 363 must file with the FDIC, the appropriate federal banking agency, and any appropriate state supervisor, two copies of the Part 363 annual report within 90 days after the end of its fiscal year. These annual reports should be submitted to the appropriate FDIC Regional or Area Office and, if appropriate, the district or regional office of the institution's primary federal banking agency. However, notwithstanding the 90-day filing period, each institution must file a copy of each audit and attestation report issued by its independent accountant within 15 days of receipt. To comply with this filing requirement, the FDIC encourages institutions and their independent auditors to coordinate the preparation and delivery of audit and attestation reports and the filing of the Part 363 annual report in order to avoid having to make duplicate filings.

In addition, each institution subject to Part 363 is required to file a copy of any management letter and any other report issued by its independent accountant with the FDIC, the appropriate federal banking agency, and any appropriate state supervisor within 15 days of receipt. Refer to Section 363.4(c) of the FDIC's regulations for further information.