

SUPPORTING STATEMENT
SECURITIES OF STATE NONMEMBER BANKS AND STATE SAVINGS ASSOCIATIONS
(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 February 28, 2023. The information collection requirements are contained in 12 CFR 335 of the FDIC’s regulations. The collection of information is captioned “Securities of State Nonmember Banks and State Savings Associations,” Under Part 335, the information is collected from FDIC-supervised institutions (state nonmember banks and state savings associations) subject to the securities registration requirements of the Securities Exchange Act of 1934, as amended (“the Exchange Act”) as well as from the officers, directors, and principal shareholders of such institutions and certain persons making tender offers for these institutions’ registered equity securities. The FDIC is proposing to rescind its Statement of Policy Regarding the Use of Offering Circulars in Connection with the Public Distribution of Bank Securities, which provides a guide for a State nonmember banks and other institutions in the preparation of offering circulars. At the same time, the FDIC is proposing to amend part 335 to create subpart B to contain the existing regulations of part 335 and create subpart A to contain the new proposed regulation relating to securities offering disclosures previously contained in the Statement of Policy. In so doing, the FDIC would create a unified scheme for securities disclosure requirements applicable to FDIC-supervised institutions. This proposal adds new third-party disclosure requirements to this information collection.

The information collected herein is considered necessary for actual and potential investors making investment decisions concerning securities issued by affected institutions.

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

Section 12(i) of the Exchange Act grants authority to the Federal banking agencies to administer and enforce Sections 10A(m), 12, 13, 14(a), 14(c), 14(d), 14(f), and 16 of the Exchange Act and Sections 302, 303, 304, 306, 401(b), 404, 406, and 407 of the Sarbanes-Oxley Act of 2002. Pursuant to Section 12(i), the FDIC has the authority, including rulemaking authority, to administer and enforce these enumerated provisions as may be necessary with respect to state nonmember banks and state savings associations over which it has been designated the appropriate Federal banking agency. Section 12(i) generally requires the FDIC to issue regulations substantially similar to those issued by the Securities and Exchange Commission (“SEC”) regulations to carry out these responsibilities. Thus, Part 335 of the FDIC regulations incorporates by cross-reference the SEC rules and regulations regarding the disclosure and filing requirements of registered securities of state nonmember banks and state savings associations.

This information collection includes the following:

Beneficial Ownership Forms: FDIC Forms 3, 4, and 5 (FDIC Form Numbers 6800/03, 6800/04, and 6800/05)

Pursuant to Section 16 of the Exchange Act, every director, officer, and owner of more than ten percent of a class of equity securities registered with the FDIC under Section 12 of the Exchange Act must file with the FDIC a statement of ownership regarding such securities. The initial filing is on Form 3 and changes are reported on Form 4. The Annual Statement of beneficial ownership of securities is on Form 5. The forms contain information on the reporting person's relationship to the company and on purchases and sales of such equity securities. 12 CFR Sections 335.601 through 336.613 of the FDIC's regulations, which cross-reference 17 CFR 240.16a of the SEC's regulations, provide the FDIC form requirements for FDIC Forms 3, 4, and 5 in lieu of SEC Forms 3, 4, and 5, which are described at 17 CFR 249.103 (Form 3), 249.104 (Form 4), and 249.105 (Form 5).

Forms 8-A and 8-C for Registration of Certain Classes of Securities

Form 8-A is used for registration pursuant to Section 12(b) or (g) of the Exchange Act of any class of securities of any issuer which is required to file reports pursuant to Section 13 or 15(d) of that Act or pursuant to an order exempting the exchange on which the issuer has securities listed from registration as a national securities exchange. Form 8-C has been replaced by Form 8-A. Form 8-A is described at 17 CFR 249.208a. There is no actual "Form 8-A" as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

Form 8-K: Current Report

This is the current report that is used to report the occurrence of any material events or corporate changes that are of importance to investors or security holders and have not been reported previously by the registrant. It provides more current information on certain specified events than would Forms 10-Q and 10-K. The form description is at 17 CFR 249.308. There is no actual "Form 8-K" as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

Forms 10 and 10-C: Forms for Registration of Securities

Form 10 is the general reporting form for registration of securities pursuant to section 12(b) or (g) of the Exchange Act of classes of securities of issuers for which no other reporting form is prescribed. It requires certain business and financial information about the issuer. Form 10-C has been replaced by Form 10. Form 10 is described at 17 CFR 249.210. There is no actual "Form 10" as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

Form 10-K: Annual Report

This annual report is used by issuers registered under the Exchange Act to provide information described in Regulation S-K, 17 CFR 229. The form is described at 17 CFR 249.310. There is no actual “Form 10-K” as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer’s particular circumstances.

Form 10-Q: Quarterly Reports

The Form 10-Q is a report filed quarterly by most reporting companies. It includes unaudited financial statements and provides a continuing overview of major changes in the company’s financial position during the year, as compared to the prior corresponding period. The report must be filed for each of the first three fiscal quarters of the company’s fiscal year and is due within 40 or 45 days of the close of the quarter, depending on the size of the reporting company. The description of Form 10-Q is at 17 CFR 249.308a. There is no actual “Form 10-Q” as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer’s particular circumstances.

Form 12b-25: Notification of Late Filing

This notification extends the reporting deadlines for filing quarterly and annual reports for qualifying companies. There is no FDIC Form 12b-25. The form is described at 17 CFR 249.322.

Form 15: Certification and Notice of Termination of Registration

This form is filed by each issuer to certify that the number of holders of record of a class of security registered under section 12(g) of the Exchange Act is reduced to a specified level in order to terminate the registration of the class of security. For a bank, the number of holders of record of a class of registered security must be reduced to less than 1,200 persons. For a savings association, the number of record holders of a class of registered security must be reduced to (1) less than 300 persons or (2) less than 500 persons and the total assets of the issuer have not exceeded \$10 million on the last day of each of the issuer’s most recent three fiscal years. In general, registration terminates 90 days after the filing of the certification. There is no FDIC Form 15. This form is described at 17 CFR 249.323.

Schedule 13D: Certain Beneficial Ownership Changes

This Schedule discloses beneficial ownership of certain registered equity securities. Any person or group of persons who acquire a beneficial ownership of more than 5 percent of a class of registered equity securities of certain issuers must file a Schedule 13D reporting such acquisition together with certain other information within ten days after such acquisition. Moreover, any material changes in the facts set forth in the Schedule generally precipitates a duty to promptly file an amendment on Schedule 13D. The SEC’s rules define the term beneficial owner to be any person who directly or indirectly shares voting power or investment power (the power to sell the security). There is no FDIC form for Schedule 13D. This schedule is described at 17 CFR 240.13d-101.

Schedule 13E-3: Going Private Transactions by Certain Issuers or Their Affiliates

This schedule must be filed if an issuer engages in a solicitation subject to Regulation 14A or a distribution subject to Regulation 14C, in connection with a going private merger with its affiliate. An affiliate and an issuer may be required to complete, file, and disseminate a Schedule 13E-3, which directs that each person filing the schedule state whether it reasonably believes that the Rule 13e-3 transaction is fair or unfair to unaffiliated security holders. There is no FDIC form for Schedule 13E-3. This schedule is described at 17 CFR 240.13e-100.

Schedule 13G: Certain Acquisitions of Stock

Certain acquisitions of stock that are over than 5 percent of an issuer must be reported to the public. Schedule 13G is a much abbreviated version of Schedule 13D that is only available for use by a limited category of persons (such as banks, broker/dealers, and insurance companies) and even then only when the securities were acquired in the ordinary course of business and not with the purpose or effect of changing or influencing the control of the issuer. There is no FDIC form for Schedule 13G. This schedule is described at 17 CFR 240.13d-102.

Schedule 14A: Proxy Statements

State law governs the circumstances under which shareholders are entitled to vote. When a shareholder vote is required and any person solicits proxies with respect to securities registered under Section 12 of the Exchange Act, that person generally is required to furnish a proxy statement containing the information specified by Schedule 14A. The proxy statement is intended to provide shareholders with the proxy information necessary to enable them to vote in an informed manner on matters intended to be acted upon at shareholders' meetings, whether the traditional annual meeting or a special meeting. Typically, a shareholder is also provided with a proxy card to authorize designated persons to vote his or her securities on the shareholder's behalf in the event the holder does not vote in person at the meeting. Copies of preliminary and definitive (final) proxy statements and proxy cards are filed with the FDIC. There is no FDIC form for Schedule 14A. The description of this schedule is at 17 CFR 240.14a-101.

Schedule 14C: Information Required in Information Statements

An information statement prepared in accordance with the requirements of the SEC's Regulation 14C is required whenever matters are submitted for shareholder action at an annual or special meeting when there is no proxy solicitation under the SEC's Regulation 14A. There is no FDIC form for Schedule 14C. This schedule is described at 17 CFR 240.14c-101.

Schedule 14D-1: Tender Offer

This schedule is also known as Schedule TO. Any person, other than the issuer itself, making a tender offer for certain equity securities registered pursuant to Section 12 of the Exchange Act is required to file this schedule if acceptance of the offer would cause that person to own over 5 percent of that class of the securities. This schedule must be filed and sent to various parties, such as the issuer and any competing bidders. In addition, the SEC's Regulation 14D sets forth

certain requirements that must be complied with in connection with a tender offer. This schedule is described at 17 CFR 240.14d-100. There is no actual form for Schedule 14D-1 as filers must produce a customized narrative document in compliance with the requirements in accordance with the filer's particular circumstances.

Statement of Policy on Offering Circulars.

The FDIC proposes to rescind its current Statement of Policy Regarding the Use of Offering Circulars in Connection with the Public Distribution of Bank Securities (1996 Statement of Policy), and replace both part 390, subpart W and the 1996 Statement of Policy with a proposed Regulation that will, among other things, incorporate changes in the securities laws and regulations that have occurred since the statement of policy was last updated in 1996 and ensure the principles therein are relevant to State savings associations.

2. Use of the Information:

The FDIC reviews the information collected to ensure that it complies with federal law and makes public all information required to be filed under these rules. Current and potential investors, depositors, and the public use the information to make informed investment decisions about state nonmember banks and state savings associations with a class of equity securities registered with the FDIC under Section 12(b) or 12(g) of the Exchange Act.

3. Consideration of the use of improved information technology:

As required by the Sarbanes-Oxley Act and implemented by Section 335.801(b) of the FDIC's regulations, electronic filing of beneficial ownership reports on Forms 3, 4, and 5 is mandatory. Thus, the FDIC maintains an electronic system for filing beneficial ownership reports, which is accessed using the *FDICconnect* Business Center.

All other forms and schedules may also be filed electronically using *FDICconnect* or may be prepared and submitted in paper form to the FDIC.

4. Efforts to identify duplication:

Generally, the requested information will not otherwise be available. The required disclosures are unique, and do not duplicate data reported for other purposes.

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

This collection of information imposes upon (1) state nonmember banks that have more than \$10 million in total assets and 2,000 or more stockholders and (2) state savings associations that have

more than \$10 million in total assets and (a) 2,000 or more persons or (b) 500 or more persons who are not accredited investors only the minimum burden necessary to fulfill statutory requirements under the Exchange Act and to serve investors, depositors, and the public. Congress sought to be sensitive to the needs of small entities by affording sufficient time in which to file the forms. The SEC considered the resources of small entities in formulating its rules and regulations, and has clarified and simplified the forms and instructions thereto to the extent practicable. The FDIC is also sensitive to the needs of small entities.

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

The collection of information is the minimum necessary to comply with the Exchange Act. The disclosures required by the Exchange Act provide the public with material financial information about the securities of reporting companies, alert the public to ownership changes in and tender offers for those securities, and provide shareholders with information relevant to the solicitation of proxies. Less frequent collection would make the program unworkable and would not be in the public interest.

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 extension, without revisions, 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

None.

10. Any assurance of confidentiality:

Except as provided in Section 335.701(c) of the FDIC's regulations, the forms and schedules filed with the FDIC pursuant to 12 CFR Part 335 are public documents. Section 335.701(c) describes the procedures for requesting confidential treatment for a form or schedule or a portion thereof.

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:

Current Action:

The set of potential respondents include all State nonmember banks and State savings associations. According to recent Call Report data, the FDIC supervises approximately 3,270 insured depository institutions,¹ including 2,492 entities considered small for purposes of the Regulatory Flexibility Act.² However, the proposed rule would only directly apply to FDIC-supervised institutions that issue offering documents.³ The FDIC does not currently have access to information that would enable it to precisely estimate the number of FDIC-supervised institutions that will issue offering documents. To estimate the number of respondents to this information collection, the FDIC has utilized Call Report data to determine the average number of cooperative banks, cooperative banks with stock ownership, mutual commercial banks, mutual savings and loan associations, mutual savings banks, savings and loan associations with stock ownership, savings banks with stock ownership, and de novo institutions, in existence at year-end over the past five years. The FDIC estimates that 376 institutions will respond to the disclosure requirements in the proposed rule.

The estimated PRA compliance labor hours and costs for the Statement rule are summarized in Table 1 below. Table 1 lists the estimated annual number of responses per respondent and estimated time per response, as described in the sections above.

Information Collection (IC) Description	Type of Burden	Estimated Number of Respondents	Estimated Frequency of Responses	Estimated Time per Response	Total Estimated Annual Burden (Hrs.)
Statement of Policy on Offering Circulars	Disclosure	376	On Occasion	114	42,864
Source: FDIC Estimate					

¹ FDIC Call Reports, June 30, 2020.

² The Small Business Administration (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.

³ The proposed rule would not apply to offering documents issued by an FDIC-supervised institution’s holding company.

Revised Estimated Annual Burden –

	Estimated Number of Responses	Hours per Response	Frequency of Response	Number of Responses per Year	Estimated Burden
Form 3 - <i>Initial Statement of Beneficial Ownership</i>	58	1	On Occasion	1	58
Form 4 - <i>Statement of Changes in Beneficial Ownership</i>	297	0.5	On Occasion	4	594
Form 5 - <i>Annual Statement of Beneficial Ownership</i>	69	1	Annual	1	69
Form 8-A	2	3	On Occasion	2	12
Form 8-C	2	2	On Occasion	1	4
Form 8-K	21	2	On Occasion	4	168
Form 10	2	215	On Occasion	1	430
Form 10-C	1	1	On Occasion	1	1
Form 10-K	21	140	Annual	1	2,940
Form 10-Q	21	100	Quarterly	3	6,300
Form 12b-25	6	3	On Occasion	1	18
Form 15	2	1	On Occasion	1	2
Form 25	2	1	On Occasion	1	2
Schedule 13D	2	3	On Occasion	1	6
Schedule 13E-3	2	3	On Occasion	1	6
Schedule 13G	2	3	On Occasion	1	6
Schedule 14A	21	40	Annual	1	840
Schedule 14C	2	40	On Occasion	1	80
Schedule 14D-1 (Schedule TO)	2	5	On Occasion	1	10
Statement of Policy on Offering Circulars	376	114	On Occasion	1	42,864
Totals					54,410

Annualized Cost of Internal Hourly Burden -

Data from the Consolidated Reports of Condition and Income as of June 30, 2019, indicate that salaries and employee benefits per full-time equivalent employee averaged approximately \$56.00 per hour at all institutions with more than \$10 billion in total assets. The FDIC assumes that the above figure is reasonably representative of the average salaries and employee benefits costs for all respondents. The annualized cost of internal hourly burden is estimated to be approximately \$3,046,960 based on the application of the \$56.00 fully-loaded hourly labor cost to the estimated total annual burden of 54,410 hours.

13. Estimate of start-up costs to respondents:

None.

14. Estimate of annualized costs to the government:

None.

15. Analysis of change in burden:

The change in burden is an increase of 42,864 hours attributable to the third-party disclosure requirements contained in the revised regulation incorporating the Statement of Policy on Offering Circulars.

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

None. Forms 3, 4, and 5 filed by directors, officers, and principal shareholders are publicly available on the FDIC's Web site at <http://www2.fdic.gov/efr/>. The other forms and schedules, if filed electronically, are publicly available at the same Web site. The other forms and schedules, if filed in paper form, are available for public inspection at the FDIC, Division of Risk Management Supervision, Accounting and Securities Disclosure Section, 550 17th Street, NW., Washington, DC 20429.

17. Exceptions to Display of expiration date:

None.

18. Exceptions to certification:

None.

B. COLLECTION OF INFORMATION EMPLOYING STATISTICAL METHODS

Not applicable.