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FDIC Law, Regulations, Related Acts

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SEC. 36. EARLY IDENTIFICATION OF NEEDED IMPROVEMENTS IN FINANCIAL MANAGEMENT.

(a) ANNUAL REPORT ON FINANCIAL CONDITION AND MANAGEMENT.—

(1) REPORT REQUIRED.—Each insured depository institution shall submit an annual report to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor (including any State bank supervisor of a host State).

(2) CONTENTS OF REPORT.—Any annual report required under paragraph (1) shall contain—

(A) the information required to be provided by—

(i) the institution's management under subsection (b); and

(ii) an independent public accountant under subsections (c) and (d); and

(B) such other information as the Corporation and the appropriate Federal banking agency may determine to be necessary to assess the financial condition and management of the institution.

(3) PUBLIC AVAILABILITY.—Any annual report required under paragraph (1) shall be available for public inspection. Notwithstanding the preceding sentence, the Corporation and the appropriate Federal banking agencies may designate certain information as privileged and confidential and not available to the public.

[Codified to 12 U.S.C. 1831m(a)]

[Source: Section 2[36(a)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2242), effective December 31, 1992; as amended by section 2301(c) of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--420, effective September 30, 1996)]

(b) Management Responsibility for Financial Statements and Internal Controls.—Each insured depository institution shall prepare—

(1) annual financial statements in accordance with generally accepted accounting principles and such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe; and

(2) a report signed by the chief executive officer and the chief accounting or financial officer of the institution which contains—

(A) a statement of the management's responsibilities for—

(i) preparing financial statements;

(ii) establishing and maintaining an adequate internal control structure and procedures for financial reporting; and

(iii) complying with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency; and

(B) an assessment, as of the end of the institution's most recent fiscal year, of—

(i) the effectiveness of such internal control structure and procedures; and

(ii) the institution's compliance with the laws and regulations relating to safety and soundness which are designated by the Corporation and the appropriate Federal banking agency.

[Codified to 12 U.S.C. 1831m(b)]

[Source: Section 2[36(b)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2242), effective December 31, 1992; as amended by section 1603(b)(3)(A) of title XVI of the Act of October 28, 1992 (Pub. L. No. 102--550; 106 Stat. 4079), effective December 31, 1992]

(c) Internal Control Evaluation and Reporting Requirements for Independent Public Accountants.—

(1) IN GENERAL.--With respect to any internal control report required by subsection (b)(2) of any institution, the institution's independent public accountant shall attest to, and ~~report separately on, the assertions of the institution's management contained in such report.~~

(2) ATTESTATION REQUIREMENTS.--Any attestation pursuant to paragraph (1) shall be made in accordance with generally accepted standards for attestation engagements.

[Codified to 12 U.S.C. 1831m(c)]

[Source: Section 2[36(c)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2242), effective December 31, 1992]

(d) ANNUAL INDEPENDENT AUDITS OF FINANCIAL STATEMENTS.--

(1) AUDITS REQUIRED.--The Corporation, in consultation with the appropriate Federal banking agencies, shall prescribe regulations requiring that each insured depository institution shall have an annual independent audit made of the institution's financial statements by an independent public accountant in accordance with generally accepted auditing standards and section 37.

(2) SCOPE OF AUDIT.--In connection with any audit under this subsection, the independent public accountant shall determine and report whether the financial statements of the institution--

(A) are presented fairly in accordance with generally accepted accounting principles; and

(B) comply with such other disclosure requirements as the Corporation and the appropriate Federal banking agency may prescribe.

(3) Requirements for insured subsidiaries of holding companies.--The requirements for an independent audit under this subsection may be satisfied for insured depository institutions that are subsidiaries of a holding company by an independent audit of the holding company.

[Codified to 12 U.S.C. 1831m(d)]

[Source: Section 2[36(d)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2242), effective December 31, 1992]

(e) [Repealed]

[Codified to 12 U.S.C. 1831m(e)]

[Source: Section 2[36(e)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2242), effective December 31, 1992; as repealed by section 2301(a) of title II of the Act of September 30, 1996 (Pub. L. No. 104--208; 110 Stat. 3009--419, effective September 30, 1996)]

(f) FORM AND CONTENT OF REPORTS AND AUDITING STANDARDS.--

(1) IN GENERAL.--The scope of each report by an independent public accountant pursuant to this section, and the procedures followed in preparing such report, shall meet or exceed the scope and procedures required by generally accepted auditing standards and other applicable standards recognized by the Corporation.

(2) CONSULTATION.--The Corporation shall consult with the other appropriate Federal banking agencies in implementing this subsection.

[Codified to 12 U.S.C. 1831m(f)]

[Source: Section 2[36(f)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102--242; 105 Stat. 2242), effective December 31, 1992]

(g) IMPROVED ACCOUNTABILITY.--

(1) INDEPENDENT AUDIT COMMITTEE.--

~~report separately on, the assertions of the institution's management contained in such report.~~

(A) ESTABLISHMENT.--Each insured depository institution (to which this section applies) shall have an independent audit committee entirely made up of outside directors who are independent of management of the institution, except as provided in subparagraph (D), and who satisfy any specific requirements the Corporation may establish.

(B) DUTIES.--An independent audit committee's duties shall include reviewing with management and the independent public accountant the basis for the reports issued under subsections (b)(2), (c), and (d).

(C) Criteria applicable to committees of large insured depository institutions.--In the case of each insured depository institution which the Corporation determines to be a large institution, the audit committee required by subparagraph (A) shall--

(i) include members with banking or related financial management expertise;

(ii) have access to the committee's own outside counsel; and

(iii) not include any large customers of the institution.

(D) EXEMPTION AUTHORITY.--

(i) IN GENERAL.--An appropriate Federal banking agency may, by order or regulation, permit the independent audit committee of an insured depository institution to be made up of less than all, but no fewer than a majority of, outside directors, if the agency determines that the institution has encountered hardships in retaining and recruiting a sufficient number of competent outside directors to serve on the internal audit committee of the institution.

(ii) FACTORS TO BE CONSIDERED.--In determining whether an insured depository institution has encountered hardships referred to in clause (i), the appropriate Federal banking agency shall consider factors such as the size of the institution, and whether the institution has made a good faith effort to elect or name additional competent outside directors to the board of directors of the institution who may serve on the internal audit committee.

(2) Review of quarterly reports of large insured depository institutions.--

(A) IN GENERAL.--In the case of any insured depository institution which the Corporation has determined to be a large institution, the Corporation may require the independent public accountant retained by such institution to perform reviews of the institution's quarterly financial reports in accordance with procedures agreed upon by the Corporation.

(B) REPORT TO AUDIT COMMITTEE.--The independent public accountant referred to in subparagraph (A) shall provide the audit committee of the insured depository institution with reports on

the reviews under such subparagraph and the audit committee shall provide such reports to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor.

(C) LIMITATION ON NOTICE.--Reports provided under subparagraph (B) shall be only for the information and use of the insured depository institution, the Corporation, any appropriate Federal banking agency, and any State bank supervisor that received the report.

(D) NOTICE TO INSTITUTION.--The Corporation shall promptly notify an insured depository institution, in writing, of a determination pursuant to subparagraph (A) to require a review of such institution's quarterly financial reports.

(3) QUALIFICATIONS OF INDEPENDENT PUBLIC ACCOUNTANTS.--

(A) IN GENERAL.--All audit services required by this section shall be performed only by an independent public accountant who--

(i) has agreed to provide related working papers, policies, and procedures to the Corporation, any appropriate Federal banking agency, and any State bank supervisor, if requested; and

(ii) has received a peer review that meets guidelines acceptable to the Corporation.

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(B) REPORTS ON PEER REVIEWS.--Reports on peer reviews shall be filed with the Corporation and made available for public inspection.

(4) ENFORCEMENT ACTIONS.--

(A) IN GENERAL.--In addition to any authority contained in section 8, the Corporation or an appropriate Federal banking agency may remove, suspend, or bar an independent public accountant, upon a showing of good cause, from performing audit services required by this section.

(B) JOINT RULEMAKING.--The appropriate Federal banking agencies shall jointly issue rules of practice to implement this paragraph.

(5) NOTICE BY ACCOUNTANT OF TERMINATION OF SERVICES.-- Any independent public accountant performing an audit under this section who subsequently ceases to be the accountant for the institution shall promptly notify the Corporation and each appropriate Federal banking agency pursuant to such rules as the Corporation and each appropriate Federal banking agency shall prescribe.

[Codified to 12 U.S.C. 1831m(g)]

[Source: Section 2[36(g)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102-242; 105 Stat. 2242), effective December 31, 1992; as amended by section 1603(b)(3)(B) and (C) of title XVI of the Act of October 28, 1992 (Pub. L. No. 102-550; 106 Stat. 4079), effective December 31, 1992; as amended by section 314(b) of title III of the Act of September 23, 1994 (Pub. L. No. 103-325; 108 Stat. 2222), effective September 23, 1994; section 2301(b) of title II of the Act of September 30, 1996 (Pub. L. No. 104-208; 110 Stat. 3009-419, effective September 30, 1996)]

(h) EXCHANGE OF REPORTS AND INFORMATION.--

(1) REPORT TO THE INDEPENDENT AUDITOR.--

(A) IN GENERAL.--Each insured depository institution which has engaged the services of an independent auditor to audit such institution shall transmit to the auditor a copy of the most recent report of condition made by the institution (pursuant to this Act or any other provision of law) and a copy of the most recent report of examination received by the institution.

(B) ADDITIONAL INFORMATION.--In addition to the copies of the reports required to be provided under subparagraph (A), each insured depository institution shall provide the auditor with--

(i) a copy of any supervisory memorandum of understanding with such institution and any written agreement between such institution and any appropriate Federal banking agency or any appropriate State bank supervisor which is in effect during the period covered by the audit; and

(ii) a report of--

(I) any action initiated or taken by the appropriate Federal banking agency or the Corporation during such period under subsection (a), (b), (c), (e), (g), (i), (s), or (t) of section 8;

(II) any action taken by any appropriate State bank supervisor under State law which is similar to any action referred to in subclause (I); or

(III) any assessment of any civil money penalty under any other provision of law with respect to the institution or any institution-affiliated party.

(2) REPORTS TO BANKING AGENCIES.--

(A) INDEPENDENT AUDITOR REPORTS.--Each insured depository institution shall provide to the Corporation, any appropriate Federal banking agency, and any appropriate State bank supervisor, a copy of each audit report and any qualification to such report, any management letter, and any other report within 15 days of receipt of any such report, qualification, or letter from the institution's independent auditors.

(B) NOTICE OF CHANGE OF AUDITOR.--Each insured depository institution shall provide written notification to the Corporation, the appropriate Federal banking agency, and any appropriate State bank supervisor of the resignation or dismissal of the institution's independent auditor or the engagement of a new independent auditor by the institution, including a statement of the reasons for such change within 15 calendar days of the occurrence of the event.

[Codified to 12 U.S.C. 1831m(h)]

[Source: Section 2[36(h)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102-242; 105 Stat. 2242), effective December 31, 1992]

(i) Requirements for Insured Subsidiaries of Holding Companies.--

(1) IN GENERAL.--Except with respect to any audit requirements established under or pursuant to subsection (d), the requirements of this section may be satisfied for insured depository institutions that are subsidiaries of a holding company, if--

(A) services and functions comparable to those required under this section are provided at the holding company level; and

(B) the institution--

(i) has total assets, as of the beginning of such fiscal year, of less than \$5,000,000,000; or

(ii) has--

(I) total assets, as of the beginning of such fiscal year, of \$5,000,000,000, or more; and

(II) a CAMEL composite rating of 1 or 2 under the Uniform Financial Institutions Rating System (or an equivalent rating by any such agency under a comparable rating system) as of the most recent examination of such institution by the Corporation or the appropriate Federal banking agency.

(2) LARGE INSTITUTIONS.--For purposes of this subsection, in the case of an insured depository institution described in paragraph (1)(B)(ii) that the Corporation determines to be a large institution, the

audit committee of the holding company of such an institution shall not include any large customers of the institution.

(3) **APPLICABILITY BASED ON RISK TO FUND.**—The appropriate Federal banking agency may require an institution with total assets in excess of \$9,000,000,000 to comply with this section, notwithstanding the exemption provided by this subsection, if it determines that such exemption would create a significant risk to the Deposit Insurance Fund if applied to that institution.

[Codified to 12 U.S.C. 1831m(i)]

[Source: Section 2[36(i)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102–242; 105 Stat. 2242), effective December 31, 1992; as amended by section 314(a) of title III of the Act of September 23, 1994 (Pub. L. No. 103–325; 108 Stat. 2221), effective September 23, 1994; section 8(a)(34) of the Act of February 15, 2006 (Pub. L. No. 109–173; 119 Stat. 3615), effective date shall take effect on the day of the merger of the Bank Insurance Fund and the Savings Association Insurance Fund pursuant to the Federal Deposit Insurance Reform Act of 2005]

(j) **EXEMPTION FOR SMALL DEPOSITORY INSTITUTIONS.**—This section shall not apply with respect to any fiscal year of any insured depository institution the total assets of which, as of the beginning of such fiscal year, are less than the greater of—

- (1) \$150,000,000; or
- (2) such amount (in excess of \$150,000,000) as the Corporation may prescribe by regulation.

[Codified to 12 U.S.C. 1831m(j)]

[Source: Section 2[36(j)] of the Act of September 21, 1950 (Pub. L. No. 797; 64 Stat. 882), effective September 21, 1950, as added by section 112(a) of title I of the Act of December 19, 1991 (Pub. L. No. 102–242; 105 Stat. 2242), effective December 31, 1992]

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(a) **REPORTS TO APPROPRIATE FEDERAL BANKING AGENCIES—**

(1) **IN GENERAL.**—The Attorney General, the Secretary of the Treasury, and the head of any other agency or instrumentality of the United States shall, unless otherwise prohibited by law, disclose to the appropriate Federal banking agency any information that the Attorney General, the Secretary of the Treasury, or such agency head believes raises significant concerns regarding the safety or soundness of any depository institution doing business in the United States.

(2) **EXCEPTIONS—**

(A) **Intelligence information—**

(i) **IN GENERAL.**—The Director of Central Intelligence shall disclose to the Attorney General or the Secretary of the Treasury any intelligence information that would otherwise be reported to an appropriate Federal banking agency pursuant to paragraph (1). After consultation with the Director of Central Intelligence, the Attorney General or the Secretary of the Treasury, shall disclose the intelligence information to the appropriate Federal banking agency.

(ii) **Procedures for receipt of intelligence information.**—Each appropriate Federal banking agency, in consultation with the Director of Central Intelligence, shall establish procedures for receipt of intelligence information that are adequate to protect the intelligence information.

(B) **Criminal investigations, safety of Government investigators, informants, and witnesses.**—If the Attorney General, the Secretary of the Treasury or their respective designees determines that the disclosure of information pursuant to paragraph (1) may jeopardize a pending civil investigation or litigation, or a pending criminal investigation or prosecution, may result in serious bodily injury or death to Government employees, informants, witnesses or their respective families, or may disclose sensitive investigative techniques and methods, the Attorney General or the Secretary of the Treasury shall—

(i) provide the appropriate Federal banking agency a description of the information that is as specific as possible without jeopardizing the investigation, litigation, or prosecution, threatening serious bodily injury or death to Government employees, informants, or witnesses, or their respective families, or disclosing sensitive investigation techniques and methods; and

(ii) permit a full review of the information by the Federal banking agency at a location and under procedures that the Attorney General determines will ensure the effective protection of the information while permitting the Federal banking agency to ensure the safety and soundness of any depository institution.

(C) **GRAND JURY INVESTIGATION; CRIMINAL PROCEDURE**

PARAGRAPH (1) SHALL NOT—

(i) apply to the receipt of information by an agency or instrumentality in connection with a pending grand jury investigation; or

(ii) be construed to require disclosure of information prohibited by rule 6 of the Federal Rules of Criminal Procedure.

(b) **PROCEDURES FOR RECEIPT OF DISCLOSURE REPORTS—**

(1) **IN GENERAL.**—Within 90 days after October 28, 1992, each appropriate Federal banking agency shall establish procedures for receipt of a disclosure report by an agency or instrumentality made in accordance with subsection (a)(1) of this section. The procedures established in accordance with this subsection shall ensure adequate protection of information disclosed, including access control and information accountability.

(2) **PROCEDURES RELATED TO EACH DISCLOSURE REPORT.**—Upon receipt of a report in accordance with subsection (a)(1) of this section, the appropriate Federal banking agency shall—

(A) consult with the agency or instrumentality that made the disclosure regarding the adequacy of the procedures established pursuant to paragraph (1), and

(B) adjust the procedures to ensure adequate protection of the information disclosed.

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(c) **EFFECT ON AGENCIES.**—This section does not impose an affirmative duty on the Attorney General, the Secretary of the Treasury, or the head of any agency or instrumentality of the United States to collect new or to review existing information.

(d) **DEFINITIONS.**—For purposes of this section, the terms "appropriate Federal banking agency" and "depository institution" have the same meanings as in section 1818 of this title.

[Codified to 12 U.S.C. 1831m–l]

[Section 1542 of title XV of the Act of October 28, 1992 (Pub. L. No. 102–550; 106 Stat. 4067), effective October 28, 1992; section 1001(f) of title X of the Act of November 10, 1998; 112 Stat. 3292], effective

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