

SUPPORTING STATEMENT
Margin and Capital Requirements for Covered Swap Entities
(OMB No. 3064-0030)

INTRODUCTION

The Federal Deposit Insurance Corporation (“FDIC”) is requesting OMB approval for the revision of a currently approved collection of information. Approval for the current collection expires on January 31, 2020. The information collection requirements are contained in 12 CFR part 349 of the FDIC’s regulations. The collection of information is captioned “Margin and Capital Requirements for Covered Swap Entities.” Under Part 349, the information is collected from FDIC-supervised covered swap entities, which includes persons registered with the Commodity Futures Trading Commission as swap dealers or major swap participants pursuant to the Commodity Exchange Act of 1936 and persons registered with the Securities Exchange Commission (SEC) as security-based swap dealers and major security-based swap participants under the Securities Exchange Act of 1934.

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

The Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) required the Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the FDIC, the Farm Credit Administration, and Federal Home Finance Agency (each, an agency, and collectively, the agencies) to jointly adopt rules that establish capital and margin requirements for swap entities that are prudentially regulated by one of the agencies (covered swap entities).¹ These capital and margin requirements apply to swaps that are not cleared by a registered derivatives clearing organization or a registered clearing agency (non-cleared swaps).²

The agencies published regulations that require swap dealers and security-based swap dealers under the agencies’ respective jurisdictions to exchange margin with their counterparties for swaps that are not centrally cleared (Swap Margin Rule or Rule). First issued in 2015, the Swap

1 Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010). See 7 U.S.C. 6s; 15 U.S.C. 78o–10. Sections 731 and 764 of the Dodd-Frank Act added a new section 4s to the Commodity Exchange Act of 1936, as amended, and a new section, section 15F, to the Securities Exchange Act of 1934, as amended, respectively, which require registration with the Commodity Futures Trading Commission (CFTC) of swap dealers and major swap participants and the U.S. Securities and Exchange Commission (SEC) of security-based swap dealers and major security-based swap participants (each a swap entity and, collectively, swap entities). Section 1a (39) of the Commodity Exchange Act of 1936, as amended, defines the term “prudential regulator” for purposes of the margin requirements applicable to swap dealers, major swap participants, security-based swap dealers and major security-based swap participants. See 7 U.S.C. 1a (39).

2 A “swap” is defined in section 721 of the Dodd-Frank Act to include, among other things, an interest rate swap, commodity swap, equity swap, and credit default swap, and a security-based swap is defined in section 761 of the Dodd-Frank Act to include a swap based on a single security or loan or on a narrow-based security index. See 7 U.S.C. 1a (47); 15 U.S.C. 78c(a)(68).

Margin Rule includes a phased compliance schedule from 2016 to 2020 and generally applies only to a non-cleared swap entered into on or after the applicable compliance date. A non-cleared swap entered into prior to an entity's applicable compliance date is "grandfathered" by this regulatory provision and is generally not subject to the margin requirements in the Swap Margin Rule (legacy swap) unless it is amended or novated on or after the applicable compliance date. The FDIC's Swap Margin Rule can be found at 12 CFR part 349.

2. Use of the Information:

The information collected is used to monitor compliance with the following Rule requirements:

The reporting requirements found in 12 CFR 349.1(d) refer to statutory provisions that set forth conditions for an exemption from clearing. Section 349.1(d)(1) provides an exemption for non-cleared swaps if one of the counterparties to the swap is not a financial entity, is using swaps to hedge or mitigate commercial risk, and notifies the Commodity Futures Trading Commission of how it generally meets its financial obligations associated with entering into non-cleared swaps. Section 349.1(d)(2) provides an exemption for security-based swaps if the counterparty notifies the Securities and Exchange Commission (SEC) of how it generally meets its financial obligations associated with entering into non-cleared security-based swaps.

Section 349.2 defines terms used in part 349, including the definition of "eligible master netting agreement," which provides that a covered swap entity that relies on the agreement for purpose of calculating the required margin must: (1) Conduct sufficient legal review of the agreement to conclude with a well-founded basis that the agreement meets specified criteria; and (2) establish and maintain written procedures for monitoring relevant changes in law and to ensure that the agreement continues to satisfy the requirements of this section.

The term "eligible master netting agreement" is used elsewhere in part 349 to specify instances in which a covered swap entity may: (1) Calculate variation margin on an aggregate basis across multiple non-cleared swaps and security-based swaps and (2) calculate initial margin requirements under an initial margin model for one or more swaps and security-based swaps. Section 349.5(c)(2)(i) specifies that a covered swap entity shall not be deemed to have violated its obligation to collect or post margin from or to a counterparty if the covered swap entity has made the necessary efforts to collect or post the required margin, including the timely initiation and continued pursuit of formal dispute resolution mechanisms, or has otherwise demonstrated upon request to the satisfaction of the agency that it has made appropriate efforts to collect or post the required margin.

Section 349.7 generally requires a covered swap entity to ensure that any initial margin collateral that it collects or posts is held at a third-party custodian. Section 349.7(c) requires the custodian to act pursuant to a custody agreement that: (1) Prohibits the custodian from rehypothecating, pledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset held in compliance with § 349.7, and

such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin and (2) is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding. A custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian under certain conditions.

With respect to collateral collected by a covered swap entity pursuant to § 349.3(a) or posted by a covered swap entity pursuant to § 349.3(b), the agreement must require the posting party to substitute only funds or other property that would qualify as eligible collateral under § 349.6 and for which the amount net of applicable discounts described in Appendix B would be sufficient to meet the requirements of § 349.3 and direct reinvestment of funds only in assets that would qualify as eligible collateral under § 349.6.

Section 349.8 establishes standards for the use of initial margin models. These standards include: (1) A requirement that the covered swap entity receive prior approval from the relevant Agency based on demonstration that the initial margin model meets specific requirements (§§ 349.8(c)(1) and 349.8(c)(2)); (2) a requirement that a covered swap entity notify the relevant Agency in writing 60 days before extending use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions (§ 349.8(c)(3)); and (3) a variety of quantitative requirements, including requirements that the covered swap entity validate and demonstrate the reasonableness of its process for modeling and measuring hedging benefits, demonstrate to the satisfaction of the relevant Agency that the omission of any risk factor from the calculation of its initial margin is appropriate, demonstrate to the satisfaction of the relevant Agency that incorporation of any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or noncleared security-based swaps is appropriate, periodically review and, as necessary, revise the data used to calibrate the initial margin model to ensure that the data incorporate an appropriate period of significant financial stress (§§ 349.8(d)(5), 349.8(d)(10), 349.8(d)(11), 349.8(d)(12), and 349.8(d)(13)).

Also, if the validation process reveals any material problems with the initial margin model, the covered swap entity must promptly notify the Agency of the problems, describe to the Agency any remedial actions being taken, and adjust the initial margin model to ensure an appropriately conservative amount of required initial margin is being calculated (§ 349.8(f)(3)). Section 349.8 also establishes requirements for the ongoing review and documentation of initial margin models. These standards include: (1) A requirement that a covered swap entity review its initial margin model annually (§ 349.8(e)); (2) a requirement that the covered swap entity validate its initial margin model at the outset and on an ongoing basis, describe to the relevant Agency any remedial actions being taken, and report internal audit findings regarding the effectiveness of the initial margin model to the covered swap entity's board of directors or a committee thereof (§§ 349.8(f)(2), 349.8(f)(3), and 349.8(f)(4)); (3) a requirement that the covered swap entity adequately document all material aspects of its initial margin model (§ 349.8(g)); and (4) that the covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such

change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval (§ 349.8(h)).

Section 349.9 addresses the treatment of cross-border transactions and, in certain limited situations, will permit a covered swap entity to comply with a foreign regulatory framework for noncleared swaps (as a substitute for compliance with the prudential regulators' rule) if the prudential regulators jointly determine that the foreign regulatory framework is comparable to the requirements in the prudential regulators' rule. Section 349.9(e) allows a covered swap entity to request that the prudential regulators make a substituted compliance determination and must provide the reasons therefore and other required supporting documentation. A request for a substituted compliance determination must include: (1) A description of the scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps; (2) the specific provisions of the foreign regulatory framework for non-cleared swaps and security-based swaps (scope of transactions covered; determination of the amount of initial and variation margin required; timing of margin requirements; documentation requirements; forms of eligible collateral; segregation and rehypothecation requirements; and approval process and standards for models); (3) the supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap and security-based swap regulatory framework; and (4) any other descriptions and documentation that the prudential regulators determine are appropriate. A covered swap entity may make a request under this section only if directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

Section 349.10 requires a covered swap entity to execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that: (1) Provides the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required and (2) specifies the methods, procedures, rules, and inputs for determining the value of each non-cleared swap or noncleared security-based swap for purposes of calculating variation margin requirements and the procedures for resolving any disputes concerning valuation.

Section 349.11(b)(1) provides that the requirement for a covered swap entity to post initial margin under § 349.3(b) does not apply with respect to any noncleared swap or non-cleared security based swap with a counterparty that is an affiliate. A covered swap entity shall calculate the amount of initial margin that would be required to be posted to an affiliate that is a financial end user with material swaps exposure pursuant to § 349.3(b) and provide documentation of such amount to each affiliate on a daily basis.

3. Consideration of the use of improved information technology:

Any information technology may be used that permits review by FDIC examiners.

4. Efforts to identify duplication:

The information required is unique. It is not duplicated elsewhere.

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

The information collection does not have a significant impact on a substantial number of small entities. Respondents to this information collection would likely not be considered small for purposes of the Regulatory Flexibility Act (RFA),³ since small entities are unlikely to engage in the level of derivative activity that would require it to register as a swap dealer or a major swap participant with the CFTC or a security-based swap dealer or security-based major swap participant with the SEC. A recent merger involving a covered swap entity is expected to result in the creation of an FDIC-supervised covered swap entity.⁴

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

Conducting the collection less frequently would present safety and soundness risks.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320.5(d)(2):

None. This information collection is conducted in accordance with the guidelines in 5 CFR 1320.5(d)(2).

8. Efforts to consult with persons outside the agency:

On October 29, 2019, the FDIC published an initial notice in the Federal Register (84 FR 57869) requesting public comment for 60 days on the proposed renewal of this information collection. The comment period for this notice expired on December 30, 2019. The FDIC did not receive any comments.

9. Payment or gifts to respondents

³The SBA defines a small banking organization as having \$600 million or less in assets, where an organization's "assets are determined by averaging the assets reported on its four quarterly financial statements for the preceding year." See 13 CFR 121.201 (as amended by 84 FR 34261, effective August 19, 2019). In its determination, the "SBA counts the receipts, employees, or other measure of size of the concern whose size is at issue and all of its domestic and foreign affiliates." See 13 CFR 121.103. Following these regulations, the FDIC uses a covered entity's affiliated and acquired assets, averaged over the preceding four quarters, to determine whether the covered entity is "small" for the purposes of RFA.

⁴See BB&T Application for Consent to Merge with SunTrust Bank, Atlanta, Georgia, and to Establish Associated Branches at <https://www.fdic.gov/news/news/press/2019/pr19111a.pdf>

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 information of a sensitive nature is requested.

12. Estimate of hour burden including annualized hourly costs:

Estimated Annual Burden –

Information Collection (IC) Description	Type of Burden	Estimated Number of Respondents	Number of Responses per Respondent	Estimated Time per Response (Hrs)	Estimated Annual Burden (Hrs)
§ 349.1(d)(1), (d)(2) Meeting criteria for exemption ⁵	Reporting	1	1,000	1	1,000
§ 349.1(h) ⁶	Disclosure	1	1	1	1
§ 349.2 Definition of “Eligible Master Netting Agreement,” paragraphs (4)(i) and (ii) ¹³ § 349.8(g) Documentation ¹³ § 349.10 Documentation of Margin Matters ⁷	Recordkeeping	1	1	5	5
§ 349.5(c)(2) Required Margin ¹³	Recordkeeping	1	1	4	4
§ 349.7(c) Custody Agreement ¹³	Recordkeeping	1	1	100	100
§ 349.8(c) and (d) Initial Margin Model ¹³	Reporting	1	1	240	240
§ 349.8(e) Periodic Review ¹³	Recordkeeping	1	1	40	40

5 From the previous ICR of OMB 3064-0204, approved on January 31, 2017.

6 From 84 FR 9940, published on March 19, 2019.

7 From 80 FR 74840, published November 30, 2015.

§ 349.8(f) Control, Oversight, and Validation Mechanisms ¹³					
§ 349.8(f)(3) Initial Margin Modeling Report ¹³	Reporting	1	1	50	50
§ 349.8(h) Escalation Procedures ¹³	Recordkeeping	1	1	20	20
§ 349.9(e) Requests for Determinations ¹³	Reporting	1	3	10	30
§ 349.11(b)(1) Posting Initial Margin ¹³	Recordkeeping	1	250	1	250
Total Estimated Annual Burden (Hrs)					1,740

As described above, the information collection affects FDIC-supervised covered swap entities, which includes persons registered with the Commodity Futures Trading Commission as swap dealers or major swap participants pursuant to the Commodity Exchange Act of 1936 and persons registered with the Securities Exchange Commission (SEC) as security-based swap dealers and major security-based swap participants under the Securities Exchange Act of 1934. The FDIC has identified 107 swap dealers and major swap participants that, as of November 14, 2019, have registered as swap entities.⁸ None of these institutions are among the 3,424 insured depository institutions (IDIs) supervised by the FDIC.⁹ However, a recent merger involving a covered swap entity is expected to result in the creation of an FDIC-supervised covered swap entity.¹⁰ Therefore, based on the preceding information and the FDIC’s convention of employing a placeholder estimate of one for any information collection where a current respondent cannot be identified, the FDIC is using an annual respondent estimate of one for this ICR. This respondent count is unchanged from the currently-approved ICR.

Annualized Cost of Internal Hourly Burden -

To estimate the weighted average hourly cost of compensation, FDIC used the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates for the relevant occupations in the Depository Credit Intermediation sector, as of June, 2019.¹¹ The reported hourly wage rates do not include

⁸ While the SEC had adopted a regulation that would require registration of security-based swap dealers and major security-based swap participants, as of December 13, 2019, there was no date established as the compliance date and no SEC-published list of any such entities that so registered (*see* 84 FR 4906 at 4925). Accordingly, no security-based swap dealers and no major security-based swap participants have been identified as swap entities by the FDIC. In identifying the 107 institutions referred to in the text, the FDIC used the list of swap dealers set forth on December 13, 2019 (providing data as of November 14, 2019) at <https://www.cftc.gov/LawRegulation/DoddFrankAct/registerswapdealer.html>. Major swap participants, among others, are required to apply for registration through a filing with the National Futures Association. Accordingly, the FDIC reviewed the National Futures Association <https://www.nfa.futures.org/members/sd/index.html> to determine whether there were registered major swap participants. As of December 13, 2019, there were no major swap participants listed on this link.

⁹ FDIC Call Report Data, June 30, 2019.

¹⁰ See footnote 4.

¹¹ The 75th percentile wage information reported by the BLS in the Specific Occupational Employment and Wage Estimates does not include health benefits and other non-monetary benefits. According to the June 2019 Employer Cost of Employee Compensation data compensation rates for health and other benefits are 33.8 percent of total

non-monetary compensation. According to the June 2019 Employer Cost of Employee Compensation data, compensation rates for health and other benefits are 33.8 percent of total compensation. To account for non-monetary compensation, FDIC adjusted the hourly wage rates reported by BLS by that percentage. FDIC also adjusted the hourly wage by 1.86 percent based on changes in the Consumer Price Index for Urban Consumers (CPI-U) from May 2018 to June 2019 to account for inflation and ensure that the wage information is contemporaneous with the non-monetary compensation statistic.

After calculating these adjustments, FDIC then weighted the total hourly compensation for six labor categories using the estimated allocation of labor shown on the table below to find the estimated hourly cost of complying with this ICR.¹² The estimated hourly compensation rates are as follows:

Estimated Category of Personnel Responsible for Complying with the PRA Burden	Total Estimated Hourly Compensation	Estimated Weights	Estimated Total Weighted Labor Cost Component
Executives and Managers ¹³	\$120.40	10%	\$12.04
Lawyers ¹⁴	\$153.93	15%	\$23.09
Compliance Officer ¹⁵	\$64.62	15%	\$9.69
IT Specialists ¹⁶	\$90.13	15%	\$13.52
Financial Analysts ¹⁷	\$83.61	15%	\$12.54
Clerical ¹⁸	\$32.19	30%	\$9.66
Total Estimated Weighted Average Hourly Compensation Rate		100%	\$80.54

FDIC estimated the total annualized hourly cost burden for this ICR by multiplying the total annual estimated burden hours (1,740) by the weighted average hourly compensation estimate shown above (\$80.54). The total annualized hourly cost burden is estimated to be \$140,139.60 per year. This represents an increase of \$39,139.60 over the estimate in the currently-approved

compensation. Additionally, the wage has been adjusted for inflation according BLS data on the Consumer Price Index for Urban Consumers (CPI-U) so that it is contemporaneous with the non-wage compensation statistic. The inflation rate was 1.86 percent between May 2018 and June 2019.

12 Source: Bureau of Labor Statistics: "National Industry-Specific Occupational Employment and Wage Estimates: Depository Credit Intermediation Sector" (May 2018), Employer Cost of Employee Compensation (June 2019), Consumer Price Index (June 2019).

13 Occupation (SOC Code): Management Occupations (110000).

14 Occupation (SOC Code): Lawyers, Judges, and Related Workers (231000).

15 Occupation (SOC Code): Compliance Officers (131041).

16 Occupation (SOC Code): Computer and Mathematical Occupations (150000).

17 Occupation (SOC Code): Financial Analyst (132051).

18 Occupation (SOC Code): Office and Administrative Support Occupations (430000).

ICR. The increase can be attributed to the addition of new burdens due to the interagency burden presentation alignment discussed in Section 15 below, which is partially offset by a decrease in estimated hourly compensation from \$101 to \$80.54.

13. Estimate of start-up costs to respondents:

None.

14. Estimate of annualized costs to the government:

None.

15. Analysis of change in burden:

Total estimated annual burden increased by 740 hours from 1,000 hours in the currently-approved information collection, to 1,740 hours under this revision. There was no change in the substance or methodology of the information collection. The reasons for the change in burden are described below.

On November 30, 2015, the FDIC, Board of Governors of the Federal Reserve System, Farm Credit Administration, Federal Housing Finance Agency, and Office of the Comptroller of the Currency (together, the agencies) published two rulemakings amending 349 Subpart A. Both rulemakings implemented Title VII Part 2 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), which directed the agencies to establish margin and capital requirements for registered swap dealers, major swap participants, securities-based swap dealers, and major securities-based swap participants (covered swap entities).

The first rulemaking established minimum margin and capital requirements for covered swap entities under 349 Subpart A.¹⁹ It required covered swap entities to record and report procedures, assumptions, and calculations related to their swap activities. These collections of information totaled an estimated 739 hours per respondent per year. The second rulemaking was an interim final rule (IFR) amending 349 Subpart A to exempt certain swaps from the margin requirements set in the first rulemaking.²⁰ It imposed reporting requirements for covered swap entities that would seek the exemptions. These reporting requirements added 1,000 burden hours per respondent per year.

At the time of the 2015 rulemakings, no FDIC-supervised institution was expected to be a covered swap entity. Thus, the FDIC was not expected to impose any PRA burden related to this IC. However, to establish an OMB control number for this IC, the FDIC used a placeholder count of one respondent and a placeholder burden of 1,000 hours per respondent per year which was recognized as an overestimate of the actual burden given zero expected respondents.

¹⁹ 80 FR 74840, published on November 30, 2015.

²⁰ 80 FR 74916, published on November 30, 2015.

On January 31, 2017, OMB 3064-0204 was approved for renewal without change with total estimated annual burden of 1,000 hours. On March 19, 2019, the agencies published an interim final rule that addressed certain swaps that might be affected by the United Kingdom's withdrawal from the European Union (Brexit Rule).²¹ The Brexit Rule added a de minimus PRA burden of one additional hour, but this additional hour was not incorporated into OMB 3064-0204 since the placeholder burden of 1,000 hours was already an overestimate of the actual burden.

Most recently, as part of a proposed notice of rulemaking to revise 349 Subpart A,²² the agencies agreed to align the requirements of their respective ICs affecting covered swap entities. This renewal ICR executes this alignment by updating the list of information collection requirements to include the nine requirements totaling 739 hours that were excluded in 2015 and the one requirement totaling 1 hour that was added by the Brexit Rule. This update aligns FDIC's burden presentation with the presentation used by the other agencies.²³

16. Information regarding collections whose results are planned to be published for statistical use:

Not applicable. No publication for statistical use is contemplated.

17. Exceptions to Display of expiration date:

None.

18. Exceptions to certification:

None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.

21 84 FR 9940, published on March 19, 2019.

22 84 FR 59970, published on November 7, 2019.

23 For example, the OCC obtained OMB approval on March 11, 2019 for the merger of OMB No. 1557-0251 and OMB No. 1557-0335 for a similar issue regarding ICRs for covered swap entities. See https://www.reginfo.gov/public/do/PRAViewICR?ref_nbr=201902-1557-004

