

SUPPORTING STATEMENT
APPLICATION FOR CONSENT TO EXERCISE TRUST POWERS
(OMB No. 3064-0025)

INTRODUCTION

This submission is being made in connection with a notice of proposed rulemaking published in the *Federal Register*. The proposed rule rescinds and removes from the Code of Federal Regulations 12 CFR part 390 subpart J, entitled *Fiduciary Powers of State Savings Associations* (subpart J) and all references thereto, and amends 12 CFR parts 333 and 303 (part 333 and part 303 respectively) regarding consent to exercise trust powers to reflect the applicability of these parts to both State savings associations and State nonmember banks. The revision of parts 333 and 303 to include State savings associations would add additional burden to the FDIC's current information collection under OMB control number 3064-0025,¹ Application for Consent to Exercise Trust Powers, as State savings associations seeking to exercise trust powers would be required to complete the designated application and submit required documentation to comply with parts 333 and 303.

A. JUSTIFICATION

1. Circumstances And Need

FDIC regulations at 12 CFR 333.2 prohibit any insured state nonmember bank from changing the general character of its business without the prior written consent of the FDIC. The FDIC has considered the exercise of trust powers by a bank to be a change in the general character of a bank's business if the bank did not exercise those powers previously. Trust powers create a new fiduciary relationship that normally affects the character of a bank's business. Therefore, unless a bank is currently exercising trust powers, it must file a formal application to obtain the FDIC's written consent to exercise trust powers. State banking authorities, not the FDIC, grant trust powers to their banks. The FDIC merely consents to the exercise of such powers. A bank may not necessarily choose or be ready to exercise trust powers although it has been granted such powers by its state authorities.

The proposed revisions would add a new section 333.3 to clarify that both State savings associations and State nonmember banks must seek prior written consent from the FDIC to exercise trust powers. For State nonmember banks, § 333.3 would not represent a change in practice, but would make explicit the FDIC's existing requirement that State nonmember banks must receive FDIC's consent before exercising trust powers. However, § 333.3 would represent a change for State savings associations, which are not currently required to receive FDIC's consent before exercising trust powers granted by their chartering authorities. Section 333.3 would explicitly state that both State nonmember banks and State savings associations would be required to follow the

¹ The information collection for Application for Consent to Exercise Trust Powers, OMB No. 3064-0025, was renewed by OMB on August 30, 2017 and now expires on August 31, 2020.

application procedures set forth in section 303.242. Section 333.101(b) also would be revised to permit State savings associations to act as custodians of certain qualifying accounts without obtaining prior written consent from the FDIC, in the same manner as is currently permitted for State nonmember banks.

The proposed rule would make section 303.242 applicable to State savings associations in addition to State nonmember banks. Similar to State nonmember banks, under the proposed rule, State savings associations would not be required to receive the FDIC's prior written consent to exercise trust powers in the following circumstances:

- (1) Where the institution received authority to exercise trust powers from its chartering authority prior to December 1, 1950; or
- (2) Where the institution continues to conduct trust activities pursuant to authority granted by its chartering authority subsequent to a charter conversion or withdrawal from membership in the Federal Reserve System.

In order to provide more information to State nonmember banks and State savings associations, section 303.242 would also be amended to provide a more complete description of the application's required documentation.

2. Use of Information Collected

Banks wishing to exercise trust powers file formal applications on Form FDIC 6200/09 with the appropriate FDIC regional office. The FDIC evaluates the information in relation to the seven banking factors enumerated in section 6 of the FDI Act (12 USC 1816), the adequacy of the institution's compliance with the Community Reinvestment Act (12 USC 2902), and the minimum requirements for sound banking practices in the operation of a trust department as listed on the Statement of Principles of Trust Department Management, which is part of the Form 6200/09 package.

Form FDIC 6200/09 identifies the trust powers applied for and provides additional information to assist the FDIC in deciding whether to grant consent to exercise trust powers. The form also indicates that all applicants must adopt, as a bank policy, the Statement of Principles of Trust Department Management.

An applicant that is an 'eligible depository institution,' as defined in Section 303.2(r) of the FDIC's Rules and Regulations (12 CFR 303.2(r)), must provide information on whether it has been granted trust powers by its state banking authority, which are a prerequisite to FDIC's consent to exercise state-granted trust powers. The bank must supply information about the proposed trust officer, as well as the officer's experience, education, and other qualifications in fiduciary matters. Furthermore, if the applicant intends to utilize a third party to manage the investments or account administration of its proposed trust department, information about such servicing arrangements must be provided. Eligible depository institutions will receive expedited processing of their applications.

An applicant that does not qualify as an eligible depository institution must provide the information required for an eligible depository institution, plus information about its proposed trust operation, including information about members of the bank's proposed Trust Committee, the qualifications of trust counsel, projections of the size and profitability of the proposed trust activity, and the applicant's analysis of the financial impact of any proposed net operating losses on the applicant institution must be provided. Applications received from banks that are not eligible depository institutions will receive standard processing.

The purpose of the evaluation by the FDIC is three-fold: (1) to ensure that the new activities to be undertaken by the bank will not unduly jeopardize the financial condition of the bank, (2) to ensure that the proposed new activities are legally permissible, and (3) to determine that bank management has sufficient ability and expertise in the non-banking area they propose to enter. The FDIC's evaluation also serves to safeguard the banking system and the banking public as depositors and beneficiaries of trust accounts.

Probably the most important prerequisite for the FDIC's consent to the exercise of trust powers is that the applicant bank provides sufficiently qualified management and staff to meet satisfactory standards of competency in trust matters. If the FDIC's evaluation indicates that an applicant may not be equipped to manage trust activities and more limited powers will suffice, the bank may be encouraged to file for specific limited powers. In all cases, in order to approve any application for consent to exercise trust powers, the FDIC must conclude that management is capable of handling the anticipated trust business operations.

3. Use of Technology to Reduce Burden

Respondents have the option of submitting their responses electronically via a secure FDIC-sponsored Internet connection known as *FDICConnect*.

4. Efforts to Identify Duplication

The information being collected could exist if a bank applies to its state banking authority for a grant of trust powers and, upon being granted the powers, immediately applies to the FDIC for consent to exercise these powers. To alleviate this eventuality, the FDIC has offered to provide its application form to state banking authorities, at no charge, for joint state-FDIC use. The form is designated as Form FDIC 6200/09A when it is used as a joint state-FDIC application. The information needed by FDIC for evaluation and analysis of an application to exercise trust powers is not necessarily available in the state applications filed by respondents or is not always available in the detail necessary to satisfy the purpose and need for which this collection is undertaken. The information being collected is considered essential to the purpose and need of the collection and to the analysis of results. It is therefore necessary and not deemed duplicative within the meaning of the PRA and OMB's regulation.

The FDIC collects the requested information only from the insured state nonmember banks and state associations that it directly supervises. Similar information is collected by the Federal Reserve System from member banks, and the Comptroller of the Currency from national banks and savings associations.

5. Minimizing Burden on Small Banks

The information required on the application form applies to all banks, regardless of size, that wish FDIC consent to exercise trust powers. Small banks in many cases will be applying for limited trust powers rather than full trust powers. The evaluation standards for limited trust powers would be less broad than the standards for full trust powers.

The FDIC supervises 3,674 institutions, of which 2,950 are “small entities” (defined in regulations promulgated by the Small Business Administration to include banking organizations with total assets of less than or equal to \$550 million). There are 2,907 small state non-member banks and 44 small state savings associations.²

6. Consequences of Less Frequent Collection

This collection is not a periodic reporting system. The form is submitted only on the occasion of a bank applying for consent to exercise trust powers.

7. Special Circumstances

None.

8. Consultation with Persons Outside the FDIC

The FDIC published the proposed rule in the *Federal Register* (83 FR 15327, April 10, 2018). The comment period on the notice of proposed rulemaking in connection with the Paperwork Reduction Act of 1995 closes on June 11, 2018.

9. Payment or Gift to Respondents

Not applicable.

10. Confidentiality

Any information deemed to be of a confidential nature would be exempt from public disclosure in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552). Respondents are advised on the Form FDIC 6200/09 that the information furnished by the bank in their application is normally subject to public review.

² CALL Report Data, September 2017.

11. Information of a Sensitive Nature

This collection contains no information of a sensitive nature.

12. Estimate of Annual Burden

	Type of Burden	Estimated Number of Respondents	Estimated Hours per Response	Frequency of Response	Total Annual Estimated Burden
Eligible depository institutions	Reporting	9	8	On Occasion	72 hours
Not-eligible depository institutions	Reporting	4	24	On Occasion	96 Hours
TOTAL					168 Hours

Internal Cost: 168 hours X \$79.19³ = \$13,303.92

13. Capital, Start-Up, Operating and Maintenance Cost Burden

None.

14. Estimated Annual Cost to Federal Government

None.

15. Reason for Change in Burden

The revision of parts 333 and 303 to include State savings associations would add additional burden to the FDIC's current information collection as State savings associations would be required to complete the designated application and submit required documentation to comply with parts 333 and 303. Currently, there are a total of 47 State savings associations. There is only one State savings association currently exercising trust powers, and there are 46 additional State savings associations that would potentially need to seek the FDIC's consent pursuant to the proposed revision to parts 333 and 303 if they choose to exercise trust powers at some point in the future.⁴

³ This calculation assumes that the reporting compliance requirements will be done by Lawyers who would receive compensation of \$79.19 per hour, on average. This estimate is based on the total hourly compensation for a Lawyer in the Depository Credit Intermediation sector as of December 2017. The estimate includes the May 2016 50th percentile hourly wage rate reported by the Bureau of Labor Statistics, National Industry-Specific Occupational Employment, and Wage Estimates. This wage rate has been adjusted for changes in the Consumer Price Index for all Urban Consumers between May 2016 and December 2017 (3.54 percent) and grossed up by 35.6 percent to account for non-monetary compensation as reported by the December 2017 Employer Costs for Employee Compensation Data.

⁴ CALL Report Data, September 2017.

16. Publication

This information contained in this collection is not published.

17. Display of Expiration Date

Not applicable.

18. Exceptions to certification statement

None.

B. STATISTICAL METHODS

Not applicable.