

## **Supporting Statement for the Recordkeeping and Disclosure Requirements Associated with Regulation O (FR O; OMB No. 7100-NEW)**

### **Summary**

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has temporarily implemented the Recordkeeping and Disclosure Requirements Associated with Regulation O (FR O; OMB No. 7100-NEW) pursuant to its authority to approve temporarily a collection of information without providing opportunity for public comment.<sup>1</sup>

The Board's Regulation O - Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (12 CFR Part 215) governs any extension of credit made by a member bank<sup>2</sup> to an executive officer, director, or principal shareholder of the member bank, of any company of which the member bank is a subsidiary, and of any other subsidiary of that company. It prohibits such extensions of credit unless they are made on substantially the same terms (including interest rates and collateral) as those prevailing at the time for comparable transactions by the bank with other persons who are not employed by the bank and do not involve more than the normal risk of repayment or present other unfavorable features. Sections 215.8 and 215.9 of Regulation O contain recordkeeping and disclosure requirements on member banks. The estimated total annual burden for the FR O is 9,420 hours.

### **Background and Justification**

Sections 22(g) and (h) of the Federal Reserve Act restrict certain transactions between banks and their insiders or insiders of their affiliates.<sup>3</sup> Insiders include executive officers, directors, principal shareholders, and companies controlled by such persons. Congress enacted sections 22(g) and (h) to prevent bank insiders from abusing their positions to gain favorable treatment from their associated banks and authorized the Board to prescribe rules and regulations as necessary to effectuate the purposes and to prevent evasions. Accordingly, the Board has promulgated the Board's Regulation O to prevent insider abuse in banks. The regulation contains recordkeeping and disclosure requirements related to member banks' compliance with Regulation O. This information is not available from other sources.

#### *Implementation of FR O on a Temporary Basis*

The delegation of authority to the Board from OMB that permits the Board to approve collections of information under the Paperwork Reduction Act includes the authority to temporarily approve a collection of information without seeking public comment. To exercise this authority, the Board must determine that a new collection of information or a change to an existing collection must be instituted quickly and that public participation in the approval process

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<sup>1</sup> 5 CFR Part 1320, Appendix A (1)(a)(3)(i)(A).

<sup>2</sup> 12 U.S.C. § 221 defines a "member bank" as any national bank, state bank, or bank or trust company which has become a member of one of the Federal Reserve banks.

<sup>3</sup> 12 U.S.C. §§ 375a and 375b.

would substantially interfere with the Board's ability to perform its statutory obligation. Following the temporary approval of an information collection, the Board must conduct a normal delegated review of the collection within six months, including publishing in the *Federal Register* a notice seeking public comment.

The Board has temporarily approved the collections of information contained within Regulation O. The Board has determined that this collection of information must be instituted quickly and that public participation in the approval process would defeat the purpose of the collection of information, as the Board's ability to perform its statutory duties would be diminished if the Board were unable to enforce the collections of information contained within Regulation O due to possible noncompliance with the Paperwork Reduction Act.

### **Description of Information Collection**

Regulation O contains certain recordkeeping and disclosure requirements. Pursuant to section 215.8 of Regulation O, respondents must maintain records necessary for compliance with the requirements of Regulation O. Any recordkeeping method adopted by a respondent shall identify, through an annual survey, all insiders of the respondent and maintain records of all extensions of credit to insiders of the respondent, including the amount and terms of each such extension of credit. Additionally, any recordkeeping method adopted by a respondent shall maintain records of extensions of credit to insiders of the respondent's affiliates by using either the survey method or borrower inquiry method, as set forth in Regulation O, or a different recordkeeping method if the appropriate federal banking agency determines that the respondent's method is at least as effective as the listed methods.<sup>4</sup>

Pursuant to section 215.9 of Regulation O, upon receipt of a written request from the public, a respondent must make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or \$500,000, whichever amount is less. Respondents are not required to disclose the specific amounts of individual extensions of credit. Additionally, each respondent must maintain records of all requests for the information described above and the disposition of such requests. These records may be disposed of after two years from the date of the request.

### **Respondent Panel**

The FR O panel comprises member banks.

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<sup>4</sup> A member bank that is prohibited by law or by an express resolution of the board of directors of the bank from making an extension of credit to any company or other entity that is covered by Regulation O as a company is not required to maintain any records of the related interests of the insiders of the bank or its affiliates or to inquire of borrowers whether they are related interests of the insiders of the bank or its affiliates. 12 CFR 215.8(d).

## **Time Schedule for Information Collection**

The time schedule for when the records associated with this collection are produced and maintained is contingent on the method of compliance with Regulation O chosen by the member bank, and can include annually, upon an extension of credit, or on an ongoing basis. Disclosure is required when requests by the public are received by the member bank.

## **Public Availability of Data**

Upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or \$500,000, whichever amount is less.

## **Legal Status**

The FR O is authorized by section 7 of the Federal Deposit Insurance Act (12 U.S.C. § 1817(k)) and section 22(h) of the Federal Reserve Act (12 U.S.C. § 375b). The Board also has the authority to require reports from state member banks (12 U.S.C. §§ 248(a) and 324). Section 7 authorizes the Board to require state member banks to report and publicly disclose information concerning extensions of credit by the state member bank to its executive officers, principal shareholders, or related interests of those persons. Section 22(h) authorizes the Board to prescribe rules related to extensions of credit to executive officers, directors, and principal shareholders.<sup>5</sup> The obligation to respond is mandatory.

The information disclosed under the disclosure requirements of Regulation O is not confidential. The information that is subject to the recordkeeping requirements of Regulation O would be maintained at each state member bank. For this information, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information would be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in "examination, operating, or condition reports" obtained in the bank supervisory process (5 U.S.C. § 552(b)(8)). In addition, in these cases, the information may also be kept confidential under exemption 4 for the FOIA, which protects commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. § 552(b)(4)). Finally, this information may be kept confidential under exemption 6, which protects information "the disclosure of which would constitute a clearly unwarranted invasion of personal privacy" (5 U.S.C. § 552(b)(6)).

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<sup>5</sup> Section 306(o) of the Federal Deposit Insurance Corporation Improvement Act of 1991 contains a similar authorization.

## Consultation Outside the Agency

The Board consulted with the Office of the Comptroller of the Currency and Federal Deposit Insurance Corporation in developing the information collections contained in Regulation O.

## Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR O is 9,420 hours. The estimated number of respondents is based on the current total of member banks, and the time per response is based on a broad estimate of how long it is expected to take to fulfill each requirement. These recordkeeping and disclosure requirements represent less than 1 percent of the Board's total paperwork burden.

<b>FR O</b>	<i>Estimated number of respondents<sup>6</sup></i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<b>Recordkeeping</b>				
Sections 215.8 and 215.9	1,570	1	4	6,280
<b>Disclosure</b>				
Section 215.9	1,570	1	2	<u>3,140</u>
<i>Total</i>				<u>9,420</u>

The estimated total annual cost to the public for the FR O is \$544,005.<sup>7</sup>

## Sensitive Questions

This collection of information contain 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 for collecting and processing the FR O is negligible.

<sup>6</sup> Of these respondents, 1,074 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>. There are no special accommodations given to mitigate the burden on small institutions.

<sup>7</sup> 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/>.