

**Supporting Statement for the
Notifications Related to Community Development and Public Welfare Investments by
State Member Banks Pursuant to Section 208.22 of Regulation H
(FR H-6; OMB No. 7100-0278)**

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 Notifications Related to Community Development and Public Welfare Investments by State Member Banks Pursuant to Section 208.22 of Regulation H (FR H-6; OMB No. 7100-0278). Regulation H - Membership of State Banking Institutions in the Federal Reserve System requires state member banks planning to make community development or public welfare investments to comply with the following Regulation H notification requirements:

- If the investment does not require prior Board approval per 12 CFR 208.22(b), a written notice must be sent to the appropriate Federal Reserve Bank per 12 CFR 208.22(c).
- If the investment does require prior Board approval per 12 CFR 208.22(d), a request for approval must be sent to the appropriate Federal Reserve Bank.
- If the Board orders divestiture, but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank per 12 CFR 208.22(e).

A model form and checklist are available that banks may, at their option, use to notify the Reserve Banks of public welfare investments that do not require Board approval.¹ The checklist is available to assist banks with determining whether they must submit a request for prior approval. The current burden associated with the notifications is estimated to be 400 hours.

Background and Justification

On December 7, 1994, the Board added to Regulation H a new section entitled Community Development and Public Welfare Investments to implement a provision of the Depository Institutions Disaster Relief Act of 1992. The statutory provision authorizes state member banks to make investments designed primarily to promote the public welfare to the extent permissible under state law and subject to regulation by the Board. Regulation H permits state member banks to make certain public welfare investments without prior approval and to make other public welfare investments with specific Board approval.

A state member bank may make a public welfare investment without prior approval so long as the aggregate of such investments does not exceed five percent of the capital stock and surplus of the state member bank, and:

- the investment (a) previously has been determined to be a public welfare investment by the Board or the Office of the Comptroller of the Currency (OCC), (b) is in a community development financial institution (CDFI) as defined in the Community Development Banking and Financial Institutions Act of 1994, or (c) is in an entity established solely to

¹ See www.federalreserve.gov/apps/reportforms/reporthistory.aspx?sOoYJ+5BzDazVuQfl4CjHQ==.

engage in one or more of the following activities: developing low- and moderate-income residential housing, developing nonresidential real estate in a low- or moderate-income area that is targeted towards low- and moderate-income persons, developing small business opportunities in a low- or moderate-income area, job training or placement for low- and moderate-income persons, creating employment opportunities in a low- or moderate-income area for low- and moderate-income persons, and providing technical assistance and credit counseling to benefit community development;²

- the investment is permitted by state law;
- the investment is in a corporation, limited partnership, or other entity;
- the investment does not expose the state member bank to liability beyond the amount of the investment;
- the bank is at least adequately capitalized and rated a composite CAMELS 1 or 2 and at least, 1 or 2 in its last consumer compliance examination; and
- the state member bank is not subject to any written agreement, cease and desist order, capital directive, prompt corrective action directive, or memorandum of understanding issued by the Board or a Reserve Bank acting under delegated authority.

If these conditions are not met, a state member bank must receive Board approval before making an investment. In no event may aggregate public welfare investments exceed 10 percent of the state member bank's capital stock and surplus (12 U.S.C. 338a).

If a public welfare investment ceases to meet the statutory requirements or certain regulatory requirements, the state member bank must divest itself of the investment to the extent that the investment ceases to meet those requirements. Divestiture is not required if the investment ceases to meet the non-statutory requirements concerning capital, examination ratings, and enforcement actions. This divestiture is governed by the same requirements as divestitures of interests acquired by a lending subsidiary of a bank holding company or a bank holding company itself in satisfaction of a debt previously contracted (12 CFR 225.140). The Board will monitor the efforts of the company to effect an orderly divestiture and may order divestiture if supervisory concerns warrant such action.

Regulation H requires state member banks engaging in permissible public welfare and community development investments to provide notice of such investments to the Federal Reserve Bank of which it is a member. The regulation specifies that the notice, which may be submitted on bank letterhead or on the optional FR H-6 model form, provide the amount of the investment and identity of the entity in which the investment was made. In addition to this information, banks typically describe the mission and service area of the entity in which the investment was made and how the investment meets the definition of public welfare and community development. Even though this information is not required by Regulation H, Reserve Bank staff contact the investing bank to obtain such information to evaluate the permissibility of the investment, imposing additional burden for both Reserve Bank staff and bank management.

² Regulation H uses the U.S. Department of Housing and Urban Development's Chapter 69 Community Development definition of low- and moderate-income persons and the U.S. Small Business Administration's definition of a small business.

Information about the identity and amount of public welfare investments that Regulation H requires the Board to collect is useful to the Community Affairs function of the Federal Reserve System. The mission of the Federal Reserve's Community Affairs Office (CAO) is to support the Federal Reserve System's economic growth objectives by promoting community development and fair and impartial access to credit. Toward this end, the CAO of each Reserve Bank develops specific projects and services to meet its regional market's needs for information relating to community development activities.

Description of Information Collection

There are three types of notification requirements in 12 CFR 208.22: (1) the public welfare investment notice, (2) the request for prior approval, and (3) the request for extension of the divestiture period. When a public welfare investment is made without prior approval, the state member bank must notify its Federal Reserve Bank within 30 calendar days of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

In 2002, a model form and checklist were adopted that banks could use, at their option, to report the information required by Regulation H for investments that do not require prior Board approval. The optional checklist is used to help banks determine whether they must submit a request for prior approval. When a public welfare investment requires prior Board approval, the state member bank must submit a request for approval to the appropriate Federal Reserve Bank.

The request should include, at a minimum:

- the amount of the proposed investment;
- a description of the entity in which the investment is to be made;
- an explanation of how the investment meets the statutory definition of a public welfare investment;
- a description of the state member bank's potential liability under the proposed investment;
- the amount of the state member bank's aggregate outstanding public welfare investments;
- the amount of the state member bank's capital stock and surplus; and
- the reason(s) why the investment is ineligible to be made without prior approval.

When a public welfare investment exceeds the scope of, or ceases to meet, the public welfare investment requirements, a state member bank must divest itself of that investment within two years. Within the divestiture period it is expected that the state member bank will make a good faith effort to dispose of the investment at the earliest practicable date. The Board may, upon written request, extend the two-year period for up to three additional one-year periods.

Time Schedule for Information Collection

The three notifications (public welfare investment notice, request for approval, and request for extension of a divestiture period) are event generated. A state member bank must file a notice with the appropriate Reserve Bank within 30 calendar days of making an investment that

does not require prior approval. For investments requiring prior approval, the Board must act on the request within 60 calendar days of receipt or notify the requesting state member bank that a longer period of time will be required. If a state member bank fails to accomplish a required divestiture within two years, it must file a request for extension. A bank may receive up to three one-year extensions.

Legal Status

The Board's Legal Division has determined that the public welfare investment notice, request for approval, and request for extension of the divestiture period are authorized by the Federal Reserve Act (12 U.S.C. 338a) and by the Board's Regulation H (12 CFR 208.22). The obligation of state member banks to make public welfare investments under both the Reserve Bank post-notice and the Board's prior approval procedure is mandatory. The request for extension of the divestiture period is required to obtain a benefit.

Individual respondent data generally are not regarded as confidential. However, a bank that submits confidential proprietary information may request confidential treatment of that information pursuant to section (b)(4) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)), and the information will be accorded confidential treatment if the institution can establish the potential for substantial competitive harm under the standards set forth in *National Park and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974). Such a determination would be made on a case-by-case basis in response to a specific request for disclosure. If examination ratings are included in a submission, those will be considered confidential under exemption 8 of the FOIA (5 U.S.C. § 552(b)(8)).

Consultation Outside the Agency

Given that most community development entities obtain funding from a variety of local and regional financial institutions, Board staff consults with other agencies' staff to discuss applications relating to such investments, as appropriate. On August 11, 2017, the Board published an initial notice in the *Federal Register* (82 FR 37589) requesting public comment for 60 days on the proposal to extend, without revision, the FR H-6. The comment period for this notice expired on October 10, 2017. The Board did not receive any comments. On November 2, 2017, the Board published a final notice in the *Federal Register* (82 FR 50871) and the information collection will be extended as proposed.

Estimate of Respondent Burden

The annual reporting burden imposed on all institutions for the public welfare investment notice, the request for prior approval, and the request for extension of the divestiture period is 400 hours as shown in the table below. The estimated number of respondents listed in the table below is based on the number of requests and notices received by the Federal Reserve in 2016. These reporting requirements for the FR H-6 represent less than 1 percent of total Federal Reserve System paperwork burden.

FR H-6	Number of respondents ³	Annual frequency	Estimated average hours per response	Estimated annual burden hours
Investment notice	20	1	2	40
Application (<i>Prior approval</i>)	71	1	5	355
Extension of divestiture period	1	1	5	<u>5</u>
<i>Total</i>				400

The total cost to the public for these reports is estimated to be \$29,400.⁴

Sensitive Questions

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

Estimate of Cost to the Federal Reserve System

The annual costs associated with providing the instructions for and processing the investment notice, request for prior approval, and request for extension of the divestiture period are minimal. The Federal Reserve does not incur any mailing or printing cost in administering these requirements.

³ Of these respondents, none 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.

⁴ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (50% Financial Managers at \$67, 25% Lawyers at \$67, and 25% Chief Executives at \$93). Hourly rate for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2016*, published March 31, 2017, www.bls.gov/news.release/ocwage.nr0.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.