Supporting Statement
Restrictions on Qualified Financial Contracts of Subsidiaries of certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions

OMB Control No. 3064-NEW

A. Justification.

1. Circumstances that make the collection necessary:

This submission is being made in connection with a notice of proposed rulemaking published in the *Federal Register*. The FDIC is issuing this proposed rule under its authorities under the Federal Deposit Insurance Act (FDI Act)[1], including its general rulemaking authorities.[2] The FDIC is proposing to add a new part 382 to its rules to improve the resolvability of systemically important U.S. banking organizations and systemically important foreign banking organizations and enhance the resilience and the safety and soundness of certain state savings associations and state-chartered banks that are not members of the Federal Reserve System ("state non-member banks" or "SNMBs") for which the FDIC is the primary federal regulator (together, "FSIs" or "FDIC-supervised institutions"). The proposed rule pertains to several important classes of financial transactions—including, but not limited to, derivatives and repurchase agreements—that are collectively known as qualified financial contracts (QFCs). Although QFCs are a valuable tool of financial intermediation, they also represent a major source of interconnectedness among financial institutions and, as revealed during the financial crisis, can pose risks to financial stability in times of market stress and in the event of the failure of a global systemically important U.S. banking organization or global systemically important foreign banking organization (GSIB) or its affiliates.

QFCs derivatives often permit counterparties to exercise termination rights and other remedies—including netting and set-off against collateral—upon the insolvency or resolution of a contract counterparty, or an affiliate of such counterparty. Such termination rights and other related remedies could frustrate an orderly resolution of large complex banking organizations and pose risks to financial stability if not exercised in an orderly manner. To mitigate these concerns, in the United States, there is a one-business day stay on the exercise of early termination rights and other remedies with regard to QFCs under the FDI Act and the Dodd-Frank Act ("U.S. special resolution regimes"). Nevertheless, although domestic entities are clearly subject to the temporary stay provisions of the U.S. special resolution regimes, these stays may be difficult to enforce in a cross-border context. Furthermore, stays related to cross-defaults, are not applicable under the FDI Act or under the Bankruptcy Code, which is the presumptive insolvency regime for a U.S. GSIB parent and many of its subsidiaries.

1 See 12 U.S.C. 1811 et seq.

2 See 12 U.S.C. 1819.

Recognizing the need to address the risk posed by early termination of QFCs and in consultation with representatives of the FDIC, the Federal Reserve Board ("FRB"), the Office of the Comptroller of the Currency ("OCC"), and foreign regulators, the International Swaps and Derivatives Association, Inc.("ISDA"),established the ISDA 2015 Universal Resolution Stay Protocol ("ISDA Protocol"). The ISDA Protocol enables parties to amend the terms of their ISDA Master Agreements and other agreements covered by the ISDA Protocol and any related credit support arrangements to contractually recognize the cross-border application of special resolution regimes (including U.S. special resolution regimes) that stay and, in certain cases, override cross-default rights included in QFCs that arise upon the entry of a GSIB or of its affiliated entities (including covered FSIs) into receivership, insolvency, liquidation, resolution or similar proceedings. The ISDA Protocol's cross-default restrictions do not become effective until U.S. regulations are promulgated requiring GSIBs to include cross-default restrictions in all their qualifying QFCs.

This proposed rule is necessary to give effect to such cross-default restrictions in the ISDA Protocol. The proposed rule would require that FDIC-supervised institutions that are subsidiaries of GSIBs and their counterparties either adhere to the ISDA Protocol or take the prescribed steps to amend the contractual provisions of their QFCs, consistent with the requirements in the proposed rule, within a specified period of time. If such institutions elect to amend their QFCs in lieu of adhering to the ISDA Protocol, they must seek the FDIC's approval of the proposed amendments, giving rise to the information collection. The information collection is necessary to ensure QFC contracts are amended in compliance with the proposed rule.

The FDIC's proposed rule applies to FDIC-supervised institutions that are subsidiaries of GSIBs and sets forth requirements parallel to those contained in similar proposed rules recently published by the FRB and the OCC with regard to entities they supervise to ensure consistent regulatory treatment of QFCs among the various entities within a GSIB group.

Separately, the proposed rule would amend the definition of "qualifying master netting agreement" in the FDIC's capital and liquidity rules, and certain related terms in the FDIC's capital rules. These proposed amendments are intended to ensure that the regulatory capital and liquidity treatment of QFCs to which a covered FSI is party would not be affected by the proposed restrictions on such QFCs. This part of the proposed rule however, does not give rise to any information collection.

2. <u>Use of the information:</u>

Proposed 12 CFR 382.5(b) of the proposed rule would require a covered banking entity to request the FDIC to approve as compliant with the requirements of section 12 CFR 382.4 of one or more forms of covered QFCs or amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions. A covered FSI making a request must provide (1) an analysis of the proposal under each consideration of paragraph 382.5(d); (2) a written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and (3) any additional information relevant to its approval that the FDIC requests.

Covered FSIs would also have recordkeeping associated with proposed amendments to their covered QFCs. However, much of the recordkeeping associated with amending the covered QFCs is already expected from a covered FSI. Therefore, the FDIC would expect minimal additional burden to accompany the initial efforts to bring all covered QFCs into compliance.

Accordingly, the FDIC will use the information to approve certain amendments to QFCs of covered FSIs and determine whether QFC contracts have been amended in compliance with the proposed rule.

3. Consideration of the use of improved information technology:

Any information technology may be used that permits review by FDIC 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:

The collection is not expected to have an impact on a substantial number of small entities. The Corporation estimates that the reporting and recordkeeping requirements in the proposed rule would apply to approximately 12 entities. As of March 31, 2016, only six of the 12 institutions covered have derivatives portfolios that could be affected. None of these six banking organizations would qualify as a small entity for the purposes of the RFA.

In addition, the Corporation anticipates that any small subsidiary of a GSIB that in the future could be affected by this proposed rule would not bear significant additional costs as it is likely to rely on its parent GSIB, or a large affiliate, that will be subject to similar reporting, recordkeeping, and compliance requirements imposed by other regulatory agencies.

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

The collection is event-generated, that is, it results from the covered FSI entering into a new QFC contract and proposing amendments that need approval from the FDIC. Conducting the collection less frequently would be at odds with the goals of the regulation and 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:

In developing this proposal, the FDIC consulted with the Federal Reserve Board and the OCC as a means of promoting alignment across regulations and avoiding redundancy. The FDIC published the proposed rule in the *Federal Register* (81 FR 74326, October 26, 2016). The comment period on the notice of proposed rulemaking in connection with the Paperwork Reduction Act of 1995 closes on December 27, 2016.

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:

The existing burden estimates for the information collection associated with the proposed rule are as follows:

TITLE	TIMES/YEAR	RESPONDENTS	HOURS PER RESPONSE	TOTAL BURDEN HOURS
Paperwork for proposed revisions	On occasion	6	40	240
Total Burden				**240**

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 of 240 hours is due to the fact that this is a new collection.

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.