

Supporting Statement
Restrictions on Qualified Financial Contracts of Subsidiaries of
Certain FDIC-Supervised Institutions; Revisions to the Definition of
Qualifying Master Netting Agreement and Related Definitions
OMB Control No. 3064-0208

Introduction

The FDIC is requesting OMB approval of an extension, with revisions, of an existing information collection entitled “*Restrictions on Qualified Financial Contracts of Subsidiaries of Certain FDIC-Supervised Institutions; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions.*” The collection of information is comprised of reporting requirements contained in FDIC regulations 12 CFR Part 382 (“Part 382”). The current clearance for this collection of information expires on April 30, 2021.

A. Justification.

1. Circumstances that make the collection necessary:

Qualified Financial Contracts (QFCs) derivatives often permit counterparties to exercise termination rights and other remedies—including netting and set-off against collateral—upon the insolvency or resolution of a contract counterparty, or an affiliate of such counterparty. Such termination rights and other related remedies could frustrate an orderly resolution of large complex banking organizations and pose risks to financial stability if not exercised in an orderly manner. To mitigate these concerns, in the United States, there is a one-business day stay on the exercise of early termination rights and other remedies with regard to QFCs under the FDI Act and the Dodd-Frank Act (“U.S. special resolution regimes”). Nevertheless, although domestic entities are clearly subject to the temporary stay provisions of the U.S. special resolution regimes, these stays may be difficult to enforce in a cross-border context. Furthermore, stays related to cross-defaults, are not applicable under the FDI Act or under the Bankruptcy Code, which is the presumptive insolvency regime for a U.S. GSIB parent and many of its subsidiaries.

Recognizing the need to address the risk posed by early termination of QFCs and in consultation with representatives of the FDIC, the Federal Reserve Board (“FRB”), the Office of the Comptroller of the Currency (“OCC”), and foreign regulators, the International Swaps and Derivatives Association, Inc. (“ISDA”) established the ISDA 2015 Universal Resolution Stay Protocol (“ISDA Protocol”). The ISDA Protocol enables parties to amend the terms of their ISDA Master Agreements and other agreements covered by the ISDA Protocol and any related credit support arrangements to contractually recognize the cross-border application of special resolution regimes (including U.S. special resolution regimes) that stay and, in certain cases, override cross-default rights included in QFCs that arise upon the entry of a GSIB or of its affiliated entities (including covered FSIs) into receivership, insolvency, liquidation,

resolution or similar proceedings.

Part 382 requires that FDIC-supervised institutions that are subsidiaries of GSIBs and their counterparties either adhere to the ISDA Protocol or take the prescribed steps to amend the contractual provisions of their QFCs, consistent with the requirements in the rule, within a specified period of time. If such institutions elect to amend their QFCs in lieu of adhering to the ISDA Protocol, they must seek the FDIC's approval of the proposed amendments, giving rise to the information collection. The information collection is necessary to ensure QFC contracts are amended in compliance with the proposed rule.

The FDIC's rule applies to FDIC-supervised institutions that are subsidiaries of GSIBs and sets forth requirements parallel to those contained in similar final rules recently published by the FRB and the OCC with regard to entities they supervise to ensure consistent regulatory treatment of QFCs among the various entities within a GSIB group.

Separately, the rule amends the definition of "qualifying master netting agreement" in the FDIC's capital and liquidity rules, and certain related terms in the FDIC's capital rules. These proposed amendments are intended to ensure that the regulatory capital and liquidity treatment of QFCs to which a covered FSI is party are not affected by the restrictions on such QFCs. This part of the rule however, does not give rise to any information collection.

2. Use of the information:

Part 382 requires a covered banking entity to request the FDIC to approve as compliant with the requirements of section 12 CFR 382.4 one or more forms of covered QFCs or amendments to one or more forms of covered QFCs, with enhanced creditor protection conditions. A covered FSI making a request must provide (1) an analysis of the proposal under each consideration of paragraph 382.5(d); (2) a written legal opinion verifying that proposed provisions or amendments would be valid and enforceable under applicable law of the relevant jurisdictions, including, in the case of proposed amendments, the validity and enforceability of the proposal to amend the covered QFCs; and (3) any additional information relevant to its approval that the FDIC requests. Covered FSIs also have recordkeeping associated with proposed amendments to their covered QFCs. However, much of the recordkeeping associated with amending the covered QFCs is already expected from a covered FSI. Therefore, the FDIC would expect minimal additional burden to accompany the initial efforts to bring all covered QFCs into compliance.

The FDIC will use the information to approve certain amendments to QFCs of covered FSIs and determine whether QFC contracts have been amended in compliance with Part 382.

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 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:

This information collection is not expected to have an impact on a substantial number of small entities because most small entities are not parties to QFCs and Part 382 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 results from the covered FSI entering into a new QFC contract and proposing amendments that need approval from the FDIC. Conducting the collection less frequently would be at odds with the goals of the regulation pre, would present sent safety and soundness risks 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:

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:

All institutions that were covered FSIs on January 1, 2018 were required to comply with the

QFC stay rule by January 1, 2020. That means that, except for the three possible exceptions described below, all required paperwork revisions that are required to be completed by the covered entities to comply with the rule should have been completed by January 1, 2020. Consequently, for the purpose of 2021 and future PRA analysis, the FDIC does not expect any on-occasion paperwork burden associated with the rule.

The three exceptions to the foregoing statement are: (i) under the QFC stay rule, a covered FSI is not required to bring QFCs with a counterparty that were entered into prior to January 1, 2019 into compliance unless the covered FSI or any affiliate of the covered FSI becomes party to a QFC with the same counterparty or a consolidated affiliate of that party on or after January 1, 2019 (subject to special rules relating to institutions that become covered FSIs after January 1, 2018); (ii) entities that become covered entities after January 1 2018 have extended compliance periods (which can extend the date for compliance to the date that is the first day of the calendar quarter immediately following one year, 18 months or two years (depending on the type of counterparty) from the date the entity first became a covered entity); and (iii) a covered FSI might enter into a QFC with a counterparty that is not yet covered by documentation that complies with the rule

Moreover, because the market practices and conventions relating to derivatives, repo, SFT and other QFC products have evolved to include the stay provisions in the documentation used by market participants, FDIC estimates that any legal documentation review will be addressed as a part of the normal business on-boarding or maintenance of the business relations. However, FDIC recognizes that there is a possibility of a new entrant or a new product that can fall under the scope of the subject rule and, consequently, provides for a possibility of one or more respondents that can be impacted by the rule.

As noted above, the industry undertook major initiatives to achieve streamlining and straight-through processing for both on-boarding and maintenance of the QFC records over the last years. Consequently, in case a new entrant/product will be scoped-in by the subject rule to impose the paperwork burden, FDIC estimates that such burden will be less than half of the burden estimated in 2018 thanks to the automation and standardization of business processes. Accordingly, the time per response has been revised to 20 hours from the 40 hours previously estimated.

Summary of Estimate Annual Burden
(3064-0208)

Source and Burden	Obligation To Respond	Estimated Number of Respondents	Frequency of Response	Estimated Time per Response (Hours)	Estimated Annual Burden (Hours)
Approval requests prepared and submitted to the FDIC regarding modifications to enhanced creditor protection provisions <i>(reporting burden)</i>	Voluntary	1	On Occasion	20	20

Total Estimated Annual Burden					20
-------------------------------	--	--	--	--	----

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.¹ The estimated hourly compensation rates are as follows:

¹ 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. 3064-0208)			
Estimated Category of Personnel Responsible for Complying with the PRA Burden	Total Estimated Hourly Compensation	Allocated Weights	Weighted Hourly Compensation
Executives and Managers ²	\$123.30	15%	\$18.50
Lawyers ³	151.44	50	75.72
Compliance Officers ⁴	67.35	15	10.10
IT Specialists ⁵	92.30	10	9.23
Financial Analysts ⁶	79.40	5	3.97
Clerical ⁷	33.44	5	1.67
Weighted Average:			\$119.19
<p>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).</p> <p>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.</p>			

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 **\$2,384**.⁸

² Occupation (SOC Code): Management Occupations (110000).

³ Occupation (SOC Code): Legal Occupations (230000).

⁴ Occupation (SOC Code): Compliance Officers (131040).

⁵ Occupation (SOC Code): Computer and Mathematical Occupations (150000).

⁶ Occupation (SOC Code): Financial and Investment Analysts, Financial Risk Specialists, and Financial Specialists, All Other (132098).

⁷ Occupation (SOC Code): Office and Administrative Support Occupations (430000).

⁸ 20 hours / year multiplied by \$119.19 / hour = \$2,383.80 per year.

13. Estimate of annualized external costs to respondents:

None.

14. Estimate of annualized costs to the government:

None.

15. Changes in burden:

See discussion in Section 12 above.

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

No publication for statistical use is contemplated.

17. Display of expiration date:

Not applicable.

18. Exceptions to certification statement:

Not applicable.

B. Collections of Information Employing Statistical Methods.

Not applicable.