Supporting Statement
Qualified Financial Contracts
OMB Control No. 3064-0163

<u>Introduction</u>

The FDIC is requesting OMB approval of an extension, with revision, of an existing information collection. The collection of information is comprised of reporting and recordkeeping requirements contained in FDIC regulations 12 CFR Part 371 ("Part 371"). The current clearance for this collection of information expires on April 30, 2021.

A. Justification.

1. <u>Circumstances that make the collection necessary:</u>

Under the Federal Deposit Insurance Act (FDIA), Qualified Financial Contract ("QFCs") have been designated for special treatment by the FDIC in the event of the failure of an insured depository institution. As codified in FDIA as part of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), certain timing restrictions are effectively placed on the FDIC for making decisions whether to transfer QFCs to another financial institution, repudiate the QFCs, or retain the QFCs in the receivership in the event of an insured institution's failure. To make an informed decision about QFCs in such situations, the FDIC needs timely information pertaining to the types and amounts of QFC contracts held, the counterparties to these contracts and their affiliates, the purpose of these contracts, their maturity dates, the current value of these contracts, and whether these contracts are collateralized.

Because of the large volume of QFC information that a receiver must process in a limited timeframe, in Part 371, the FDIC established QFC recordkeeping requirements for institutions in a "troubled condition" as that term is defined in the rule. The FDIC does not believe these recordkeeping requirements are overly burdensome. Rather, the FDIC believes these requirements are consistent with safe and sound risk management practices for institutions that hold QFCs.

2. <u>Use of the information</u>:

When the FDIC is appointed receiver of a failed institution, the FDIC has one business day to determine whether to transfer QFCs to which a failed IDI is a party. The FDIC adopted Part 371 because it became evident that making a timely and informed decision as to whether to transfer the QFCs of a failed institution in the course of one business day required having access to and processing detailed information. If that data was not easily available in an accessible format, making such a decision was difficult. Consequently, Part 371 enabled the FDIC to more efficiently act as the receiver for failed institutions with QFCs, particularly if the failed institution had a substantial QFC portfolio

Part 371 is a recordkeeping regulation. The records that are required to be maintained are not required to be reported to the FDIC unless specific request for the records is made by the FDIC. If the records are requested from an insured depository institution ("IDI"), they would be used to help the FDIC, when it is appointed receiver, determine whether to transfer the QFCs during the one-business-day stay period applicable to QFCs of an IDI for which a receiver is appointed

3. Consideration of the use of improved information technology:

Part 371 prescribes a specific format for the maintenance of these records that is compatible with currently available information technology.

4. Efforts to identify duplication:

The information required is unique. It is not duplicated by other information collected by the FDIC.

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

The collection applies only to IDIs in a troubled condition. The recordkeeping required for small entities (other than the limited number of small entities that are members of corporate groups subject to the special requirements) are quite limited and, because most small entities are not parties to QFCs, will not apply to most small entities.

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

The collection is event-generated, that is, it comes into play when an IDI becomes in a troubled condition and, therefore, subject to Part 371. Conducting the collection less frequently would be at odds with the goals of the regulation of requiring maintenance of current records as to QFCs and would pose a significant risk to the Deposit Insurance Fund.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

None. This information collection is conducted in a manner consistent with the guidelines in 5 CFR 1320.

8. Efforts to consult with persons outside the agency:

In developing Part 371, the FDIC consulted with the Federal Reserve Board and the Office of the Comptroller of the Currency. With respect to the renewal of this information collection, a notice seeking public comment for a 60-day period was published in the *Federal Register* on

February 17, 2021 (86 FR 9935). No comments were received.

9. Payment to respondents:

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:

This collection contains no sensitive information.

12. Estimates of Hour Burden and Annualized Cost:

Revisions - For the renewal of this information collection, the FDIC determined that the burden estimation methodology should be revised to separate the implementation burden estimates for those entities that are newly subject to Part 371's recordkeeping requirements and the lesser ongoing burden for those entities that only need to maintain their existing compliance with Part 371. This split applies to both the set of Full Scope Entities and the set of Limited Scope Entities. The implementation burden estimates continue to include reporting burden for the application for extension of time to comply with Part 371 requirements. FDIC records indicate that FDIC has never received a request for an extension of time under Part 371 and is showing one respondent for this IC to preserve the reporting burden estimate in the event an institution elects to submit such a request in the future.

Estimated Number of Respondents and Responses - Potential respondents to this information collection are all FDIC-insured depository institutions (IDIs). As of December 31, 2020, there are 5,010 IDIs.[1] Of these institutions, 3,500 are considered "small" for purposes of the Regulatory Flexibility Act (RFA).[2] An IDI is subject to this information collection if it has received written notice from the IDI's appropriate Federal banking agency or the FDIC that it is in a troubled condition and written notice from the FDIC that it is subject to the reporting and recordkeeping requirements of Part 371 (together, a "QFC Notification").[3] The FDIC has identified 621 IDIs that were issued QFC Notifications between December 2008 and July 2020,[4] for an average of 52 QFC Notifications per year. Of these, 51 notifications would have

1 FFIEC Call Reports for the period ending December 31st, 2020.

2 December 31, 2020, Call Report data. 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 definition of troubled condition and details of what entities are covered is described in the final rule.

4 See the SME analysis separately attached as "PRA 371 Internal 16 April.docx"

been to Limited Scope Entities and 1 would have been to a Full Scope Entity under Part 371.[5] Approximately 361 notifications, or 30 notifications per year, would be to IDIs considered "small" for purposes of the RFA.[6]

Based on the average annual number of IDIs that were issued QFC Notifications over the twelve year period, the FDIC estimates that 51 Limited Scope Entities and 1 Full Scope Entity would receive a QFC notification and be subject to implementation burden.

To estimate the number of IDIs that will be subject to Part 371 on an ongoing basis, the FDIC identified those IDIs that have been issued QFC Notifications and deducted IDIs that failed subsequent to receiving such notification. The FDIC determined that 185 of the 621 IDIs notified between 2008 and 2020 had not failed, as of February 2021. Of these, 173 IDIs would be defined as Limited Scope Entities under the final rule,[7] including 98 IDIs that would be considered "small" for purposes of the RFA.[8] The FDIC thus estimates that 173 Limited Scope Entities will incur ongoing recordkeeping burden associated with maintaining their existing compliance with Part 371.

The FDIC also identified twelve (12) Full Scope Entities under Part 371, which were issued QFC Notifications between 2008 and 2020, and had not failed, as of February 2021. Six (6) of these entities have since been upgraded and are no longer subject to Part 371. Two (2) of the remaining entities are either working towards or will begin to work towards initial compliance with this ICR. The remaining four (4) Full Scope Entities have already completed their initial compliance efforts (or are well along in initial compliance efforts and thus treated as facing ongoing compliance burden). Thus, the FDIC estimates that four (4) Full Scope Entities will incur recordkeeping burden associated with maintaining their existing compliance with Part 371.

Estimated Hourly Burden - The FDIC estimates the information collection burdens for affected institutions based on their classifications as either Full- or Limited Scope Entities under Part 371; and based on whether they are newly subject to the requirements (implementation burden) or whether they are responding to the information collection on an ongoing basis. Full Scope Entities must complete the eight QFC Tables contained in Appendix B of the rule; limited-scope firms must complete the four QFC Tables contained in Appendix A of the rule. The FDIC estimates that new Full Scope Entities will incur, on average, approximately 6,000 hours to initially complete the required QFC Tables for all of the QFCs in their portfolio. FDIC estimates that Full Scope Entities that already complied with the final rule in any previous year will incur, on average, 250 hours ongoing burden to maintain their QFC Tables.

5 The definitions of "Full Scope" and "Limited Scope" became effective on October 1, 2017 as part of the final rule. However, in order to calculate representative statistics for estimated respondents the SME's applied those definitions to IDIs who received QFC Notifications in periods prior to enactment of those definitions.

6 As of December 31, 2020.

7 The SMEs did not track status upgrades of limited scope entities for these purposes and, accordingly, the estimate of the total existing population of limited scope entities is made assuming no change in status of an institution following its first becoming subject to Part 371.

8 As of December 31, 2020.

For the hourly implementation burden incurred by Limited Scope Entities, the FDIC assumes that burden will be based on the number of QFCs in the entity's portfolio. The FDIC assumes that 90 percent of New Limited Scope Entities, or 46 entities per year, hold 50 or fewer QFCs in their portfolio. These entities are expected in incur, on average, 15 hours of implementation burden in the first year in which they must comply with the final rule. The remaining 10 percent of New Limited Scope Entities, or 5 entities a year, are assumed to hold more than 50 QFCs in their portfolio and are expected to incur, on average, 100 hours of implementation burden. The average hourly implementation burden across all New Limited Scope Entities is thus approximately 23 hours per respondent.[9] These burdens estimates incorporate the expected time to prepare an extension request, if needed.

The FDIC uses the same methodology to estimate the hourly ongoing burden for Limited Scope Entities. It assumes that 90 percent of Limited Scope Entities that continue to be subject to Part 371 after one year, or 155 entities per year, hold 50 or fewer QFCs in their portfolio and are expected to incur, on average, 10 hours to maintain their compliance with the requirements of Part 371. The remaining 10 percent of Existing Limited Scope Entities, or 18 entities per year, are assumed to hold more than 50 QFCs in their portfolio and are expected to incur, on average, 25 hours of ongoing burden per year. The average hourly burden across all New Limited Scope Entities is thus approximately 12 hours per respondent.[10]

These burden estimates, along with the annual estimated number of entities, are delineated by burden type in Summary of Estimated Annual Burden table. The recordkeeping burdens are assumed to be one tine for the implementation phase and one time annually for the ongoing phase. Accordingly, the response rate is one response per respondent per year. The Summary of Estimated Annual Burden table also shows the estimated annual burden of each IC line item, which is equal to the product of the estimated number of respondents, the number of responses per respondent per year, and the time per response for each line item. The total estimated annual burden for this information collection is 10,250 hours, a decrease of 8,470 hours from the 18,720 estimated annual burden hours in the currently-approved information collection request. The decrease in burden is due to the change in the methodology used by the FDIC in estimating annual burden as discussed above,

Summary of Estimated Annual Burden

IC Description	Type of Burden (Obligation to Respond)	Frequency of Response	Estimated Number of Respondents	Estimated Average Time per Response (Hours)	Estimated Annual Burden (Hours)
Implementation Burden					
Full Scope Entities	Recordkeeping (Mandatory)	One time	1	6,000	6,000
Limited Scope Entities	Recordkeeping	One Time	51	23	1,173

9 23.34 hours = (46 respondents * 15 hours + 5 respondents * 100 hours) / 51 total respondents
10 11.56 hours = (155 respondents * 10 hours + 18 respondents * 25 hours) / 173 total respondents

	(Mandatory)				
Application for Extension of Time	Reporting (Required to Obtain a Benefit)	On Occasion	1	1	1
Total Estimated Annual Implementation Burden					***7,174***
Ongoing Burden					
Full Scope Entities	Recordkeeping (Mandatory)	Annual	4	250	1,000
Limited Scope Entities	Recordkeeping (Mandatory)	Annual	173	12	2,076
Total Estimated Annual Ongoing Burden					***3.076***
Total Estimated Annual Burden					**10,250**

Estimated Hourly Labor Compensation Rates -To estimate the weighted average hourly compensation cost of the burdens described above, FDIC uses 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 December 2020.

The hourly wage rates reported do not include non-monetary compensation. According to the December 2020 Employer Cost of Employee Compensation data, compensation rates for health and other benefits are 34 percent of total compensation. To account for non-monetary compensation, FDIC adjusts the hourly wage rates reported by BLS by that percentage. FDIC also adjusts the hourly wage by 1.71 percent based on changes in the Consumer Price Index for Urban Consumers (CPI-U) from May 2019 to December 2020 to account for inflation and ensure that the wage information is contemporaneous with the non-monetary compensation statistic.

After calculating these adjustments, FDIC then weights the total hourly compensation for the six occupations (Executives and Managers, Lawyers, Compliance Officers, IT Specialists, Financial Analysts, and Clerical), using the agency's estimated allocation of labor to find the estimated hourly cost of complying with this IC.[11] The estimated hourly compensation rates are as follows:

11 The FDIC did not have information sufficient to allocate labor hours and, accordingly, it has assumed that an even allocation among the listed occupations would be appropriate.

Summary of Hourly Burden Cost Estimate (OMB No. 3064-0163)			
Estimated Category of Personnel Responsible for Complying with the PRA Burden	**Total Estimated Hourly Compensation**	**Allocated Weights**	**Weighted Hourly Compensation**
Executives and Managers[12]	$123.30	16.7%	$20.55
Lawyers[13]	151.44	16.7%	$25.24
Compliance Officers[14]	67.35	16.7%	$11.23
IT Specialists[15]	92.30	16.7%	$15.38
Financial Analysts[16]	79.40	16.7%	$13.23
Clerical[17]	33.44	16.7%	$5.57
		Weighted Average:	**$91.21**
Source: Bureau of Labor Statistics: "National Industry-Specific Occupational Employment and Wage Estimates: Industry: Credit Intermediation and Related Activities (5221 And 5223 only)" (May 2019), Employer Cost of Employee Compensation (December 2020), Consumer Price Index (December 2020). Note: 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 December 2020 Employer Cost of Employee Compensation data compensation rates for health and other benefits are 34 percent of total 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 1.71 percent between May 2019 and December 2020.			

Total Estimated Compliance Cost

Estimated Labor Cost – FDIC estimates the total annual cost burden for this information collection by multiplying the total estimated annual burden hours shown in the Summary of Estimated Annual Burden table above, by the weighted average hourly compensation estimate shown in the Summary of Hourly Burden Cost Estimate table . The total annual cost burden is estimated to be approximately **$934,902**.[18]

12 Occupation (SOC Code): Management Occupations (110000).
13 Occupation (SOC Code): Legal Occupations (230000).
14 Occupation (SOC Code): Compliance Officers (131040).
15 Occupation (SOC Code): Computer and Mathematical Occupations (150000).
16 Occupation (SOC Code): Financial and Investment Analysts, Financial Risk Specialists, and Financial Specialists, All Other (132098).
17 Occupation (SOC Code): Office and Administrative Support Occupations (430000).
18 10,250 hours / year multiplied by $91.21 / hour = $934,902.05 per year.

13. <u>Estimate of annualized external costs to respondents</u>:

None.

14. <u>Estimate of annualized costs to the government</u>:

None.

15. <u>Changes in burden:</u>

See discussion in Section 12 above.

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

No publication for statistical use is contemplated.

17. <u>Display of expiration date</u>:

Not applicable.

18. <u>Exceptions to certification statement</u>:

Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.