

Supporting Statement
Margin and Capital Requirements for Covered Swap Entities
OMB Control No. 1557-NEW

A. Justification.

1. Circumstances that make the collection necessary:

This Information Collection Request (ICR) is being filed in connection with an interim final rule required by the Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA).¹ Title III of TRIPRA, the “Business Risk Mitigation and Price Stabilization Act of 2015,” amends the statutory provisions added by the Dodd-Frank Act relating to margin requirements for non-cleared swaps and non-cleared security-based swaps. Section 302 of Title III amends sections 731 and 764 of the Dodd-Frank Act to provide that the initial and variation margin requirements do not apply to certain transactions with specified counterparties that qualify for an exemption or exception from clearing. Non-cleared swaps and non-cleared security-based swaps that are exempt under section 302 of TRIPRA will not be subject to the Agencies’² rules implementing margin requirements.³ In section 303 of TRIPRA, Congress required that the Agencies implement the provisions of Title III by promulgating an interim final rule and seeking public comment on the interim final rule.

The effect of the interim final rule is to augment provisions proposed by the Agencies in the September 2014⁴ proposed rule that would allow swap entities to collect no initial or variation margin from certain “other counterparties” like commercial end-users with a provision that grants an exception from the margin requirements for certain swaps with these and certain additional counterparties. The final rule also contains provisions allowing a covered swap entity to continue with the current practice of collecting initial or variation margin at such times and in such forms and amounts (if any) as the covered swap entity determines appropriate consistent with its overall credit risk management of its exposures to “other counterparties.”

2. Use of the information:

The interim final rule implements statutory language that requires certain swaps of certain counterparties that qualify for a statutory exemption or exception from clearing also to be exempt

1 [?] Pub. L. 114-1, 129 Stat. 3 (2015).

2 [?] The Agencies are the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Federal Deposit Insurance Corporation, the Farm Credit Administration, and the Federal Housing Finance Agency.

3 [?] This interim final rule is a companion rule to a final rule adopted to implement section 731 and 764 of the Dodd-Frank Act.

4 [?] 79 FR 57348 (September 24, 2014).

from the initial and variation margin requirements of the joint final rule. The reporting requirements found in § 45.1(d) refer to other statutory provisions that set forth conditions for an exemption from clearing. Section 45.1(d)(1) provides an exemption for non-cleared swaps if one of the counterparties to the swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the CFTC of how it generally meets its financial obligations associated with entering into non-cleared swaps. Section 45.1(d)(2) provides an exemption for security-based swaps if the counterparty notifies the SEC of how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

For example, TRIPRA provides that the initial and variation margin requirements of the joint final rule shall not apply to a non-cleared swap or non-cleared security-based swap for which a counterparty qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act, which includes certain reporting requirements established by the applicable Commission.

The same notification requirements required for an exemption from the SEC and CFTC clearing requirements will be required for an exception or exemption pursuant to § 45.1(d) from the initial and variation margin requirements for non-cleared swaps established by the Agencies under sections 731 and 764 of the Dodd-Frank Act. Because this interim final rule serves to implement exemptions and exceptions by reference to existing statutory provisions, including the relevant existing reporting requirements, § 45.1(d) imposes new reporting requirements.

3. Consideration of the use of improved information technology:

Any information technology may be used that permits review by OCC examiners.

4. Efforts to identify duplication:

The information required is unique. It is not duplicated elsewhere.

5. Methods used to minimize burden if the collection has an impact on a substantial number of small entities:

Not applicable.

6. Consequences to the Federal program if the collection were conducted less frequently:

Conducting the collection less frequently would present safety and soundness risks.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

None. The information collection is conducted in accordance with OMB guidelines in 5 CFR part 1320.

8. Efforts to consult with persons outside the agency:

The Agencies published the information collection requirements contained in the interim final rule for 60 days of comment.⁵

9. Payment to respondents:

None.

10. Any assurance of confidentiality:

The information will be kept private to the extent permitted by law.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature. No personally identifiable information is collected.

12. Burden estimate:

20 Respondents x 1,000 Burden Hours per Respondent = 20,000 Burden Hours.

20,000 Hours x \$101 = \$2,020,000

To estimate average hourly wages we reviewed data from May 2014 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the rule, we use \$101 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation (2 percent), plus an additional 30 percent to cover private sector benefits. Thirty percent represents the average private sector costs of employee benefits.

13. Estimate of annualized costs to respondents (excluding cost of hour burden in Item #12):

None.

14. Estimate of annualized costs to the government:

None.

15. Changes in burden:

The increase in burden is due to the fact that this is a new collection.

⁵ 80 FR 74916 (November 30, 2015).

16. Information regarding collections whose results are planned to be published for statistical use:

No publication for statistical use is contemplated.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.