

**Supporting Statement  
Recordkeeping Requirements for Qualified Financial Contracts**

**OMB Control No. 3064-0163**

A. Justification.

1. Circumstances that make the collection necessary:

This submission is being made in connection with a final rule published in the *Federal Register*. The FDIC is issuing this rule under its authorities under Section 1821(e)(8)(H) of the Federal Deposit Insurance Act (FDI Act).<sup>1</sup> The final rule amends and restates in its entirety 12 CFR Part 371 (“Part 371”), which was adopted in December 2008 and sets forth recordkeeping requirements relating to qualified financial contracts (“QFCs”) of insured depository institutions (“IDIs”) that are in “troubled condition”, as defined in Part 371.

On October 31, 2016, the Department of the Treasury published its QFC recordkeeping regulations codified at 31 CFR Part 148 (the ‘Part 148 Regulations’). These regulations impose comprehensive QFC recordkeeping requirements on large U.S. financial company groups where at least one member has a significant QFC portfolio. The Part 148 Regulations do not require QFC recordkeeping for IDIs and certain IDI subsidiaries. The final rule aligns the recordkeeping requirements of Part 371 for large IDIs (IDIs with \$50 billion or more in total consolidated assets) and IDIs that are members of corporate groups that are subject to Part 148 (collectively, “Full Scope Entities”) with the requirements of Part 148. It also makes formatting changes to the recordkeeping requirements and deletes and adds certain recordkeeping requirements for other IDIs (“Limited Scope Entities”). These changes will improve the FDIC’s ability, if it is appointed receiver of an IDI, to expeditiously analyze and make decisions regarding the IDI’s QFC portfolio.

2. Use of the information:

When the FDIC is appointed receiver of a failed institution, the FDIC has one business day to determine whether to transfer QFCs to which a failed IDI is a party. The FDIC adopted Part 371 because it became evident that making a timely and informed decision as to whether to transfer the QFCs of a failed institution in the course of one business day required having access to and processing detailed information. If that data was not easily available in an accessible format, making such a decision was difficult. Consequently, Part 371 enabled the FDIC to more efficiently act as the receiver for failed institutions with QFCs, particularly if the failed institution had a substantial QFC portfolio

Part 371 is a recordkeeping regulation. The records that are required to be maintained are not required to be reported to the FDIC unless specific request for the records is made by the FDIC. If the records are requested from an IDI, they would be used to help the FDIC, when it is

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<sup>1</sup> 12 U.S.C. 1821(e)(8)(H).

appointed receiver, determine whether to transfer the QFCs during the one-business-day stay period applicable to QFCs of an IDI for which a receiver is appointed.

3. Consideration of the use of improved information technology:

The Final rule prescribes a specific format for the maintenance of these records that is compatible with currently available information technology.

4. Efforts to identify duplication:

The information required is unique. It is not duplicated by other information collected by the FDIC.

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

The collection applies only to IDIs in a troubled condition. The new recordkeeping required for small entities (other than the limited number of small entities that are members of corporate groups subject to the Part 148 Regulations) are quite limited and, because most small entities are not parties to QFCs, will not apply to most small entities.

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

The collection is event-generated, that is, it results from an IDI becoming in a troubled condition and becoming subject to Part 371. Conducting the collection less frequently would be at odds with the goals of the regulation of requiring maintenance of current records as to QFCs.

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 rule, as required by statute, the FDIC consulted with the Federal Reserve Board and the OCC. The FDIC published the proposed rule in the *Federal Register* (81 FR 95496, December 28, 2016). The FDIC submitted the information collection requirements contained in the rule to OMB for review and approval. OMB filed its Notice of Action with respect to that submission on March 17, 2017 requesting that the agency address any comments received in response to the Notice of Proposed Rulemaking in the final rule. The FDIC received one joint comment letter from two industry trade associations in response to the notice of proposed rulemaking<sup>2</sup> and fully addressed the comments in the preamble to the final rule.

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<sup>2</sup> Letter dated February 27, 2017 from The Clearing House Association LLC (“TCH”) and the Securities Industry and Financial Markets Association (“SIFMA”) (the “TCH/SIFMA Letter”).

The comment letter was strongly supportive of the proposal to harmonize the recordkeeping requirements applicable to full scope entity IDIs under Part 371 with the recordkeeping requirements under Part 148 applicable to other entities in the same corporate group and stated that “[s]uch harmonization is important as a matter of sound policy and as a practical matter for our members.”

The TCH/SIFMA Letter also suggested that several changes be made to the proposed rule. The final rule reflects acceptance of many of these proposed changes, as discussed in more detail in the preamble. The changes reflected in the final rule include the addition of an exemption process to Part 371; an increase in the ceiling, from 19 QFC positions to 50 QFC positions, for applicability of the *de minimis* exception to the requirement that records be kept electronically; an exclusion, from the scope of reportable subsidiaries, for subsidiaries that are organized under foreign law and for unconsolidated subsidiaries; for certain IDIs that are maintaining records in accordance with Part 371 on the effective date of the final rule and have one or more affiliates that are members of a corporate group required to comply with Part 148, an extension of the date on which the IDI is required to comply with Part 371, as revised by the final rule, until the first date on which any such affiliate is scheduled to comply with Part 148; and the addition of a consolidation criterion for determining which entities are treated as full scope entities solely because they have an affiliate that is a member of a corporate group with at least one member subject to Part 148.

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:

Not applicable.

12. Burden estimate:

*Existing Burden:* The burden, as previously approved in 2015, was as follows:

Title	Type of Burden	Estimated Number of Respondents	Estimated Number of Responses	Estimated Time per Response	Frequency of Response	Total Annual Estimated Burden
Appendix A, Tables A & B	Reporting	190	12	2 hours	Monthly	4,560 hours

Appendix A (Part B)	Recordkeeping	190	4	10 hours	Quarterly	7,600 hours
Application for Extension of Time	Reporting	20	1	.5 hour	On Occasion	10 hours
<b>TOTAL BURDEN</b>						12,170 hours

*Additional Burden:* The additional burden in connection with this final rule is as follows:

Title	Type of Burden	Estimated Number of Respondents	Estimated Number of Responses	Estimated Time per Response	Frequency of Response	Total Annual Estimated Burden
Full Scope Entities: Recordkeeping related to QFCs to which they are a party when they are in troubled condition	Recordkeeping	2	1	3,000 hours	On Occasion	6,000 hours
Limited Scope Entities: Recordkeeping related to QFCs to which they are a party when they are in troubled condition	Recordkeeping	110	1	5 hours	On Occasion	550 hours
<b>TOTAL BURDEN</b>						6,550 hours

When added to the existing total burden of 12, 170 hours previously approved by OMB for this information collection, the total revised estimated annual burden for this information collection will be **18,720 hours**.

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 6,550 hours is because there are additional data elements required to be maintained by this 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.