

FDIC Final Rule Amending Part 363 (Annual Independent Audit and Reporting Requirements)*

The FDIC published a final rule in the Federal Register on December 4, 2025, to adjust and index certain regulatory thresholds in 12 CFR Parts 335 (Securities of State Nonmember Banks and State Savings Associations), 340 (Restrictions on Sale of Assets of a Failed Institution by the FDIC), 347 (International Banking), 363 (Annual Independent Audits and Reporting Requirements), and 380 (Orderly Liquidation Authority). 90 FR 55789. Since the changes made by the final rule (the “Final Rule”) to 12 CFR Part 363 regarding audit and reporting requirements for insured depository institutions have the most impact on BCG Members that are FDIC-insured, this article focuses on the changes to 12 CFR Part 363.

The changes made by the Final Rule, which becomes effective on January 1, 2026, are designed to ensure that regulatory thresholds align with inflation and reflect the current economic environment. The Final Rule’s changes to 12 CFR Part 363 will impact FDIC-insured financial institutions in terms of asset size thresholds for independent audits and related reporting obligations. The Final Rule also provides that going forward the thresholds will be periodically indexed and adjusted to account for changes in the cost of living, as measured by the Consumer Price Index (“CPI”), which is addressed in new 12 CFR Part 314.

The below discusses the more relevant changes to Part 363. Note that while the increased thresholds discussed below are the new thresholds as of January 1, 2026, the amount of the thresholds may be changed in subsequent years given the adjustments for CPI.

Application and General Requirements Under Part 363. Currently, pursuant to 12 CFR Section 363.1(a), Part 363 only applies to FDIC-insured depository institutions with consolidated total assets of \$500 million or more. Under the Final Rule, 12 CFR Section 363.1(a) will be revised to increase this threshold to \$1 billion effective January 1, 2026.

* Janet Bonnefin has retired from the firm.

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In brief, all institutions subject to Part 363 must comply with the following general requirements (among others):

- Prepare annual financial statements in accordance with Generally Accepted Accounting Principles (“GAAP”) that are audited by an independent public accountant (as required by 12 CFR Section 363.2(a));
- Have a management report accompany the annual financial statements that complies with 12 CFR Section 363.2(b)(1)-(2) and (c);
- Engage an independent public accountant to audit and report on the institution’s annual financial statements in accordance with generally accepted auditing standards or the Public Company Accounting Oversight Board’s (“PCAOB”) auditing standards (as required by 12 CFR Section 363.3(a)); and
- File two copies of its Part 363 Annual Report with the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor (as required by 12 CFR Section 363.4(a)(1)).

Effective January 1, 2026, the above requirements will only apply to those FDIC-insured depository institutions with consolidated total assets of \$1 billion or more.

Audit Committee Requirements. Section 363.5 of Part 363 includes various requirements related to audit committees based on the asset size of the institution. The below is a brief overview of the requirements noting the changes made by the Final Rule effective January 1, 2026.

- Institutions with at least \$500 million but less than \$1 billion in total assets (changing to at least \$1 billion but less than \$5 billion in total assets under the Final Rule). Establish an independent audit committee comprised of outside directors, a majority of whom must also be independent of the management of the institution. 12 CFR Section 363.5(a)(2).
- Institutions with \$1 billion or more in total assets (changing to at least \$5 billion in total assets under the Final Rule). The audit committee must be made up entirely of independent outside directors. 12 CFR Section 363.5(a)(1).
- Institutions with more than \$3 billion in total assets (changing to more than \$5 billion in total assets under the Final Rule). Audit committee must include members with banking or related financial management expertise, have access to its own outside counsel, and not include any large customers of the institution. If such an institution is a subsidiary of a holding company and relies on the audit committee of the holding company to comply with this rule, then the holding company’s audit committee must not include any members who are large customers of the subsidiary institution. 12 CFR Section 363.5(b).

Internal Control Reporting and Other Requirements. Additionally, effective January 1, 2026, the Final Rule adjusts the threshold from \$1 billion to \$5 billion in consolidated total assets for the following internal control and reporting requirements:

- An assessment by management of the effectiveness of the institution’s internal control structure and procedures meeting the requirements under 12 CFR Section 363.2(b)(3);
- The independent public accountant who audits the institution’s financial statements must examine, attest to, and report separately on the assertion of management concerning the effectiveness of the institution’s internal control structure and procedures for financial reporting, as required by 12 CFR Section 363.3(b); and

- Institutions that are required to file (or whose parent holding company is required to file) the management's assessment of the effectiveness of internal control over financial reporting with the SEC or the appropriate federal banking agency in accordance with Section 404 of the Sarbanes-Oxley ("SOX") Act must also submit a copy of such assessment to the FDIC, the appropriate federal banking agency, and any appropriate state bank supervisor with its Part 363 Annual Report as additional information, as required by 12 CFR Section 363.4(a)(2).

The FDIC's Final Rule is available in its entirety at <https://www.fdic.gov/news/financial-institution-letters/2025/final-rule-adjusting-and-indexing-certain-regulatory>. For questions, please contact Joel Cook at JCook@ABLawyers.com.