

**Supporting Statement for the
Reports Related to Securities of State Member Banks as Required by Regulation H
(Reg H-1; OMB No. 7100-0091)**

Summary

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the mandatory Reports Related to Securities of State Member Banks as Required by Regulation H (Reg H-1; OMB No. 7100-0091). Regulation H requires certain state member banks (SMBs) to submit information relating to their securities to the Federal Reserve on the same reporting forms that bank holding companies and nonbank entities use to submit similar information to the Securities and Exchange Commission (SEC). Because most publicly held banking organizations are bank holding companies, only three SMBs, which are generally small, currently submit these data. The information is primarily used for disclosure to a SMB's shareholders and public investors and is available to the public upon request. The reporting frequency varies, depending on the SEC reporting form being submitted. The attached Reg H-1 Appendix lists and describes the SEC reporting forms that are specified by the securities disclosure and reporting requirements embodied in Regulation H (208.36). The annual reporting burden for this information collection is estimated to be 264 hours.

Background and Justification

Section 12(i) of the Securities Exchange Act of 1934 (1934 Act) requires SMBs with 2,000 or more shareholders and more than \$10 million in total assets or those having a class of securities listed on a national exchange to make certain public disclosures to the Federal Reserve under regulations that are substantially similar to those of the SEC.¹ In order to comply with the substantially similar requirement of the 1934 Act and to avoid having to amend its rules whenever SEC rules are changed, the Federal Reserve in 1987 amended its rules to provide that SMBs subject to the 1934 Act must file those reporting forms set forth in the SEC's rules for entities subject to SEC regulation. The disclosures required by the 1934 Act provide the public with material financial information about the securities of reporting companies, alert the public to ownership changes in and tender offers for those securities, and provide shareholders with information relevant to the solicitation of proxies.

In May 2003, the SEC amended its rules to implement electronic filing requirements imposed by the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley) for Forms 3, 4, and 5. Regulation H requires SMBs registered under section 12(g) of the 1934 Act to comply with the rules, regulations, and reporting forms adopted by the SEC. When the SEC amended its rules to require electronic filing of Forms 3, 4, and 5, those requirements became applicable to SMBs registered under Section 12(g) of the 1934 Act. Because the Federal Reserve does not have a

¹ The Jumpstart Our Business Startups Act (JOBS Act) was enacted in April, 2012. The JOBS Act amended the SEC registration obligation for banks under Section 12(g) of the 1934 Act from 500 persons to 2,000 persons. The holders of record threshold for Section 12(g) deregistration for banks has been increased from 300 persons to 1,200 persons.

capacity for receiving these reporting forms electronically, the Federal Reserve, and other bank regulators, provided written guidance to the affected banks requesting that they submit their Forms 3, 4, and 5 data electronically through *FDICconnect*,² an electronic filing system operated by the Federal Deposit Insurance Corporation (FDIC).

Description of Information Collection

Under section 208.36 of Regulation H, SMBs are subject to the reporting requirements of the 1934 Act and must file the same reporting forms that the SEC, pursuant to the 1934 Act, requires of bank holding companies and nonbank entities. Therefore, SMBs are required to review the various SEC rules, regulations, releases, and reporting forms to determine appropriate filing requirements. The use of SEC reporting forms has a three-fold effect on respondent banks. First, respondents are required to submit audited financial statements. Second, respondents are required to include a management's discussion and analysis of financial condition and results of operations, as required by the SEC's Part 229 Standard Instructions For Filing Forms Under Securities Act of 1933, Securities Exchange Act of 1934, and Energy Policy and Conservation Act of 1975 (Regulation S-K). Third, by submitting data based on SEC rules, respondent's filings are consistent with those of other public companies, thus reducing burden and improving usefulness to users.

Small SMBs may reduce their reporting burden by electing to substitute the quarterly financial statements they submit as part of their Consolidated Reports of Condition and Income (Call Report; FFIEC 041; OMB No. 7100-0036) in lieu of the financial statements the SEC requires in its Quarterly Report Pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934 (10-Q; OMB No. 3235-0070). This election is available to any SMB that has no foreign offices and that controls total assets of less than \$150 million. Unlike entities subject to the SEC's requirements, small banks electing this option do not need to include any interim statements of cash flow or comparative balance sheets and income statements from prior fiscal years. However, these banks shall include earnings per share or net loss per share prepared in accordance with generally accepted accounting principles and shall disclose any material contingencies. Of the three SMBs subject to these reporting requirements, none currently submit copies of their Call Reports as part of the Form 10-Q.

Time Schedule for Information Collection

SMBs that are subject to section 208.36 of Regulation H must file securities reporting forms at the times indicated below.

- Form 10-Q quarterly reports for the first three fiscal quarters (for the quarters ending March 31, June 30, and September 30) are due by May 15, August 15, and November 15, respectively. Due dates for accelerated and large accelerated filers are May 10, August 10, and November 10.³

² See <https://www2.fdicconnect.gov/>.

³ Accelerated filers are companies that have a public float of at least \$75 million but less than \$700 million. Large accelerated filers include reporting companies with a public float of \$700 million or more.

- Form 10-K annual report for the year ending December 31 is and is due by March 31 of the following year. The due date for accelerated filers is March 15 and for large accelerated filers is February 28.
- Form 8-K (Current Report) is required when certain material events occur, generally within four days of the event. It would contain more current information than Forms 10-K and 10-Q.
- A proxy (Schedule 14A) is generally filed annually, prior to the bank's shareholders meeting.
- Form 3 (Initial Statement of Beneficial Ownership of Securities) must be filed by every director or officer, upon initial appointment, or by every shareholder when his or her equity position reaches 10 percent or more of the bank.
- Any person who has previously filed Form 3 must file Form 4 (Statement of Changes of Beneficial Ownership of Securities) for any month in which his or her ownership position changes. (Taken together, on average, eleven of Form 3 and Form 4 are filed by each bank per year).
- Form 5 is the Annual Statement of Beneficial Ownership of Securities and must be filed on or before the 45th day after the end of the issuer's fiscal year in accordance with Rule 16a-3(f).
- All other reporting forms are event -generated and are filed infrequently.

Registered SMBs file Forms 3, 4, and 5 electronically through *FDICconnect*. The Federal Reserve Bank monitors the SMB's filings via the Beneficial Ownership Filings System (BOFS).⁴ The Federal Reserve does not publish data from the filings; however, they are made available to the public no later than the end of the business day following the filing via BOFS.

Legal Status

The Board's Legal Division has determined that sections 12(i) and 23(a)(1) of the Securities Exchange Act of 1934 (15 U.S.C. §§ 78l(i) and 78w(a)(1)) and Regulation H (12 CFR 208.36) authorizes the Board to require these reports. The obligation of SMBs to file these reports is mandatory. The information collected is not considered confidential. However, a SMB may request that a report or document not be disclosed to the public and be held confidential by the Board. Should a SMB request confidential treatment of such information, the question of whether the information is entitled to confidential treatment must be determined on a case-by-case basis.

Consultation Outside of the Agency

On April 7, 2016, the Board published a notice in the *Federal Register* (81 FR 20384) requesting public comment for 60 days on the extension, without revision, of the Reg H-1. The comment period for this notice expired on June 6, 2016. The Board did not receive any comments. On June 29, 2016, the Board published a final notice in the *Federal Register* (81 FR 42357).

⁴ See <http://www2.fdic.gov/efr/>.

Estimate of Respondent Burden

The annual reporting burden for this information collection is estimated to be 264 hours. The number of respondents is estimated based on actual 2014 submissions. On average, each SMB submits 17 reports a year, including the required quarterly and annual reports and event-generated reports. These reporting requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

	<i>Number of respondents⁵</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Reg H-1	3	17	5.17	264

The total cost to the public is estimated to be \$14,032.⁶

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimated Cost to the Federal Reserve System

The annual cost to the Federal Reserve System for collecting this information is negligible.

⁵ Of these respondents, two are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards.

⁶ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$17, 45% Financial Managers at \$65, 15% Lawyers at \$66, and 10% Chief Executives at \$89). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2015*, published March 30, 2016 www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

Reg H-1 Appendix

**SEC Forms Specified by the Securities and Exchange Commission
Reporting Requirements Embodied in Regulation H (208.36)**

<i>SEC Form</i>	<i>Authorizing Regulation & Description</i>
Form 10	17 CFR 249.210 This is the general reporting form for registration of securities pursuant to section 12(b) or (g) of the 1934 Act of classes of securities of issuers for which no other reporting form is prescribed. It requires certain business and financial information about the issuer.
Form 10-K	17 CFR 249.310 This is the annual report that most reporting companies file. It provides a comprehensive overview of the registrant's business, and includes audited annual financial statements. Depending on the reporting company's size, the report must be filed within 60, 75, or 90 days after the end of the company's fiscal year.
Form 8-K	17 CFR 249.308 This is the current report that is used to report the occurrence of any material events or corporate changes which are of importance to investors or security holders and previously have not been reported by the registrant. It provides more current information on certain specified events than would Forms 10-Q or 10-K.
Form 10-Q	17 CFR 249.308(a) The Form 10-Q is a report filed quarterly by most reporting companies. It includes unaudited financial statements and provides a continuing overview of major changes in the company's financial position during the year, as compared to the prior corresponding period. The report must be filed for each of the first three fiscal quarters of the company's fiscal year and is due within 40 or 45 days of the close of the quarter, depending on the size of the reporting company.
Schedule 14A (proxy statement)	17 CFR 240.14a-2.14a-10 State law governs the circumstances under which shareholders are entitled to vote. When a shareholder vote is required and any person solicits proxies with respect to securities registered under Section 12 of the 1934 Act, that person generally is required to furnish a proxy statement containing the information specified by Schedule 14A. The proxy statement is intended to provide <i>shareholders</i> with the information necessary to enable them to vote in an informed manner on matters intended to be acted upon at <i>shareholders'</i> meetings, whether the traditional annual meeting or a special meeting. Typically, a <i>shareholder</i> is also provided with a proxy card to authorize designated persons to vote his or her securities on the <i>shareholder's</i> behalf in the event the holder does not vote in person at the meeting. Copies of definitive (final) proxy statements and proxy card are filed at the time they are sent to <i>shareholders</i> . Certain preliminary proxy filings relating to mergers, consolidations, acquisitions and similar matters are non-public upon filing; all other proxy filings are publicly available.
Forms 3, 4, and 5	17 CFR 249.103 (Form 3), 249.104 (Form 4), and 249.105 (Form 5) Every director, officer or owner of more than ten percent of a class of equity securities registered under Section 12 of the 1934 Act must file with the Commission a statement of ownership regarding such security. The initial filing is on Form 3 and changes are reported on Form 4. The Annual Statement of beneficial ownership of securities is on Form 5. The forms contain information on the reporting person's relationship to the company and on purchases and sales of such equity securities.
Form 8B	17 CFR 249.208b This specialized registration form may be used by certain issuers with no securities registered under the 1934 Act that succeed to another issuer which had securities so registered at the time of succession.

Reg H-1 Appendix (continued)

**SEC Forms Specified by the Securities and Exchange Commission
Reporting Requirements Embodied in Regulation H (208.36)**

<i>SEC Form</i>	<i>Authorizing Regulation & Description</i>
Schedule 13D	<p>17 CFR 240.13d-101 This Schedule discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquire a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition together with certain other information within ten days after such acquisition. Moreover, any material changes in the facts set forth in the Schedule generally precipitates a duty to promptly file an amendment on Schedule 13D. The Commission's rules define the term beneficial owner to be any person who directly or indirectly shares voting power or investment power (the power to sell the security).</p>
Schedule 13G	<p>17 CFR 240.13d-102 Schedule 13G is a much abbreviated version of Schedule 13D that is only available for use by a limited category of persons (such as banks, broker/dealers, and insurance companies) and even then only when the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer.</p>
Schedule 14D-9	<p>17 CFR 240.101 This schedule must be filed when an interested party, such as an issuer, a beneficial owner of securities, or a representative of either, makes a solicitation or recommendation to the shareholders with respect to a tender offer which is subject to Regulation 14D.</p>
Schedule 14D-1	<p>17 CFR 240.14d-100 Any person, other than the issuer itself, making a tender offer for certain equity securities registered pursuant to Section 12 of the 1934 Act, is required to file this schedule if acceptance of the offer would cause that person to own over 5 percent of that class of the securities. This schedule must be filed and sent to various parties, such as the issuer and any competing bidders. In addition, Regulation 14D sets forth certain requirements that must be complied with in connection with a tender offer.</p>
Form 10-C	<p>17 CFR 249.310c This form is filed by any issuer of securities which are registered under section 12(g) of the 1934 Act or which are subject to 15(d) of the Act, after (1) such issuer has been notified that any class of its securities is to be quoted on the NASDAQ interdealer quotation system, reporting thereon any aggregate increase or decrease in the amount of its securities whose change exceeds 5 percent of the amount of the class outstanding as last reported; and (2) any change in the name of the corporation. This report shall be filed not later than 10 days after the first date on which such change in outstanding securities or corporate name has occurred.</p>
Form 15	<p>17 CFR 249.323 This form shall be filed by each issuer to certify that the number of holders of record of a class of security registered under section 12(g) of the 1934 Act is reduced to less than 300 persons, or that the number of holders of record of a class of security registered under section 12(g) of the 1934 Act is reduced to less than 500 persons and the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer's most recent three fiscal years. Registration terminates 90 days after the filing of the certificate or within such shorter time as the Commission may direct.</p>