

SUPPORTING STATEMENT
Margin and Capital Requirements for Covered Swap Entities
(OMB No. 3064-NEW)

INTRODUCTION

The FDIC is requesting approval from the OMB to establish a new information collection comprised of reporting and recordkeeping requirements contained in a notice of proposed rulemaking on Margin and Capital Requirements for Covered Swap Entities (the Proposed Rule), jointly issued by the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (FRB), the Farm Credit Administration (FCA), and the Federal Housing Financing Agency (FHFA), to implement sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank), Pub. L. No. 111-203, 124 Stat 1376 (2010).

JUSTIFICATION

1. Circumstances and Need

The FDIC, OCC, FRB, FCA, and FHFA (each an “Agency” and, collectively, the “Agencies”) propose to issue a joint rule to establish minimum margin and capital requirements for registered swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants for which one of the Agencies is the prudential regulator. This proposed rule implements sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act, which require the Agencies to adopt rules jointly to establish capital requirements and initial and variation margin requirements for such entities and their counterparties on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared.

Sections 731 and 764 of the Dodd Frank Wall Street Reform and Consumer Protection Act (Dodd Frank Act) add a new section, section 4s, to the Commodity Exchange Act of 1936, as amended (“Commodity Exchange Act”) and a new section, section 15F, to the Securities Exchange Act of 1934, as amended (“Exchange Act”), respectively, which require the registration by the Commodity Futures Trading Commission (the “CFTC”) and the Securities and Exchange Commission (the “SEC”) of swap dealers, major swap participants, security-based swap dealers, and major security-based swap participants (each a “swap entity” and, collectively, “swap entities”) For swap entities that are prudentially regulated by one of the Agencies, sections 731 and 764 of the Dodd-Frank Act require the Agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing (i) capital requirements and (ii) initial and variation margin requirements on all swaps not cleared by a central counterparty (“CCP”).

The capital and margin standards for swap entities imposed under sections 731 and 764 of the Dodd-Frank Act are intended to offset the greater risk to the swap entity and the financial system arising from the use of swaps and security-based swaps that are not cleared. They require that

the capital and margin requirements imposed on swap entities must, to offset the greater risk to the swap entity and the financial system arising from the use of non-cleared swaps, help ensure the safety and soundness of the swap entity and be appropriate for the greater risk associated with the non-cleared swaps and non-cleared security-based swaps held as a swap entity. They also require the Agencies, in establishing capital rules for covered swap entities, to take into account the risks associated with other types of swaps or classes of swaps or categories of swaps engaged in and the other activities conducted by that person that are not otherwise subject to regulation applicable to that person by virtue of the status of the person as a swap dealer or a major swap participant.

The swaps-related provisions are intended to reduce risk, increase transparency, promote market integrity within the financial system, and, in particular, address a number of weaknesses in the regulation and structure of the swaps markets that were revealed during the financial crisis. During the financial crisis, the opacity of swap transactions among dealers and between dealers and their counterparties created uncertainty about whether market participants were significantly exposed to the risk of a default by swap counterparties. A regulatory margin requirement for non-cleared swaps reduces the uncertainty around the possible exposures arising from non-cleared swaps.

In addition, the financial crisis revealed that a number of significant participants in the swaps markets had taken on excessive risk through the use of swaps without sufficient financial resources to make good on their contracts. By imposing an initial and variation margin requirement on non-cleared swaps, the ability of firms to take on excessive risks through swaps without sufficient financial resources will be reduced. The minimum margin requirement will reduce the amount by which firms can leverage the underlying risk associated with the swap contract.

2. Use of Information Collected

The information collected under the proposed rule will be used by regulators to verify compliance with the proposed rule, by bank management to verify that contractual obligations are being met, and provide bank management with analysis of the ongoing risks of uncleared OTC derivative exposures. Under current safety and soundness guidance and capital rules issued by the appropriate Federal banking agencies, banks are required to identify, measure, monitor and control the risks of counterparty exposures arising from the use of derivatives contracts. The additional reporting requirements contained in this proposed rule bolster existing bank internal analysis and onsite examination of the risks posed by OTC derivatives activities by increasing the qualitative and quantitative analysis of the possible losses from counterparty credit risks. This analysis includes variation and initial margin amounts be calculated, and in some cases, requires that counterparties to these transactions provide cash or high quality liquid and marketable securities to reduce these exposures.

3. Use of Technology to Reduce Burden

Banks may use technology to the extent feasible and/or desirable or appropriate to make the

required reports and to maintain the required records.

4. Efforts to Identify Duplication

The reporting and recordkeeping requirements in the rule are new and are not otherwise duplicated.

5. Minimizing the Burden on Small Banks

The collection is not expected to have an impact on a substantial number of small entities. The reporting and recordkeeping requirements apply to covered swap entities, and no small entity supervised by the FDIC is expected to be such an entity. .

6. Consequences of Less Frequent Collection

The reporting and recordkeeping requirements in this information collection are either event-generated or annual. The event-generated reporting and recordkeeping requirements relate to documentation of legal review and establishment of procedures to monitor changes in the law for qualifying master netting agreements; validation and documentation that initial margin models meet specified quantitative standards; and written notification of changes to or problems with initial margin models. Requiring swap entities to prepare reports or maintain records any less frequent than at the time of the event would impair the ability of the Agencies to ensure the safety and soundness of swap entities and circumvent the goals of reducing risk to swap entities and the financial system, increasing transparency for derivatives transactions, and promoting market integrity. The annual reporting and recordkeeping requirements relate to review of initial margin models and reports to boards of directors of internal audit findings. Requiring swap entities to review initial margin models and report on internal findings on an annual basis is considered the minimum necessary to ensure the model effectiveness and to take any necessary remedial action.

7. Special Circumstances

There are no special circumstances.

8. Consultation With Members of the Public

The agencies have published a joint notice of proposed rulemaking[79 FR 57348 (September 24, 2014)] seeking public comment on all aspects of the proposal. The request for comment includes specific questions on each aspect of the proposal on which the agencies are seeking feedback. The Agencies will consider all comments received in development of the final rule and will respond to all comments received in the preamble of the final rule document.

9. Payment or Gift to Respondents

No payments or gifts will be provided to respondents.

10. Confidentiality

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

11. Information of a Sensitive Nature

None of the information required to be reported or maintained is of a sensitive nature.

12. Estimated Burden

The estimated reporting and recordkeeping burden is set forth in the following table:

Sections Containing PRA Burden	Type of Burden	Number of Respondents	Estimated Annual Frequency	Estimated Average Hours Per Response	Estimated Annual Burden Hours
§349.8(c) Initial Margin Model §349.8(d) Quantitative Requirements	Reporting	3	1	240	720
§ 349.9(e) Requests for Determination	Reporting	3	3	10	90
§ 349.2 Master Netting Agreement §349.5 Margin Collection and Posting §349.8(f) Periodic Review §349.(8)(g) Documentation §349.8(h) Escalation Procedures §349.10 Documentation of Margin Matters	Recordkeeping	3	1	69	207
TOTALS					1,017

13. Estimate of Total Annual Cost Burden

Covered institutions already have established systems to accumulate data and produce reports for the internal calculation of margin and capital for counterparty credit risk. Therefore, only nominal additional maintenance costs are involved. It is estimate that for the 3 impacted institutions a total of 40 additional hours periodic review and related control and validation mechanism for a total of 120 hours will be required at an estimated cost of \$101 per hour for a total cost estimated of \$12,120.

14. Estimate of Total Annual Cost to the Federal Government

None.

15. Reason for Change in Burden

This is a new information collection.

16. Publication

The information collected will not be published by the FDIC.

17. Display of Expiration Date

The expiration date will be set forth in the preamble to the final rule.

18. Exceptions to Certification

Not applicable.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.