

**Supporting Statement for the
Notice Requirements Associated with Regulation W
(FR W¹; OMB No. 7100-0304)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), extended for three years, without revision,² the Notice Requirements Associated with Regulation W (FR W; OMB No. 7100-0304), which implemented sections 23A and 23B of the Federal Reserve Act (FRA). The information collection associated with the Board's Regulation W - Transactions Between Member Banks and Their Affiliates (12 CFR part 223) is triggered by specific events, and there are no associated reporting forms. Filings are required from insured depository institutions and uninsured member banks that seek to request certain exemptions from the requirements of sections 23A and 23B, as described further below. This information collection is separate from the quarterly Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates (FR Y-8; OMB No. 7100-0126), which collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act. The estimated total annual burden for the FR W is 24 hours.

Background and Justification

Sections 23A and 23B of the FRA are statutory provisions designed to prevent a depository institution from suffering losses in transactions with affiliates.³ They also limit the ability of an insured depository institution to transfer the subsidy arising from access to the federal safety net to its affiliates. Sections 23A and 23B apply, by their terms, to banks that are members of the Federal Reserve System (member banks). Other federal law subjects insured nonmember banks and insured thrifts to sections 23A and 23B in the same manner and to the same extent as member banks.

In 2003, the Board published a final rule adopting Regulation W to implement sections 23A and 23B.⁴ The Board issued Regulation W and its associated notice requirements for several reasons. First, the regulatory framework established by the Gramm-Leach-Bliley Act emphasized the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates.⁵ Second, adoption of a comprehensive rule simplified the interpretation and application of sections 23A and 23B, made it more likely that they will be consistently interpreted and applied, and reduced the burden on banking organizations. Third, issuing a comprehensive rule allowed the public to comment on Federal Reserve interpretations

¹ The internal Agency Tracking Number previously assigned by the Board to this information collection was Reg W. The Board is changing the internal Agency Tracking Number for the purpose of consistency.

² Although Regulation W will be revised in the near future to incorporate amendments required by section 608 of the Dodd-Frank Act, this extension is necessary to ensure that the collections of information in the current Regulation W and the associated OMB control number remain valid.

³ See 12 U.S.C. 371c and 371c-1.

⁴ See 67 FR 76560 (December 12, 2002).

⁵ See Pub. L. No. 106-102, 113 Stat. 1338 (1999).

of sections 23A and 23B. As described below, Regulation W includes certain exemptions from the requirements of sections 23A and 23B that a depository institution may only use if it provides certain information to the Federal Reserve System and/or its appropriate federal supervisor.

Description of Information Collection

This collection of information comprises the reporting requirements of Regulation W that are found in sections 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is used to demonstrate compliance with sections 23A and 23B and to request an exemption from the Board. These reporting requirements associated with Regulation W are described below.

Loan participation renewal notice (section 223.15(b)(4)). Generally, a depository institution is prohibited from purchasing a low-quality asset, as defined by Regulation W, from an affiliate unless, pursuant to an independent credit evaluation, the member bank had committed itself to purchase the asset before the time the asset was acquired by the affiliate. However, a depository institution may renew or extend additional credit with respect to a loan participation if the loan was not a low-quality asset at the time the depository institution purchased its participation, if certain requirements are met. One such requirement is that the participating depository institution must provide its appropriate federal banking agency with a written notice of the renewal of, or the extension of additional credit in connection with, a low-quality asset not later than 20 calendar days after consummation.

Acquisition notice (section 223.31(d)(4)). In general, a depository institution's acquisition of a security issued by a company that was an affiliate of the depository institution before the acquisition is treated as a purchase of assets from an affiliate if, as a result of the transaction, the company becomes an operating subsidiary of the depository institution and the company either has liabilities or the depository institution gives cash or any other consideration in exchange for the security. However, such a transaction is exempt from the requirements of Regulation W if it is a "step transaction," as described in section 223.31(d) of Regulation W. In order to meet the requirements for this exemption, a depository institution must notify the appropriate federal banking agency and the appropriate Reserve Bank of its intention to acquire the company at or before the time that the company becomes an affiliate of the institution. The notice also must describe the primary business activities of the company.

Internal-corporate-reorganization transactions notice (section 223.41(d)(2)). An internal corporate reorganization transaction is exempt from the quantitative limits and collateral requirements of Regulation W if certain conditions are met. The depository institution involved must provide the appropriate federal banking agency and the appropriate Reserve Bank with written notice of the transaction 10 calendar days before consummation. The notice must describe the primary business activities of the affiliate and indicate the proposed date of the asset purchase.

Additional exemptions from the requirements of section 23A (section 223.43(b)). The Board may, at its discretion, by regulation or order, exempt transactions or relationships from the requirements of section 23A if it finds such exemptions to be in the public interest and consistent with the purposes of section 23A. A state member bank may request an exemption by

submitting a written request to the General Counsel of the Board. Other depository institutions should contact their federal supervisor to determine the procedures that the institution needs to follow. The request must describe in detail the transaction or relationship for which the state member bank seeks exemption, explain why the Board should exempt the transaction or relationship, and explain how the exemption would be in the public interest and consistent with the purposes of section 23A.

Time Schedule for Information Collection

The notifications required under Regulation W are event-generated and must be provided to the appropriate federal banking agency and, if applicable, the Board within the time periods established by the law, as discussed above.

Legal Status

Sections 23A and 23B of the FRA authorize the Board to issue these notice requirements (12 U.S.C. 371c(f) and 371c-1(e)). Respondents are required to file one or more of the Regulation W notices in order to obtain the benefits noted above. Information provided on the Loan Participation Renewal notice is confidential under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)), because the information is typically considered confidential commercial or financial information and is reasonably likely to result in substantial competitive harm if disclosed. However, information provided on the Acquisition notice, the Internal Corporate Reorganization Transaction notice, and the section 23A Additional Exemption request generally is not considered confidential under exemption 4. Respondents who desire that the information on one of these three submissions be kept confidential pursuant to exemption 4 of the FOIA may request confidential treatment under the Board's rules at 12 CFR 261.15. In addition, any information that is obtained as a part of an examination or supervision of a financial institution is exempt from disclosure under exemption 8 of the FOIA (5 U.S.C. 552(b)(8)).

Consultation Outside the Agency

On November 9, 2018, the Board published an initial notice in the *Federal Register* (83 FR 56080) requesting public comment for 60 days on the extension, without revision, of the FR W. The comment period for this notice expired on January 8, 2019. The Board did not receive any public comments. On February 12, 2019, the Board published a final notice in the *Federal Register* (84 FR 3445).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR W is 24 hours. These reporting requirements represent less than 1 percent of the Board's total paperwork burden.

FR W	<i>Estimated number of respondents⁶</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Section 223.15(b)(4)	1	1	2	2
Section 223.31(d)(4)	1	1	6	6
Section 223.41(d)(2)	1	1	6	6
Section 223.43(b)	1	1	10	<u>10</u>
<i>Total</i>				24

The estimated total annual cost to the public for this information collection is \$1,382.⁷

Sensitive Questions

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

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System to process these notifications is negligible.

⁶ Of these respondents, one may be considered a small entity as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets), <https://www.sba.gov/document/support--table-size-standards>.

⁷ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$19, 45% Financial Managers at \$71, 15% Lawyers at \$69, and 10% Chief Executives at \$96). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2018*, published March 29, 2019, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.