

SUPPORTING STATEMENT  
Qualifications for Failed Bank Acquisitions  
OMB No. 3064-NEW

The Federal Deposit Insurance Corporation (FDIC) is requesting emergency approval from the Office of Management and Budget (OMB) by August 28, 2009, to establish a collection of information in connection with its Statement of Policy on Qualifications for Failed Bank Acquisitions (Policy Statement). The Policy Statement provides guidance to private capital investors interested in acquiring or investing in failed insured depository institutions regarding the terms and conditions for such investments or acquisitions. The information collected will allow the FDIC to evaluate, among other things, whether such investors (and their related interests) could negatively impact the Deposit Insurance Fund, increase resolution costs, or operate in a manner that conflicts with statutory safety and soundness principles and compliance requirements.

A. JUSTIFICATION

Among other things, the Federal Deposit Insurance Act (FDIA) sets forth the duties and responsibilities of the Federal Deposit Insurance Corporation (FDIC) in providing for and maintaining a system of deposit insurance for the nation's insured depository institutions and in resolving troubled insured depository institutions in a manner that presents the least cost to the Deposit Insurance Fund. Section 6 of the FDIA sets forth a number of factors to be considered before an institution is permitted by the FDIC to obtain federal deposit insurance. Among these factors are the financial history of the institution; the adequacy of the institution's capital structure; the further earnings prospects; the convenience and needs of the community; the institution's corporate powers, and, not insignificantly, the risk presented to the Deposit Insurance Fund. (Similarly, provisions of the Change in Bank Control Act, found in section 7 of the FDIA, permit the FDIC - or another appropriate federal banking agency - to refuse to permit a proposed change in bank control if the proposed transaction would result in an adverse effect on the Deposit Insurance Fund.) Section 8 of the FDIA authorizes the FDIC to assess the safety and soundness of the practices, operations, and conditions of insured depository institutions, and permits the FDIC to terminate deposit insurance or to take other appropriate actions if the institution operates in an unsafe and unsound manner. Finally, section 13 of the FDIA authorizes the FDIC to resolve troubled insured depository institutions and to dispose of the assets of such institutions using the method that is least costly to the Deposit Insurance Fund, maximizes the return from the sale of such assets, and minimizes any loss to the Deposit Insurance Fund.

The information sought by the FDIC in its Policy Statement is consistent with the FDIC's statutory missions and will provide enhancements to existing collections of information related to the FDIC's responsibilities. The information will assist the FDIC in maintaining the nation's deposit insurance system by improving the FDIC's review of applications for deposit insurance and will guard against adverse effects on the Deposit Insurance Fund in other circumstances. The information also will support the FDIC's resolution of insured depository institutions using the method that is least costly to the Deposit Insurance Fund and that maximizes the return and minimizes the loss related to assets acquired from failed insured depository institutions.

### 1. Circumstances and Need

The Policy Statement applies to certain private capital investors that propose to acquire, directly or indirectly, the deposit liabilities and or such liabilities and assets from the resolution of a failed insured depository institution or for applicants of deposit insurance in the case of *de novo* charters issued in connection with the resolution of failed insured depository institutions (Investors). The information sought from these Investors will provide greater transparency to the FDIC about their business models, capital structures, management, interaction with related parties, and other interests of Investors involved in the acquisition of deposit liabilities or liabilities and assets from troubled insured depository institutions.

### 2. Use of Information Collected

Information sought from Investors and others described in the Policy Statement will assist the FDIC in evaluating resolution alternatives and in providing prudent oversight of insured depository institutions to ensure that they do not pose unreasonable risks to the Deposit Insurance Fund when originally chartered or during their early, critical years of operation.

The FDIC's information request will require Investors to provide regular reports that identify all known affiliates of the Investor and known "portfolio companies" in which the Investor or its affiliates owns more than 10% of the total voting equity; to maintain their books and records (or a duplicate thereof) in the United States if such Investors wish to be eligible to own a direct or indirect interest in an insured depository institution; and to submit to the FDIC information about themselves and all entities in their ownership chain, including such information as the size of the capital fund or funds, its diversification, the return profile, the marketing documents, the management team, the business model and such other information as the FDIC determine to be necessary to ensure compliance by Investors with the Policy Statement.

The FDIC believes that this information can be provided by Investors without significantly deterring private capital investments in the deposit and other liabilities and assets associated with troubled insured depository institutions. By identifying the information sought in its published Policy Statement, the FDIC intends to make an interested Investor aware of the information required by the FDIC and, and in so doing, make the Investor's investment decision a more informed one.

### 3. Use of Technology to Reduce Burden

Submission of periodic investor affiliate reports to insured depository institutions may be facilitated by whatever technology is mutually agreeable to investors and institutions. Similarly, business books and records (or duplicates thereof) to be maintained in the U.S. by investors that own an interest in an insured depository institution and that employ ownership structures utilizing entities that are domiciled in bank secrecy jurisdictions may be maintained in the form and format typically utilized by such entities. Finally, in making disclosures regarding the size of capital funds, diversification, return profile, marketing documents, the management team, and

business models, investors subject to the policy statement may use technology to the extent feasible and appropriate to meet the disclosure requirements.

4. Efforts to Identify Duplication

The information collection contained in the Policy Statement is related to, but not duplicated by, other previously approved collections of information. It cannot be readily acquired from other sources. In order to provide clarity to affected information providers, the FDIC is proposing this information collection to specify the information required to be submitted by Investors subject to the Policy Statement.

5. Minimizing the Burden on Small Entities

The information collected is the minimum necessary to ensure that the acquisitions of failed institutions by private capital investors do not raise safety and soundness issues, present a risk to the Deposit Insurance Fund, or increase resolution costs. Small entities can choose whether to participate in the program.

6. Consequences of Less Frequent Collection

Absent the information sought by the FDIC, Investors with opaque organizational structures and their related business interests may adversely affect the Deposit Insurance Fund or resolution costs by compromising existing capital sources, utilizing unproven management, and engaging in risky business ventures. The business and management interests of Investors and related parties often are subject to frequent change. The FDIC believes that such fluctuations call for a more frequent reporting cycle to guard against loss to the Deposit Insurance Fund throughout the investment period. Such factors may become more significant if the Investor or a related company is domiciled in a jurisdiction where the FDIC or other federal regulator may be unable to obtain ready access to needed records. Requiring such records (or a duplicate of them) to be maintained in the United States, as mandated by the Policy Statement, is expected to mitigate these concerns.

7. Special Circumstances

The Policy Statement requires Investor(s) to provide “regular reports” to the acquired insured depository institution identifying all affiliates of such Investor(s) and known portfolio companies in which the investors or their affiliates have invested. For purposes of the Policy Statement, the term “affiliate” is defined as “any company in which the Investor owns, directly or indirectly, at least 10 percent of the equity of such company and has maintained such ownership *for at least 30 days.*” (emphasis added)

In including this 30 day requirement in the definition of “affiliate” in the Policy Statement, the FDIC signals its understanding of the common industry practice for an Investor to frequently alter its investment mix. If the FDIC required less frequent reporting, the Deposit Insurance Fund could be adversely affected and the Investor could have disposed of its interest in the offending investment before the FDIC became aware of potential risk to the Deposit Insurance

Fund. The FDIC believes that a monthly reporting cycle for this information could offer significant protection against loss to the Deposit Insurance Fund.

8. Consultation with Persons Outside the FDIC

The FDIC published a Proposed Policy Statement with a request for comments on July 9, 2009 (74 FR 32931). At the time of publication of the proposal, it was believed that the reporting and recordkeeping requirements were related to existing collections for deposit insurance applications and change in control. However, given the unique issues raised by the acquisition of failed banks by private capital investors, the FDIC has decided to establish a separate information collection. Therefore, with publication of the final Policy Statement, the FDIC is submitting to OMB a request for approval of the new information collection under emergency processing procedures. The FDIC will follow its requests for emergency processing under the Paperwork Reduction Act with a request under normal clearance procedures, during which comments will be solicited for the required 60-day and 30-day periods. All comments received on paperwork burden will be considered in finalizing the information collection.

9. Payment or Gift to Respondents

No gifts will be given to respondents.

10. Confidentiality

Information deemed confidential is exempt from public disclosure under the Freedom of Information Act (5 U.S.C. 552).

11. Information of a Sensitive Nature

No information of a sensitive nature is requested.

12. Estimate of Annual Burden

<u>New Paperwork Burden</u>	<u>Number of Respondents</u>	<u>Hours Per Response</u>	<u>Responses Per Year</u>	<u>Total Hours</u>
Investor reports on affiliates	20	2	12	480
Maintenance of business books and records	5	2	4	40
Disclosures regarding investors and entities in ownership chain	20	4	4	320

13. Capital, Start-up, and Operating Costs

There are no capital, start-up or operating costs associated with preparation of written letter applications. Costs associated with maintaining business books and records (or duplicates) in the U.S., where applicable, and periodic reports on affiliates should be minimal.

14. Estimates of Annualized Cost to the Federal Government

Any incremental costs associated with reviewing information submitted by private capital investors are encompassed within the FDIC's personnel and data processing budgets and are not separately identifiable.

15. Reason for Change in Burden

This is a new information collection.

16. Publication

The information collected from private capital investors will not be published by the FDIC.

17. Exceptions to Expiration Date Display

None.

18. Exceptions to Certification

None.