Supporting Statement for the
Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation KK
(FR KK; OMB No. 7100-0364)

Margin and Capital Requirements for Covered Swap Entities
(Docket No. R-1682; RIN 7100-AF62)

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, with revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation KK (FR KK; OMB No. 7100-0364). The Board, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Farm Credit Administration (FCA), and Federal Housing Finance Agency (FHFA) (collectively, the agencies) adopted a joint final rule[1] that implemented sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) requiring the agencies to establish capital requirements and initial and variation margin requirements for such entities on all non-cleared swaps and non-cleared security-based swaps in order to offset the greater risk to such entities and the financial system arising from the use of swaps and security-based swaps that are not cleared. This final rule created reporting and recordkeeping requirements. The Board accounts for any state member bank, bank holding company, savings and loan holding company, foreign banking organization, foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank, or Edge or agreement corporation that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

The Board adopted a final rule[2] that implemented section 716 of the Dodd-Frank Act. Regulation KK - Swaps Margin and Swaps Push-Out (12 CFR Part 237) treats an uninsured U.S. branch or agency of a foreign bank as an insured depository institution for purposes of section 716 of the Dodd-Frank Act and establishes a process by which a state member bank or uninsured state branch or agency of a foreign bank may request a transition period to conform its swaps activities to the Dodd-Frank Act. This final rule created reporting requirements.

The agencies have adopted a joint interim final rule and final rule that amends the agencies' regulations requiring 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). The Swap Margin Rule as adopted in 2015 takes effect under a phased compliance schedule spanning from 2016 through 2020, and the entities covered by the rule continue to hold swaps in their portfolios that were entered into before the effective dates of the rule. Such swaps are grandfathered from the Swap Margin Rule's requirements until they expire according to their terms. The final rule permits swaps entered into prior to an applicable compliance date (legacy swaps) to retain their legacy status in the event that they are amended to replace an interbank offered rate (IBOR) or other discontinued rate, modifies initial margin requirements for noncleared swaps between affiliates, introduces an additional

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[1] See 80 FR 74840 (November 30, 2015).
[2] See 79 FR 340 (January 3, 2014).

compliance date for initial margin requirements, clarifies the point in time at which trading documentation must be in place, permits legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, and makes technical changes to relocate the provision addressing amendments to legacy swaps that are made to comply with the Qualified Financial Contract Rules. In addition, the final rule addresses comments received in response to the agencies' publication of the interim final rule that would preserve the status of legacy swaps meeting certain criteria if the United Kingdom withdraws from the European Union (hereafter Brexit) without a negotiated settlement agreement. The final rule reduces certain recordkeeping requirements that have been previously cleared and creates a new disclosure requirement. In order to be consistent across the agencies, the agencies are also applying a conforming methodology for calculating the burden estimates. The interim final rule is effective March 19, 2019, and the final rule is effective August 31, 2020.

The current estimated total annual burden for the FR KK is 71,313 hours, and would decrease to 61,104 hours. The adopted revisions would result in a decrease of 10,209 hours. At this time, there are no required reporting forms associated with this information collection.

Background and Justification

Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which are generally characterized as swaps and security-based swaps. Sections 731 and 764 of the Dodd-Frank Act added a new section, section 4s, to the Commodity Exchange Act of 1936, as amended (Commodity Exchange Act) and a new section, section 15F, to the Securities Exchange Act of 1934, as amended (Securities Exchange Act), respectively, which require the registration with the U.S. 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 (collectively swap entities). For swap entities that are prudentially regulated by one of the agencies, sections 731 and 764 of the Dodd-Frank Act required the agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing (1) capital requirements and (2) initial and variation margin requirements on all swaps not cleared by a registered derivatives clearing organization or a registered clearing agency. Swap entities that are prudentially regulated by one of the agencies and therefore subject to the final rule are referred to herein as "covered swap entities."

Sections 731 and 764 of the Dodd-Frank Act also required the CFTC and SEC separately to adopt rules imposing capital and margin requirements to their applicable swap entities for which there is no prudential regulator. The Dodd-Frank Act required the CFTC, SEC, and the agencies to establish and maintain, to the maximum extent practicable, capital and margin requirements that are comparable, and to consult with each other periodically (but no less than annually) regarding these requirements.

The capital and margin standards for swaps entities imposed under sections 731 and 764 of the Dodd-Frank Act are intended to offset the greater risk to the swap entity and the financial system arising from non-cleared swaps. They require that the capital and margin requirements imposed on swap entities must, to offset such risk, (1) help ensure the safety and soundness of the swap entity and (2) be appropriate for the greater risk associated with the non-cleared swaps. They also required the agencies, in establishing capital requirements for entities designated as covered swap entities for a single type or single class or category of swap or activities, to take into account the risks associated with other types, classes, or categories of swaps engaged in, and the other activities conducted by swap entities that are not otherwise subject to regulation.

The swaps-related provisions are intended in general to reduce risk, increase transparency, promote market integrity within the financial system, and, in particular, address a number of weaknesses in the regulation and structure of the swaps markets that were revealed during the financial crisis of 2008 and 2009. During the financial crisis, the opacity of swap transactions among dealers and between dealers and their counterparties created uncertainty about whether market participants were significantly exposed to the risk of a default by a swap counterparty. By imposing a regulatory margin requirement for non-cleared swaps, the Dodd-Frank Act reduced the uncertainty around the possible exposures arising from non-cleared swaps.

Further, the financial crisis revealed that a number of significant participants in the swaps markets had taken on excessive risk through the use of swaps without sufficient financial resources to make good on their contracts. By imposing an initial and variation margin requirement on non-cleared swaps, sections 731 and 764 of the Dodd-Frank Act will reduce the ability of firms to take on excessive risks through swaps without sufficient financial resources. Additionally, the minimum margin requirement will reduce the amount by which firms can leverage the underlying risk associated with the swap contract.

Section 716 of Title VII of the Dodd-Frank Act generally prohibits the provision of Federal assistance to any swaps entity with regard to any swap, security-based swap, or other activity of the swaps entity. Federal assistance is defined by section 716 to include advances from any Federal Reserve credit facility or discount window that is not part of a program or facility with broad-based eligibility under section 13(3)(A) of the Federal Reserve Act and FDIC insurance or guarantees. Section 716 provides a specific exclusion from the definition of swaps entity for any insured depository institution that is a major swap participant or major security-based swap participant. Section 716 also provides that its prohibition does not apply to an insured depository institution that limits its swaps activities to certain specified activities. Section 716 provides insured depository institutions with a transition period to facilitate compliance with the requirements of the section. By its terms, the prohibitions of section 716 apply to insured depository institutions only with respect to swaps and security-based swaps entered into after the expiration of the transition period.

The structure, language, and purpose of section 716 of the Dodd-Frank Act created an ambiguity as to whether the term “insured depository institution” includes uninsured U.S. branches and agencies of foreign banks for purposes of the various provisions of section 716. The final rule resolved this ambiguity by providing that the term “insured depository institution” includes uninsured U.S. branches and agencies of foreign banks for purposes of section 716 of the Dodd-Frank Act. Accordingly, uninsured branches and agencies of foreign banks are provided the same exceptions and opportunity for transition period relief provided to insured depository institutions.

Description of Information Collection

The reporting requirements are found in sections 237.1(d), 237.8(c), 237.8(d), 237.8(f)(3), 237.9(e), 237.22(a)(1), and 237.22(e) of Regulation KK and the recordkeeping requirements are found in sections 237.2 (definition of "eligible master netting agreement," item 4), 237.5(c)(2)(i), 237.7(c), 237.8(e), 237.8(f), 237.8(g), 237.8(h), 237.10, and 237.11(b)(1). These reporting and recordkeeping requirements implemented sections 716, 731, and 764 of the Dodd-Frank Act. No other Federal law mandates these reporting and recordkeeping requirements. At this time, there are no required reporting forms associated with this information collection.

Reporting Requirements

The reporting requirements found in section 237.1(d) are pursuant to cross-references to other statutory provisions that set forth the conditions for an exemption from clearing. For example, Terrorism Risk Insurance Program Reauthorization Act of 2015 (TRIPRA) provides that the initial and variation margin requirements of the joint final rule shall not apply to a non-cleared swap or non-cleared security-based swap in which a counterparty qualifies for an exception under section 2(h)(7)(A) of the Commodity Exchange Act or section 3C(g)(1) of the Securities Exchange Act, which includes certain reporting requirements established by the CFTC or the SEC. Certain other counterparties that are exempt from clearing pursuant to other provisions are also required to meet these reporting requirements to notify the CFTC or the SEC. Thus, in certain cases, the statutory exemption from clearing requires a notification to the CFTC or SEC. These counterparties may be required to meet the same notification requirements that are required for an exception or exemption from clearing in order to qualify for an exception or exemption pursuant to section 237.1(d) from the initial and variation margin requirements established by the agencies under sections 731 and 764 of the Dodd-Frank Act.

Section 237.8 establishes standards for 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 (237.8(c)(1) and (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 (237.8(c)(3)), (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 non-cleared 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 (237.8(d)(5), (10), (11), (12), and (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 (237.8(f)(3)).

Section 237.9(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 a description of the scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps; 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); 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 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 237.22(a)(1) provides that an insured depository institution for which the Board is the appropriate Federal banking agency may request a transition period of up to 24 months from the later of July 16, 2013, or the date on which it becomes a swaps entity, to conform its swaps activities to the requirements of section 716 of the Dodd-Frank Act.[3] Such insured depository institution may request a transition period by submitting a request in writing to the Board. Any request submitted must, at a minimum, include the following information: (1) the length of the transition period requested, (2) a description of the quantitative and qualitative impacts of divestiture or cessation of swap or security-based swaps activities on the insured depository institution, including information that addresses the factors in section 237.22(c), and (3) a detailed explanation of the insured depository institution's plan for conforming its activities to the requirements of section 716 of the Dodd-Frank Act.[4]

Section 237.22(e) allows the Board to extend a transition period for a period of up to one additional year. To request an extension of the transition period, an insured depository institution must submit a written request containing the information set forth in section 237.22(a) no later than 60 days before the end of the transition period.

Recordkeeping Requirements

Section 237.2 defines terms used in the proposed rule, 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

[3] The insured depository institution must also qualify as a "swaps entity" and be subject to the "Federal assistance" prohibition in section 716(a) of the Dodd-Frank Act.
[4] See section 237.22(a)(1).

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 the proposed rule 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 237.5(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 237.7(c) requires the custodian to act pursuant to a custody agreement that (1) prohibits the custodian from rehypothecating, repledging, 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, such asset is held in compliance with this section 237.7, 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, provided that, with respect to collateral collected by a covered swap entity pursuant to section 237.3(a) or posted by a covered swap entity pursuant to section 237.3(b), the agreement requires the posting party to substitute only funds or other property that would qualify as eligible collateral under section 237.6, and for which the amount net of applicable discounts described in appendix B would be sufficient to meet the requirements of section 237.3 and direct reinvestment of funds only in assets that would qualify as eligible collateral under section 237.6, and for which the amount net of applicable discounts described in appendix B would be sufficient to meet the requirements of section 237.3.

Section 237.8 establishes standards for initial margin models. These standards include (1) a requirement that a covered swap entity review its initial margin model annually (237.8(e)), (2) a requirement that the covered swap entity validate its initial margin model initially 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 (237.8(f)(2), (3), and (4)), (3) a requirement that the covered swap entity adequately document all material aspects of its initial margin model (237.8(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 (237.8(h)).

Section 237.10 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, value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements, and the procedures for resolving any disputes concerning valuation.

Section 237.11(b)(1) provides that the requirement for a covered swap entity to post initial margin under section 237.3(b) does not apply with respect to any non-cleared 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 section 237.3(b) and provide documentation of such amount to each affiliate on a daily basis.

Respondent Panel

The FR KK panel comprises any state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. § 1841), savings and loan holding company (as defined in 12 U.S.C. § 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. § 3101(b)(11) and (12)), or Edge or agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)) that is registered as a swap dealer, major swap participant, security-based swap dealer, or major security-based swap participant.

Revisions to the FR KK

The agencies adopted a joint interim final rule and joint final rule that amended the agencies' regulations requiring 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. The Swap Margin Rule as adopted in 2015 takes effect under a phased compliance schedule spanning from 2016 through 2020, and the entities covered by the rule continue to hold swaps in their portfolios that were entered into before the effective dates of the rule. Such swaps are grandfathered from the Swap Margin Rule's requirements until they expire according to their terms. The final rule permits swaps entered into prior to an applicable compliance date (legacy swaps) to retain their legacy status in the event that they are amended to replace an interbank offered rate (IBOR) or other discontinued rate, modifies initial margin requirements for noncleared swaps between affiliates, introduces an additional compliance date for initial margin requirements, clarifies the point in time at which trading documentation must be in place, permits legacy swaps to retain their legacy status in the event that they are amended due to technical amendments, notional reductions, or portfolio compression exercises, and makes technical changes to relocate the provision addressing amendments to legacy swaps that are made to comply with the Qualified Financial Contract Rules. In addition, the final rule addressed comments received in response to the agencies' publication of the interim final rule that would preserve the status of legacy swaps meeting certain criteria if the United Kingdom withdraws from the European Union (hereafter Brexit) without a negotiated settlement agreement. The final rule reduced certain recordkeeping requirements that have been previously cleared and created a new disclosure requirement. In order to be consistent across the agencies, the agencies are also applied a conforming methodology for calculating the burden estimates. The interim final rule is effective March 19, 2019, and the final rule is effective August 31, 2020.

Recordkeeping Requirements

The final rulemaking removed the recordkeeping requirement in section 237.11(b) that 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 section 237.3(b) and provided documentation of such amount to each affiliate on a daily basis.

Disclosure Requirements

Section 237.1(h) of the interim final rule specifies that transfers of legacy swaps initiated by a covered swap entity's counterparty require a representation to the covered swap entity that the counterparty carried out the swap in accordance with both elements of the purpose test 30 in order to remain outside the scope of the rule.

Time Schedule for Information Collection

The reporting, recordkeeping, and disclosure requirements are event-generated. At this time, there are no required reporting forms associated with this information collection.

Legal Status

Sections 731 (7 U.S.C. § 6*s*) and 764 (15 U.S.C. § 78*o*-10) of Dodd-Frank Act expressly authorize the prudential regulators to adopt rules jointly for swap entities under their respective jurisdictions by imposing (1) capital requirements and (2) initial and variation margin requirements on all non-cleared swaps. Section 721(a)(39) of Dodd-Frank Act (7 U.S.C. § 1*a*(39)) defines the Board as the "prudential regulator" for the covered swap entities. Section 731(j)(3) provides that each registered swap dealer and major swap participant "shall disclose to the Commission [CFTC] and to the prudential regulator for the swap dealer or major swap participant, as applicable, information concerning (1) terms and conditions of its swaps, (2) swap trading operations, mechanisms, and practices, (3) financial integrity protections relating to swaps, and (4) other information relevant to its trading in swaps." Section 731(j)(4) provides that each registered swap dealer and major swap participant "shall (1) establish and enforce internal systems and procedures to obtain any necessary information to perform any of the functions described in this section and (2) provide the information to the [CFTC] and to the prudential regulator for the swap dealer or major swap participant, as applicable, on request." Sections 764(j)(3) and 764(j)(4) provide the equivalent authorizations for each *security-based* swap dealer and major *security-based* swap participant. Section 716 of Dodd-Frank expressly authorizes the "appropriate Federal banking agency, after consulting with and considering the views of [the CFTC or SEC, as appropriate]" to permit a covered swap entity under its jurisdiction "an appropriate transition period to effect such divestiture or cessation of activities" as may be required under the swaps provisions of the Act for "up to 24 months," with an opportunity for an extension “for a period of up to 1 additional year” (15 U.S.C. § 8305(f)). Section 237.22 of the Board’s Regulation KK implements this transition provision (12 CFR 237.22).

The obligation to comply with Subpart A’s recordkeeping and reporting requirements is (1) with respect to an Eligible Master Netting Agreement (237.2), required in order for a covered swap entity to obtain the benefit of calculating margin requirements on a net basis across non-cleared swaps with a counterparty, (2) with respect to the Satisfaction of Collecting and Posting Requirements (237.5(c)(2)(i)), required in order to for a covered swap entity not to be deemed to have violated its obligation to collect or post margin from or to a counterparty with respect to an open swap, (3) with respect to the Segregation of Collateral, Documentation of Margin Matters, and Posting of Initial Margin with Affiliates provisions (237.7(c), 10, and 11(b)(1)), mandatory for all covered swap entities, (4) with respect to the Initial Margin Model provisions (237.8(c)-(h)), required in order for a covered swap entity to obtain the benefit of using a model to calculate initial margin requirements, and (5) with respect to the Substituted Compliance Determination provision (237.9(e)), required in order for foreign covered swap entities to obtain the benefit of remaining subject to a regulatory framework that has been determined to be comparable to the joint final rule. The obligation to comply with the reporting requirements in Subpart B is required in order for state member banks or uninsured branches and agencies of foreign banks to obtain the benefit of utilizing a transition period (or extension of a transition period) under section 716.

Five of the above-described categories of information collection reflect records maintained at the institutions, and so issues of confidentiality normally would not arise. They are (1) Eligible Master Netting Agreement, (2) Satisfaction of Collecting and Posting Requirements, (3) Segregation of Collateral, (4) Documentation of Margin Matters, and (5) Posting of Initial Margin with Affiliates. Should such information be obtained by the Board in the course of an examination, it would be exempt from disclosure under exemption 8 of Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(8)). In addition, some or (more likely) all of such information may be highly sensitive “commercial or financial” information protected from disclosure under exemption 4 of FOIA, under the standards set forth in National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974). The information submitted by a covered swap entity to the Board for its approval of an Initial Margin Model would consist of confidential, highly sensitive proprietary modeling information. Such information would be protected from disclosure under exemption 4. Such information also is subject to withholding under FOIA exemption 8 as it is collected in the course of supervisory oversight of the institution and its activities. Portions of the information provided by the covered swap entity to the Board regarding a Substituted Compliance Determination could be of a highly sensitive nature regarding the nature and extent of foreign regulatory supervision over the counterparty and so be subject to withholding under FOIA exemption 4.

Any initial request for a transition period submitted under section 237.22(a)(1), or for an extension of the transition period under section 237.22(e) must, at a minimum, include the following information: (1) the length of the transition period requested, (2) a description of the quantitative and qualitative impacts of divestiture or cessation of swap or security-based swaps activities on the insured depository institution, including information that addresses the factors in section 237.22(d), and (3) a detailed explanation of the insured depository institution’s plan for conforming its activities to the requirements of section 716. Such information is the type of confidential commercial and financial information that may be withheld under Exemption 4 of the FOIA (5 U.S.C. § 552(b)(4)). As required information, it may be withheld under Exemption 4 only if public disclosure could result in substantial competitive harm to the submitting institution, under National Parks and Conservation Association v. Morton, 498 F.2d 765 (D.C. Cir. 1974). Should such information be obtained by the Board in the course of an examination, it may be withheld under exemption 8 of FOIA (5 U.S.C. § 552(b)(8)).

Consultation Outside the Agency

The Board, OCC, FDIC, FCA, and FHFA coordinated in developing these revisions.

Public Comment

On March 19, 2019, the agencies published a joint interim final rule in the *Federal Register* (84 FR 9940) for public comment. The comment period for this notice expired on April 18, 2019. On November 7, 2019, the agencies published a joint notice of proposed rulemaking in the *Federal Register* (84 FR 59970) for public comment. The comment period for this notice expired on December 9, 2019, and was extended to January 23, 2020. The agencies received no specific comments on the Paperwork Reduction Act. On July 1, 2020, the agencies published a joint final rule in the *Federal Register* (85 FR 39754). The interim final rule is effective March 19, 2019, and the final rule is effective August 31, 2020.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR KK is 71,313 hours, and would decrease to 61,104 hour with the adopted revisions. The Board estimates that the average hours per response for the new disclosure requirement would be 1 hour. The reporting, recordkeeping, and disclosure requirements represent less than 1 percent of the Board's total paperwork burden.

FR KK	*Estimated number of respondents*[5]	*Annual frequency*	*Estimated average hours per response*	*Estimated annual burden hours*
Current				
Reporting				
Section 237.1(d)	41	1,000	1	41,000
Sections 237.8(c) and 237.8(d)	41	1	240	9,840
Section 237.8(f)(3)	41	1	50	2,050
Section 237.9(e)	41	3	10	1,230
Sections 237.22(a)(1) and 237.22(e) (Board only)	2	1	7	14
Recordkeeping				
Sections 237.2 (definition of "eligble master netting agreement," item 4), 237.8(g), and 237.10	41	1	5	205
Section 237.5(c)(2)(i)	41	1	4	164
Section 237.7(c)	41	1	100	4,100
Sections 237.8(e) and 237.8(f)	41	1	40	1,640
Section 237.8(h)	41	1	20	820
Section 237.11(b)(1)	41	250	1	10,250
Current Total				71,313
Proposed				
Reporting				
Section 237.1(d)	41	1,000	1	41,000
Sections 237.8(c) and 237.8(d)	41	1	240	9,840
Section 237.8(f)(3)	41	1	50	2,050
Section 237.9(e)	41	3	10	1,230
Sections 237.22(a)(1) and 237.22(e) (Board only)	2	1	7	14
Recordkeeping				
Sections 237.2 (definition of "eligble master netting agreement," item 4), 237.8(g), and 237.10	41	1	5	205
Section 237.5(c)(2)(i)	41	1	4	164
Section 237.7(c)	41	1	100	4,100
Sections 237.8(e) and 237.8(f)	41	1	40	1,640
Section 237.8(h)	41	1	20	820
Disclosure				
Section 237.1(h)	41	1	1	41
Proposed Total				61,104

[5] Of these respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than $600 million in total assets), https://www.sba.gov/document/support--table-size-standards.

Change	(10,209)

The current estimated total annual cost to the public for the FR KK is $4,118,326 and would decrease to $3,528,756 with the adopted revisions.[6]

Sensitive Questions

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

Estimate of Cost to the Federal Reserve System

The cost to the Federal Reserve System is negligible.

[6] 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 $20, 45% Financial Managers at $71, 15% Lawyers at $70, and 10% Chief Executives at $93). 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 2019*, published March 31, 2020, https://www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Standard Occupational Classification System, https://www.bls.gov/soc/.