

Financial Stability Oversight Council
Designation of Financial Market Utilities
Under

Title VIII of the Dodd-Frank Wall Street Reform and Consumer Protection Act

1. Circumstances necessitating the collection of information

Section 804 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (the DFA) (Pub. L. 111-203) provides the Financial Stability Oversight Council (Council) the authority to designate a financial market utility (FMU) as systemically important if the Council determines that the failure of or a disruption to the functioning of the FMU could create, or increase, the risk of significant liquidity or credit problems spreading among financial institutions or markets and thereby threaten the stability of the U.S. financial system. A designated FMU would be subject to risk management standards prescribed by the Federal Reserve Board, the CFTC, or the SEC under section 805 of the DFA.¹ The rule describes the criteria that will inform, and the processes and procedures established under the DFA, for the Council's designation of FMUs under the DFA.

2. Use of the data

The information collected in § 1320.20 from FMUs will be used generally by the Council to determine whether to designate or rescind the designation of an FMU under Title VIII of the DFA. The collection of information in § 1320.11 provides an opportunity for an FMU to submit written materials to the Council before the Council decides whether to propose: (1) the designation of the FMU as systemically important; or (2) rescinding the designation of the FMU as systemically important. Similarly, the collection of information in §1320.12 provides an opportunity for an FMU to request a hearing or submit written materials to the Council to contest the Council's proposed determination to either designate the FMU as systemically important or rescind the designation of the FMU. The collection of information in § 1320.14 provides an opportunity for an FMU to request a hearing or submit written materials to the Council to contest the Council's waiver or modification of any notice, hearing, or other requirements in §§ 1320.11 and 1320.12.

3. Use of information technology

When appropriate, the Council may request that information be submitted electronically.

4. Efforts to identify duplication

The information is not collected or reported in any other information collection.

5. Impact on small entities

¹ Some FMUs may welcome designation by the Council because of two specific benefits tied to such designation. First, a designated FMU may be able to open a Federal Reserve account under DFA § 806(a). Second, a designated FMU may be able to access the Federal Reserve Banks' discount window under DFA § 806(b).

It is unlikely that small entities will be affected by the information collections.

6. Consequences of less frequent collection and obstacles to burden reduction

If the information is not collected, the Council will not be able to adequately meet its responsibilities under the DFA.

7. Circumstances requiring special information collection

Not applicable.

8. Solicitation of comments on information collection

A notice of proposed rulemaking that describes the information collection was published in the Federal Register. The Council received comments regarding the collection of information. Several commenters generally supported the Council's approach toward the collection of information; however, several commenters suggested changes.

For example, one commenter suggested that, when the Council invokes its emergency authority under § 1320.14 to waive or modify a notice or hearing requirement, the Council should provide the affected FMU an opportunity for a hearing to contest the Council's decision. The Council agreed with the comment and revised § 1320.14 to provide affected FMUs an opportunity to request a hearing or submit written materials.

For example, one commenter stated that FMUs should be able to bypass the information collection requirements in § 1320.20 by consenting to designation. Another commenter suggested that the Council redraft § 1320.20 to make clear that the Council will not collect information directly from FMUs until a later stage in the Council's designation process. The Council considered these comments and decided to adopt § 1320.20 substantially as proposed. The Council will not allow an FMU to bypass information submission requirements by consenting to designation, because the Council has a responsibility to determine whether the FMU meets the standards for systemic importance. While the Council does not expect to collect information directly from an FMU until a later stage in the designation process, the rule already constrains the Council's ability to collect information directly from an FMU by providing that the Council can collect information only if it has reasonable cause to believe that the FMU is, or is likely to become, systemically important and after coordinating with the FMU's supervisory agency.

9. Provision of payments to recordkeepers

Not applicable.

10. Assurance of confidentiality

Any confidential information provided will be maintained as confidential consistent with applicable provisions of the Trade Secrets Act, Freedom of Information Act, and the Privacy Act.

11. Justification of sensitive questions

Not applicable.

12. Estimated burden of information collection

Total burden: 500 hours

13. Estimated total annual cost burden to respondents

The Council estimates that there will be no annualized capital/start-up costs for the respondents to collect and submit this information.

14. Estimated cost to the federal government.

There will be no annualized capital/start-up costs for the government to receive this information.

15. Reasons for change in burden

Not applicable.

16. Plans for tabulation, statistical analysis and publication

Not applicable.

17. Reasons why displaying the OMB expiration date is inappropriate

Not applicable.

18. Exceptions to certification requirement of OMB Form 83-I

Regarding this request for OMB approval, there are no exceptions to the certification statement in item 19 of Form 83-I.