SUPPORTING STATEMENT
QUALIFIED FINANCIAL CONTRACTS
(OMB No. 3064-0163)

INTRODUCTION

The FDIC is requesting OMB approval to continue the use of the information collection captioned above. There is no change in the method or substance of the collection. The current clearance for the collection expires on March 31, 2012. This collection consists of recordkeeping requirements for qualified financial contracts (QFCs) held by insured depository institutions in troubled condition. Section 908 of the Bankruptcy Abuse Prevention and Consumer Protection Act ("BAPCPA") revised the FDIA to allow the FDIC, in consultation with the Federal banking agencies, to prescribe regulations regarding QFC recordkeeping for institutions in a troubled condition. The final rule, adopted December 22, 2008 (73 FR 78162), requires institutions deemed to be in a troubled condition to produce certain position level and counterparty level information about QFCs following written notification by the FDIC, or the institution's appropriate Federal banking agency, immediately at the close of the institution's business day processing. The rule also requires the maintenance of certain additional information in electronic or written form pertaining to QFC transactions and the parties to these transactions.

A. JUSTIFICATION

1. Circumstances and Need

Under the Federal Deposit Insurance Act (FDIA), QFCs have been designated for special treatment by the FDIC in the event of a failure of an insured depository institution. As codified in FDIA as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), certain timing restrictions are effectively placed on the FDIC for making decisions whether to transfer QFCs to another financial institution, repudiate the QFCs, or retain the QFCs in the receivership in the event of an insured institution's failure. To make an informed decision about QFCs in such situations, the FDIC needs timely information pertaining to the types and amounts of QFC contracts held, the counterparties to these contracts and their affiliates, the purpose of these contracts, their maturity dates, the current value of these contracts, and whether these contracts are collateralized.

Because of the large volume of QFC information that a receiver must process in a limited timeframe, the FDIC established QFC recordkeeping requirements for institutions in a "troubled condition" as that term is defined in the rule. The FDIC does not believe these recordkeeping requirements are overly burdensome. Rather, the FDIC believes these requirements are consistent with safe and sound risk management practices for institutions that hold QFCs.

2. Use of Information Collected

Troubled institutions are required to maintain in an electronic file format, 11 categories of QFC position level data and 7 categories of QFC counterparty level data, as identified in the rule. The institutions are required to demonstrate the ability to produce these data items after written notification by the FDIC or the institution's appropriate Federal banking agency, immediately at the close of the institution's business day processing. The FDIC will use any data so requested to evaluate its options with respect to QFCs for purposes of minimizing losses to the deposit insurance fund in the event of failure. Should a failure occur, the FDIC believes that timely access to such information will allow it to make more informed decisions about QFCs for purposes of meeting its fiduciary duty to protect the insurance fund.

3. Use of Technology to Reduce Burden

All institutions covered by the rule are required to use electronic files to maintain information pertaining to QFC positions and QFC counterparties. If requested, this information would be submitted to the FDIC in electronic format as well.

4. Efforts to Identify Duplication

There is no other source of detailed information on QFCs. Regulatory financial filings such as Call Reports and Thrift Financial Reports include certain aggregated information about the holdings of QFCs by insured institutions. However, this aggregated information is not sufficient to make decisions about QFCs in the event of an institution's failure since such decisions are required on a counterparty level basis.

5. Minimizing Burden on Small Banks

The FDIC believes the rule has only limited impact on small institutions deemed to be in a troubled condition. QFC transactions tend to be entered into by larger institutions engaged in more complex types of financial activities such as interest rate and price risk hedging and the trading of financial assets. Small institutions tend to have minimal exposure to QFCs as measured by regulatory financial reports.

6. Consequences of Less Frequent Collection

The information is required to be submitted to the FDIC upon request. There is no set frequency, although frequent requests may be necessary where the following factors are present: the institution deemed to be in a troubled conditions holds a large volume of QFCs, and the near term failure prospects of an institution are significant. In the event of failure, where QFC volumes are material, less frequent information collections could result in less informed decisions about the disposition of QFCs, which could in turn result in larger losses to the insurance fund than would otherwise be the case.

7. Special Circumstances

Under the rule, certain information pertaining to QFC positions and QFC counterparties must be maintained by insured institutions deemed to be in a troubled condition. These institutions will be required to demonstrate the ability to produce such information in electronic files after written notification by the institution's appropriate Federal banking agency or by the FDIC immediately at the close of the institution's business day processing. The short timeframe for producing the requested information is necessary given the time restrictions placed on the FDIC for making decisions about the disposition of QFCs in the event of failure.

An institution's holdings of QFCs can change dramatically over a very short timeframe since QFCs often have short contractual maturities. In addition, the value of QFCs can fluctuate widely over short timeframes since these values are often tied to market-sensitive instruments such as interest rate, foreign exchange, commodities, and equity contracts. As a result, the FDIC believes it may be necessary to require relatively frequent reporting (more frequently than quarterly) of QFC information in the event it faces the prospect of a near-term failure of an institution. As noted in item 6 above, the FDIC will consider a number of factors in determining whether to require more frequent reporting of QFC information to include the perceived immediacy of near term failure prospects of an institution and the level and number of QFCs held (if known).

8. <u>Consultation with Persons Outside the FDIC</u>

A "first" Federal Register notice seeking comment for the renewal of this collection was published on November 14, 2011 (76 FR 70447). No comments were received.

9. <u>Payment or Gift to Respondents</u>

No payment or gift will be provided to respondents.

10. <u>Confidentiality</u>

Data submitted to the FDIC under this rule will not be shared with the public. The FDIC may share any information collections under this rule with the appropriate Federal banking agency.

11. <u>Information of a Sensitive Nature</u>

There are no questions of a sensitive nature in this information collection.

12. <u>Estimate of Annualized Burden</u>

The combined annual burden for this collection is estimated to be 12,170 hours. This estimate is partially derived from the product of the estimated number of institutions subject to this rule and the estimated hours per respondent necessary to meet the rule's reporting and records maintenance requirements. There are an estimated 190 institutions are subject to the reporting and recordkeeping requirements of the rule.

The combined reporting and record maintenance burdens are estimated at 64 hours per respondent annually. This estimate consists of two components: a reporting component and a records maintenance component. The reporting requirements are estimated to require 2 hours on average to complete. This estimate is based on a number of considerations including the relatively small number of items requested, the time necessary to complete other regulatory reports, and the volume of QFC activity evident in the existing population of institutions that would be subject to the proposed rule. The time necessary to produce such reports could be substantially more than 2 hours for larger institutions with greater QFC volumes. Assuming 12 such reports will be required within a given year brings the reporting component of the estimate to 24 hours per respondent. It is estimated that institutions subject to these requirements will spend, on average, 10 hours per quarter, or 40 hours annually for the updating and records maintenance component. Again, larger institutions with greater QFC volumes would likely spend considerably more time updating and maintaining records pertaining to QFC activities. Combining the records maintenance and reporting component estimates results in an estimated annual burden of 64 hours per respondent.

The rule provides for the submission of an application for an extension of time to comply with the rule's recordkeeping and records maintenance requirements for institutions that elect to file such applications. The FDIC estimates that approximately 20 institutions will avail themselves of this option and that the preparation of the letter application will take approximately 30 minutes per respondent.

Estimated Burden

Recordkeeping/records maintenance – 190 respondents x 64 hours = 12,160
Application for extension of time – 20 respondents x 30 minutes = 10 hours

Total Burden – 12,170 hours

13. Capital/Start-Up and Operation/Maintenance Cost

For some institutions, there may be certain additional costs (excluding costs included in item 12 above) associated with aspects of the rule relating to developing and maintaining data systems and electronic information files although many institutions' data systems may already have the capabilities described in the reporting and recordkeeping requirements.

14. Estimate of Total Annual Cost to the Federal Government

None.

15. Reason for Change in Burden

There is no change in burden.

16. Publication

There are no plans to publish the information.

17. Display of Expiration Date

This information collection consists primarily of recordkeeping requirements, which records must be produced only upon request by the FDIC. There are no data collection instruments.

18. Exceptions to Certification

The agency is able to certify compliance with all applicable provisions under Item 19 of OMB Form 83-I.

B. STATISTICAL METHODS

None.