

Supporting Statement
Mandatory Contractual Stay Requirements for Qualified Financial Contracts
OMB Control No. 1557-NEW

A. Justification.

1. *Circumstances that make the collection necessary:*

The proposed rule requires a covered bank to ensure that a covered qualified financial contract (QFC) (1) contains a contractual stay-and-transfer provision analogous to the statutory stay-and-transfer provision imposed under Title II of the Dodd-Frank Act and in the Federal Deposit Insurance Act and (2) limits the exercise of default rights based on the insolvency of an affiliate of the covered bank. The proposed rule applies to national banks or Federal savings associations (FSAs) (including any subsidiary) that are subsidiaries of a global systemically important bank holding company that has been designated pursuant to 12 CFR 252.82(a)(1) of the Federal Reserve Board's Regulation YY; banks or FSAs (including any subsidiary) that are subsidiaries of a global systemically important foreign banking organization designated pursuant to 12 CFR 252.87 of the Federal Reserve Board's Regulation YY; and Federal branches and agencies (including any U.S. subsidiary of a Federal branch or agency) of a global systemically important foreign banking organization designated pursuant to 12 CFR 252.87 of the Federal Reserve Board's Regulation YY. The proposed rule's purpose is to enhance the resilience and the safety and soundness of federally chartered and licensed financial institutions by addressing concerns relating to the exercise of default rights of certain financial contracts that could interfere with the orderly resolution of certain systemically important financial firms.

Covered banks may comply with the proposed rule by either by amending the contractual provisions of their QFCs consistent with the requirements of section 47.5 of the proposed rule within a specified period of time provided by the rule or by adhering to the International Swaps and Derivatives Association 2015 Universal Resolution Stay Protocol (ISDA Protocol). Alternatively, 12 CFR 47.6 provides that a covered bank may request that the OCC approve as compliant with the requirements of section 47.5, regarding insolvency proceedings, provisions of one or more forms of covered QFCs, or amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions. In order for the OCC to evaluate a covered bank's request, the request must include (1) an analysis showing that the covered bank's request is consistent with the purposes of the proposed rule, including an analysis of the contractual terms for which approval is requested in light of a range of factors that are laid out by the proposed rule intended to facilitate the OCC's consideration of whether permitting the contractual terms would be consistent with the proposed restrictions and the main objectives of the rule; (2) a written legal opinion verifying that the covered bank's proposed provisions or amendments would be valid and enforceable under applicable laws 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 the OCC's approval that the OCC requests, which will be determined on a case-by-case basis and will depend on the covered bank and the information that the covered bank has provided. Based on the information collected, the OCC will then determine whether the covered bank's proposed alternative creditor protection conditions comply with the requirements of the rule and achieve its policy goals.

The primary objective of the proposed rule is to address concerns related to the exercise of default rights of certain QFCs that could interfere with the orderly resolution of certain systemically important financial firms that are parties to such contracts. While the requirements for the mandatory stay and transfer provisions in section 47.5 address this systemic risk, the application of the OCC's proposed rule would be limited to covered banks. The ISDA Protocol provides a convenient means to comply with the proposed rule by explicitly enabling parties to amend the terms of their ISDA Master Agreements, other agreements covered by the ISDA Protocol, and any related credit support agreements. In addition, the ISDA Protocol also has an important supervisory benefit of universal application to all entities and counterparties that use the ISDA Protocol. The OCC believes that encouraging the universal application of the stay and transfer provisions is important to maximize the policy objectives of the proposed rule. Nevertheless, the OCC is sensitive to the perception that ISDA would be the sole entity capable of providing acceptable contractual language. For this reason, section 47.5 of the proposed rule makes clear that a covered bank may request OCC approval of alternative QFC provisions or amendments with enhanced creditor protection conditions that conform to the proposed rule's requirements. This process is designed to provide an alternative means of complying with the requirements to the final rule for those covered banks that may not want to use the ISDA Protocol and instead prefer to develop their own set of enhanced creditor protections.

2. *Use of the information:*

The proposed rule is intended to promote U.S. financial stability by enhancing the safety and soundness of the national banking system by mitigating potential negative impacts that could result from the disorderly resolution of certain systemically important national banks, FSAs, Federal branches and agencies, and the subsidiaries of these entities. Specifically, the OCC will use the information submitted by a covered bank under Section 47.6 to evaluate compliance of the proposed alternative enhanced creditor protection conditions with the requirements of the rule and consistency with the policy objectives of this proposed rule.

3. *Consideration of the use of improved information technology:*

Any information technology that allows respondents to meet the requirements of the collection may be used.

4. *Efforts to identify duplication:*

This information collection is unique and does not duplicate any other information already collected.

5. *If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.*

The information required is the minimum necessary to meet the requirements of the regulation. Moreover, the primary focus of the proposed rule is on global systemically important banks and their subsidiaries, and therefore, the rule would likely not impose significant burdens on small businesses or entities.

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

The collection is only triggered if a covered bank proposes QFC provisions or amendments that require approval from the OCC. The information collected is necessary to the OCC's determination of whether to grant approval, and therefore conducting the collection less frequently would be inconsistent with the proposed rule's goals and present safety and soundness risks to entities supervised by the OCC.

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

This information collection is conducted in accordance with OMB's guidelines at 5 CFR part 1320.

8. *Efforts to consult with persons outside the agency:*

The information collection requirements have been issued for comment in connection with a notice of proposed rulemaking.

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:*

No personally identifiable information is collected.

12. Burden estimate:

Estimated Number of Respondents: 42.

Estimated Burden Per Respondent: 40 hours.

Total Estimated Burden: 1,680 hours.

Cost of burden hours:

$$1,680 \times \$101 = \$169,680$$

To estimate average hourly wages we reviewed data from May 2015 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 proposed 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:

Not applicable.

14. Estimate of annualized costs to the government:

None.

15. Change in burden:

The increase in burden 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:

The OCC has no plans to publish the data for statistical purposes.

17. Approval to not display expiration date:

Not applicable.

18. Exceptions to certification statement:

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.