SUPPORTING STATEMENT
ANNUAL INDEPENDENT AUDIT S AND REPORTING REQUIREMENTS (PART 363)
3064-0113

A. Justification

1. Circumstances and Need.

Section 36 of the Federal Deposit Insurance Act (FDI Act) and the FDIC's implementing regulations (Part 363) are generally intended to facilitate early identification of problems in financial management at insured depository institutions with total assets above certain thresholds through annual independent audits, assessments of the effectiveness of internal control over financial reporting and compliance with designated laws and regulations, the establishment of independent audit committees, and related reporting requirements. The asset-size threshold for internal control assessments and certain audit committee membership requirements is $1 billion and the threshold for the other requirements is $500 million. Given changes in the industry; certain sound audit, reporting, and audit committee practices incorporated in the Sarbanes-Oxley Act of 2002 (SOX); and the FDIC's experience in administering Part 363 of its regulations, the FDIC last amended Part 363 in June 2009 to further the objectives of Section 36 by incorporating these sound practices into Part 363 and to provide clearer and more complete guidance to institutions and independent public accountants concerning compliance with the requirements of Section 36 and Part 363.

2. Use of Information Collected

The currently approved collection of information requires each insured depository institution that has consolidated total assets of $500 million or more to:

(1) file an annual report with the FDIC and its appropriate federal and state banking regulators that includes audited financial statements, a statement of management's responsibilities, and an assessment by management of compliance with designated laws and regulations,
(2) notify the FDIC when it selects or changes its independent public accountant, and
(3) file any management letter, qualification, and other report issued by the independent public accountant pertaining to its financial reporting.

In addition, the annual report filed by an insured depository institution that has total assets of $1 billion or more must include an assessment by management of the effectiveness of internal control over financial reporting and an auditor's attestation report on internal control over financial reporting.

An interagency Policy Statement on External Auditing Programs of Banks and Savings Associations was approved on October 15, 1999. The Policy Statement encourages institutions with assets less than $500 million to adopt an annual external auditing program, preferably a financial statement audit by an independent public accountant.

a. Insured Institutions with consolidated total assets of $500 million or more.

The information collected in the Part 363 Annual Report, other reports, and the notice of selection or change in accountant is used by the FDIC and other federal and state banking agencies for supervisory/surveillance, regulatory, and informational purposes. The information is used in the offsite evaluation of the institutions and to determine the frequency and scope of examinations. The Part 363 Annual Reports are also available to the public.

b. Insured Institutions with assets less than $500 million.

The information provided in the external auditor's report and the notice of selection or change in external auditor is used by the FDIC and other federal and state banking agencies for supervisory/ surveillance, regulatory, and informational purposes. The information is used in the offsite evaluation of the institutions and to determine the frequency and scope of examinations.

3. <u>Use of Technology to Reduce Burden</u>

The information is not collected electronically.

4. <u>Efforts to Identify Duplication</u>

a. Insured Institutions with assets of $500 million or more.

The collection requirements parallel the statutory language of Section 36. Much of the information in the Part 363 Annual Report and notice of selection or change in accountant is currently required to be filed by institutions and holding companies registered under the Securities Exchange Act of 1934 (public companies) with the appropriate federal banking agency or the Securities and Exchange Commission (SEC). The requirements of Part 363 were developed so that institutions that are public companies or subsidiaries of public companies will be able to file identical information with the SEC and the FDIC, supplemented by the additional information required by the differing statutory mandates.

b. Insured Institutions with assets of less than $500 million.

For institutions registered under the Securities Exchange Act of 1934 with the appropriate federal banking agency, the information requested, such as the auditor's report and any notice of selection or change in accountant, is currently required to be filed. Other institutions are requested to submit the report that they obtain from the performance of their external auditing program and a notice of any change in auditors. However, they are not required to file any specific type of report, and may use the report required by the state or their by-laws under certain circumstances.

5. <u>Minimizing the Burden on Small Institutions</u>

The SBA defines "small" banks as those with assets of $175 million or less. All small institutions (in fact, all institutions with less than $500 million in assets) are exempt from Part

363. However, with the Policy Statement, the agencies recommend that even small institutions consider their need for an external auditing program and record the rationale for their decision regarding it. Unless required to do so under another law or regulation, obtaining an external audit is voluntary for small institutions under the Policy Statement. Nonetheless, the burden estimates for this collection take account of the small institutions that file voluntarily.

6. Consequences of Less Frequent Collections

The frequency of collection is consistent with the statutory mandate in Section 36 of the FDI Act. Less frequent collection would result in non-compliance with the law. For institutions that are not subject to Section 36, an annual external auditing program is consistent with longstanding commercial practices in the banking industry.

7. Special Circumstances

None.

8. Consultation with Persons Outside the FDIC

This collection was developed through extensive consultation with the other financial institutions regulators, and its requirements were not finalized until after the notice-and-comment rulemaking process had been completed.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Part 363 Annual Reports are available to the public. Other reports and notices filed under Part 363 and reports and notices filed under the Policy Statement are afforded confidential treatment. The FDIC will ensure that information will be kept private to the extent allowed by law. Information will only be released to authorized recipients in accordance to the criterion for disclosure laid out in the Privacy Act and the Freedom of Information Act.

11. Information of a Sensitive Nature

No questions of a sensitive nature are included in the collection.

12. Estimates of Annual Burden

The estimates of annual burden are based on the estimated burden hours for FDIC-supervised institutions within each asset classification ($1 billion or more, $500 million or more but less than $1 billion, and less than $500 million) to comply with the requirements of Part 363 regarding the annual report, audit committee, other reports, and the notice of change in accountants. The number of respondents reflects the number of FDIC –supervised institutions in each asset classification. The number of annual responses reflects the estimated number of submissions for each asset classification. The annual burden hours reflects the estimated number of hours for FDIC-supervised institutions within each asset classification to comply with the requirements of Part 363.

a. FDIC-Supervised Institutions with assets of $1 billion or more.

Number of Respondents:	311
Annual Responses:	1,011
Annual Burden Hours:	69,751

b. FDIC-Supervised Institutions with assets of $500 million or more but less than $1 billion.

Number of Respondents:	416
Annual Responses:	1,352
Annual Burden Hours:	11,388

c. FDIC-Supervised Institutions with assets less than $500 million.

Number of Respondents:	3,850
Annual Responses:	11,550
Annual Burden Hours:	2,887

Total number of respondents:	4,577
Total annual responses:	13,913
Total annual burden hours:	84,026

13 Estimates of Annualized Cost.

None.

14. Estimates of Cost to the Government

None.

15. Reason for Change in Burden

There has been a decrease in the overall number of FDIC-supervised institutions, but a small increase in the number of institutions with $500 million or more in assets. The current Burden Estimate reflects an increase of 702 hours from 83,324 hours to 84,026 hours. The increase (less than 1%) is attributable to the net effect of the decrease (682) in the number of FDIC-supervised institutions with assets less than $500 million, and the increase (54) in the number of FDIC-supervised institutions with $500 million or more in assets.

16. Publication

The reports and notices filed with the FDIC are not published. The information is retained in the files of the Regional Offices of the Division of Risk Management Supervision. Part 363 Annual Reports are available to the public.

17. Display of Expiration Dates

Not Applicable.

18. Exceptions to Certification

None.