

# Regulatory Update

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# Topics

- Proposed Part 363 Amendments
- Deposit Insurance Developments
- Proposed Call Report Revisions

# Proposed Part 363 Amendments

- Part 363 – Annual Audit and Reporting Requirements
  - Also known as the FDICIA reporting requirements
- FDIC Board approved publication of proposed amendments to Part 363 on 10/16/07
- Proposal published in Federal Register on 11/2/07
  - FDIC Financial Institution Letter FIL-96-2007
    - [www.fdic.gov/news/news/financial/2007/fil07096.html](http://www.fdic.gov/news/news/financial/2007/fil07096.html)
- 90-day comment period ends 1/31/08

# Proposed Part 363 Amendments

Current Requirements	\$500 Million – \$1 Billion in Assets	\$1 Billion or More in Assets
Part 363 Annual Report must include:		
Audited financial statements and the auditor's report	Yes	Yes
Statement of management's responsibilities	Yes	Yes
Assessment by management and attestation by auditor on effectiveness of internal control over financial reporting	No	Yes
Management's assessment of compliance with designated safety and soundness laws and regulations	Yes	Yes
Audit Committee composition – All members must be outside directors and	Majority must be independent of management	All must be independent of management

# Proposed Part 363 Amendments

- Proposed revisions to Part 363 include:
  - Time period for a non-public institution to file its Part 363 Annual Report would be extended from 90 to 120 days after the end of its fiscal year
  - In assessments of internal control over financial reporting, management and independent public accountant must identify the internal control framework used, state their conclusions on the effectiveness of internal control, and disclose all identified material weaknesses
  - In assessments of compliance with designated safety and soundness laws and regulations (loans to insiders and dividend restrictions), management must state its conclusion regarding compliance and disclose any noncompliance with these laws and regulations

# Proposed Part 363 Amendments

- 30-day extension of the filing deadline for a Part 363 Annual Report that may be granted if an institution is confronted with extraordinary circumstances beyond its reasonable control would be replaced with a late filing notification requirement that would have general applicability
- An institution merged out of existence after its fiscal year-end, but before the Part 363 Annual Report filing deadline, would be exempt from filing an annual report
- An institution would be permitted to exclude a business acquired during the fiscal year from the scope of the internal control evaluation
- Illustrative management reports would be provided to assist institutions in complying with the annual reporting requirements

# Proposed Part 363 Amendments

- Independence provisions for accountants would be moved from the guidelines into the regulation and would clarify that accountants must comply with independence standards and interpretations of the AICPA, the SEC, and the PCAOB
- Duties of the audit committee would include the appointment, compensation, and oversight of the independent public accountant and ensuring that audit engagement letters do not contain the unsafe and unsound limitation of liability provisions identified in the 2006 Interagency Advisory on this subject

# Proposed Part 363 Amendments

- Institutions must submit audit engagement letters to the FDIC and other appropriate federal and state supervisors within 15 days of acceptance
- Independent public accountant must communicate to the audit committee all critical accounting policies, alternative accounting treatments discussed with management, and other written communications provided to management
- Independent public accountant must retain financial statement audit and internal control assessment working papers for 7 years

# Proposed Part 363 Amendments

- Expanded guidance would be provided for boards of directors to use in determining whether audit committee members are “independent of management” based on criteria in the audit committee independence provisions of the listing standards of securities exchanges
- Boards of directors would be required to apply written criteria for evaluating whether audit committee members are independent of management
- Total assets of a holding company’s insured depository institution subsidiaries must comprise 75 percent or more of the holding company’s consolidated total assets in order for an institution to comply with Part 363 at the holding company level

# Deposit Insurance Developments

- Designated Reserve Ratio (DRR)
  - Reform Act of 2005 requires FDIC to set annually a DRR for the Deposit Insurance Fund within a range of 1.15% and 1.5% of estimated insured deposits
  - DRR for 2007 is 1.25%
  - On 11/5/07, FDIC Board approved maintaining DRR at 1.25% for 2008
  - As of 6/30/07, actual reserve ratio was 1.21%
  - Based on assessment rate schedule currently in effect, Deposit Insurance Fund expected to reach the DRR of 1.25% in 2009

# Deposit Insurance Developments

- Assessment Rates for 2008
  - On 11/5/07, FDIC Board delayed making a decision on assessment rates for 2008 until March because of slower than projected growth in estimated insured deposits during 2007
  - Assessments for first quarter 2008 will be payable in June 2008
  - For institutions in Risk Category 1 with assessment credits remaining, credits may not be applied to more than 90% of quarterly assessments in 2008
    - Credits are applied at 100% of the assessments in 2007

# Deposit Insurance Developments

- Assessment Dividends
  - Advance Notice of Proposed Rulemaking (ANPR) published for comment on 9/18/07
    - FDIC Financial Institution Letter FIL-85-2007
      - [www.fdic.gov/news/news/financial/2007/fil07085.html](http://www.fdic.gov/news/news/financial/2007/fil07085.html)
  - Comment period ended 11/19/07
  - Reform Act of 2005 generally requires the FDIC to declare dividends from the Deposit Insurance Fund when the reserve ratio at year-end exceeds 1.35%
  - FDIC's 10/06 temporary final rule on assessment dividends sunsets on 12/31/08

# Deposit Insurance Developments

- Focus of ANPR is the type of assessment dividend allocation method that the FDIC should adopt through a subsequent rulemaking
- When devising dividend allocation method, Reform Act requires FDIC to take into account
  - Institution's assessment base compared to total assessment base at year-end 1996
  - Institution's assessments paid since 1996
  - Assessment amounts paid by institution for higher risk
  - Other factors deemed appropriate
- ANPR describes two general approaches to allocating dividends

# Deposit Insurance Developments

- Fund balance method
  - Institution's share of dividends would be based on its assigned share of the fund balance
  - Initially, an institution's share would be determined by its portion of the total year-end 1996 assessment base
  - Thereafter, share would be adjusted for increases or decreases in the fund balance and premium payments
  - Method would tend to benefit older institutions for many years
  - A variant of this method that would allocate less than the entire fund balance to institutions based on their year-end 1996 assessment base would enable newer institutions to more quickly reach parity for dividend purposes

# Deposit Insurance Developments

## ■ Payments method

- An institution's share of dividends would depend on its portion of the year-end 1996 assessment base, weighted in some fashion, and eligible portion of premiums paid after 1996
- FDIC Board would make an explicit decision about the weighting that would affect allocation of dividends between older and newer institutions
- One variation would be based on year-end 1996 assessment based plus subsequent premiums and would benefit older institutions for many years
- A second variation would consider premiums paid over previous 15 years and would achieve dividend parity for older and newer institutions in 15 years

# Proposed Call Report Revisions

- Proposed revisions for March 2008 Call Report published in the Federal Register on 9/11/07
  - FFIEC Financial Institution Letter FIL-82-2007 dated 9/18/07
    - <http://www.fdic.gov/news/news/financial/2007/fil07082.html>
  - Comment period ended 11/13/07

# Proposed Call Report Revisions

- Reporting changes related to 1-4 family residential mortgage loans
  - Interest and fee income and quarterly average
  - Troubled debt restructurings
  - Loans in process of foreclosure
  - Mortgage banking activities involving open-end mortgages
  - Repurchases and indemnifications of mortgages previously sold

# Proposed Call Report Revisions

- Revisions related to fair value measurements and fair value option
  - Instructional change for reporting fair value option assets and liabilities as trading
  - Revisions to fair value Schedule RC-Q for Level 1 measurements and netting
  - Fair value option loans not held for trading
    - Fair value and unpaid principal by loan category
    - Difference between total fair value and unpaid principal attributable to (i) changes in credit risk and (ii) other factors
    - Fair value and unpaid principal of past due and nonaccrual loans

# Proposed Call Report Revisions

- Net gains (losses) on fair value option assets/ liabilities recognized in earnings
- Net gains (losses) on fair value option loans/ liabilities recognized in earnings attributable to changes in instrument-specific credit risk
- Revisions to trading account schedule
  - Detail on trading assets in foreign offices
  - Fair value option loans held for trading
    - Fair value and unpaid principal by loan category
    - Difference between total fair value and unpaid principal attributable to (i) changes in credit risk and (ii) other factors
    - Fair value and unpaid principal of loans 90 days past due

# Proposed Call Report Revisions

- Additional detail on other trading assets and liabilities for banks with \$1 billion or more in trading assets
- Revised threshold for disclosing components of other noninterest income and expense
- Revised instructions for reporting
  - Credit derivatives for risk-based capital purposes
  - Brokered deposits participated out by the broker
  - Daily average deposits for insurance assessment purposes by institutions insured after 3/31/07
- Mailing of paper report forms and instructions by the agencies would be discontinued

**Questions?**