

The Corporation's regulations governing annual independent audits implement section 36 of the FDI Act and this proposed amendment seeks to conform the regulations to the amended statute.

In addition, the FDIC proposes several minor, technical amendments to the guidelines and interpretations (Guidelines), published as an appendix concerning compliance with certain provisions of section 36. The FDIC also proposes to amend the schedule entitled, "Agreed Upon Procedures for Determining Compliance with Designated Laws", to implement recent amendments to the federal regulations concerning loans to insiders improve the format of the procedures, streamline the specific procedures, and eliminate ambiguities. These proposed amendments reflect the experience of the Corporation, institutions, and accountants with the existing procedures during the past year.

DATES: Comments must be received by April 17, 1995.

ADDRESSES: Send comments to Robert E. Feldman, Acting Executive Secretary, FDIC, 550 17th Street, N.W., Washington, D.C. 20429. Comments may be hand-delivered to room 400, 1776 F Street, N.W., Washington, D.C. 20429 on business days between 8:30 a.m. and 5:00 p.m. (FAX number: (202) 898-3838.) Comments will be available for inspection in room 7118, 550 17th Street, N.W., Washington, D.C., between 9 a.m. and 4:30 p.m. on business days.

FOR FURTHER INFORMATION CONTACT: Doris L. Marsh, Examination Specialist, Division of Supervision, (202) 898-8905, or Sandra Comenetz, Counsel, Legal Division, (202) 898-3582, FDIC, 550 17th Street N.W., Washington, D.C. 20429.

SUPPLEMENTARY INFORMATION:

I. Background

Section 112 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) added section 36, "Independent Annual Audits of Insured Depository Institutions", to the FDI Act (12 U.S.C. 1831m). Section 36 requires the FDIC, in consultation with the appropriate federal banking agencies, to promulgate regulations requiring each insured depository institution over a certain asset size (covered institution) to have an annual independent audit of its financial statements performed in accordance with generally accepted auditing standards and section 37 of the FDI Act (12 U.S.C. 1831n), and to provide a management report and independent public accountant's attestation concerning both the effectiveness of the institution's internal

controls for financial reporting and its compliance with designated safety and soundness laws. Section 36 also requires each covered institution to have an independent audit committee. The audit committee of each large covered institution (total assets exceeding \$3 billion) must meet additional requirements.

Section 36 also requires the FDIC, in consultation with the other federal banking agencies, to designate laws and regulations concerning safety and soundness. This section requires the institution's independent public accountant to perform procedures agreed upon by the Corporation to determine an institution's compliance with these designated laws and regulations. The "Designated Laws" selected by the Corporation are the federal laws and regulations concerning loans to insiders and the federal and state laws and regulations concerning dividend restrictions.

In June 1993, the FDIC published 12 CFR part 363 (58 FR 31332, June 2, 1993) to implement the provisions of section 36 of the FDI Act. Under part 363, the requirements of section 36 apply to each insured depository institution with \$500 million or more in total assets at the beginning of any fiscal year that begins after December 31, 1992.

Section 314 of RCDRIA amends sections 36(i) and 36(g)(2) of the FDI Act (12 U.S.C. 1831m (i) and (g)(2)). The purpose of section 314(a) is to provide relief from certain duplicative reporting under section 36 of the FDI Act for sound, well managed insured depository institutions with over \$9 billion in total assets which are subsidiaries of multibank holding companies. Section 314(b) requires the Corporation to notify a large insured depository institution in writing if it decides to require a review by an independent public accountant of such institution's quarterly financial reports. In addition, the federal regulations concerning loans to insiders (Federal Reserve Regulation O, 12 CFR part 215), which are included in one of the Designated Laws, were amended during 1994.

The FDIC proposes certain amendments to 12 CFR Part 363, which conform Part 363 to the amended statute. The FDIC also proposes several minor, technical amendments to the guidelines and interpretations (Guidelines), published as Appendix A to part 363, concerning compliance with certain provisions of section 36.

In addition, a year's experience with Part 363 indicates that a clarification of certain of the specific procedures in

Schedule A to Appendix A of the Guidelines would make them more efficient and less burdensome. The FDIC therefore proposes to amend Schedule A to Appendix A—Agreed Upon Procedures for Determining Compliance with Designated Laws, to reflect the recent amendments to the federal regulations concerning loans to insiders (12 CFR Part 215), improve the format of the procedures, streamline the specific procedures, and eliminate ambiguities. The proposed amendments reflect the experience of the Corporation, institutions, and accountants dealing with the existing procedures during the past year.

Section 36(g)(2) of the FDI Act authorizes the FDIC to require independent public accountants for "large institutions" to review such institutions' quarterly financial reports. This provision is amended by Section 314(b) of RCDRIA to add section 36(g)(3) which requires the Corporation to notify a large insured depository institution in writing if it decides to require a review of its quarterly financial reports by an independent public accountant. When the FDIC adopted Part 363, it elected not to exercise its authority in this area for reasons of cost and limited expected benefits, preferring instead to request such reviews on a case-by-case basis. The FDIC has not changed its opinion. Should the FDIC decide to request an independent public accountant's review of the quarterly financial statements of a large insured depository institution, it will make the request in writing.

II. The Proposal

The FDIC proposes to make conforming amendments to Part 363 so that it is consistent with section 36 as amended by section 314 of RCDRIA, and to make minor, technical, and clarifying changes to the Guidelines in Appendix A. In addition, the FDIC proposes to amend and reformat the specific procedures in Schedule A to Appendix A to make them more efficient and less burdensome.

A. Amendments to the Rule

Section 363.1—Scope. In § 363.1(b), the phrase "but less than \$9 billion" would be deleted from the provisions of the regulation describing the institutions eligible to report using the holding company exception set forth in section 36(i). This revision would make the regulation consistent with the amendment to section 36(i) made by section 314 of RCDRIA. In addition, the subsection would be reformatted and another paragraph added to incorporate the provisions of section 314(a)(3) of RCDRIA which identifies the