

**SUPPORTING STATEMENT**  
**Tax Allocation Agreements**  
**(OMB Control No. 3064-NEW)**

INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC) is requesting OMB approval of a new information collection related to a notice of proposed rulemaking (proposed rule or proposal) that would that would prescribe requirements for tax allocation agreements that involve insured depository institutions and OCC chartered uninsured institutions (collectively, institutions). Under the proposal, institutions in a consolidated tax filing group (consolidated group<sup>1</sup>) would be required to enter into tax allocation agreements with their holding companies and other members of the consolidated group that join in the filing of a consolidated group tax return. The proposal would establish a methodology for tax payment obligations between an institution and its parent holding company within a consolidated group and would address how the institution should be compensated for the use of its tax assets (such as net operating losses and tax credits). The proposal would be adopted primarily under Section 39 of the Federal Deposit Insurance Act (FDI Act)<sup>2</sup> and codified within the agencies' safety and soundness regulations.

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

In its supervision of institutions, the FDIC has observed that some institutions in consolidated groups either lack tax allocation agreements with their holding companies or have agreements that do not have language conforming to section 23A<sup>3</sup> or 23B<sup>4</sup>. In particular, the FDIC has reviewed tax allocation agreements that do not require a holding company in a consolidated group to transmit promptly the appropriate portion of a consolidated group's tax refund to its subsidiary institution, resulting in the holding company failing to do so in some instances. Such inaction could adversely affect the safety and soundness of the subsidiary institutions because delayed access to funds could weaken an institution's liquidity profile. Further, in its capacity as receiver for failed insured depository institutions, the FDIC has engaged in legal disputes regarding the

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1 A consolidated group refers to an institution, its parent, and any affiliates of the institution that join in the filing of a tax return as a single consolidated, combined, or unitary group.

2 12 U.S.C. 1831p-1.

3 12 U.S.C. 371c. Section 23A requires, among other things, that loans and other extensions of credit from an insured depository institution to its affiliate be collateralized properly by a specified amount and subject to certain quantitative limits. Issues concerning compliance with section 23A could arise from instances whereby a tax allocation agreement does not (i) acknowledge that a holding company in a consolidated group serves as agent for its subsidiary insured depository institution with respect to tax refunds generated by the subsidiary insured depository institution, or (ii) require a holding company in a consolidated group to transmit promptly the appropriate portion of a consolidated group's tax refund to the subsidiary insured depository institution. In such circumstances, the failure of a holding company to acknowledge an agency relationship with respect to tax refunds or to pay promptly the subsidiary insured depository institution its appropriate portion of tax refunds could result in an extension of credit from the insured depository institution to its affiliated holding company in the consolidated group that would be subject to the requirements of section 23A.

4 12 U.S.C. 371c-1.

ownership of tax refunds claimed by holding companies based on losses incurred by insured depository institutions in a consolidated group because the tax allocation agreements did not clearly acknowledge an agency relationship between an insured depository institution and its holding company. These disputes can reduce or prevent recoveries by the FDIC on behalf of failed insured depository institutions, consequently increase costs to the Deposit Insurance Fund, and thus could lead to higher FDIC deposit insurance premiums charged to solvent insured depository institutions.

2. Use of the information:

The proposal would require that all institutions that are subject to Federal or State tax and file tax returns as part of a consolidated group execute a tax allocation agreement that applies to and binds each member of the consolidated group. The proposal also would require that the tax allocation agreement be approved by the boards of directors of an institution subject to that tax allocation agreement and its holding company to ensure the agreement's enforceability by and among the institutions in the consolidated group.

Section 23A and 23B generally govern extensions of credit and certain other transactions between institutions and their affiliates, which include their holding companies. Section 23A places quantitative limits on covered transactions between an institution and its affiliates and imposes collateral requirements on certain covered transactions. Section 23B requires that transactions between an institution and its affiliates be made on terms and under circumstances that are substantially the same, or at least as favorable to the institution, as comparable transactions involving nonaffiliated companies or, in the absence of the comparable transactions, on terms and circumstances that would in good faith be offered to nonaffiliated companies. The tax allocation agreement requirements in the proposal are intended to be consistent with sections 23A and 23B.

To achieve this result, tax allocation agreements subject to the proposal would be required to establish certain rights and obligations among institutions in the consolidated group. Adjustments for statutory tax considerations that may arise on a consolidated tax return are permitted as long as the adjustments are made on a basis that is equitable and consistently applied among the holding company and other affiliates. Certain proposed key terms that would be required under the proposal for tax allocation agreements are explained below.

Under the proposal, a tax allocation agreement must require that all materials including, but not limited to, returns, supporting schedules, work papers, correspondence, and other documents relating to the consolidated federal income tax return and any consolidated, combined, or unitary group state or local return, which return includes the institution, be made available on demand to the institution or any successor during regular business hours and that this requirement must survive any termination of the tax allocation agreement. Access to this information would permit the institution, as well as agency examiners, to evaluate compliance with the proposal, including whether the institution and holding company are appropriately calculating the institution's share of any tax liability and the institution's refund for use of its tax attributes. This proposed approach also is consistent with how the Internal Revenue Service views the relationship of

members in a consolidated group with respect to tax documentation.<sup>5</sup>

With respect to insured depository institutions that enter receivership, the FDIC as receiver would be successor to any rights or interests of the insured depository institution with respect to various agreements, including any tax allocation agreement and the ability to obtain tax return information for the consolidated group of which the insured depository institution is a member.<sup>6</sup> Requiring the holding company to provide access to tax returns to the consolidated group, including the insured depository institution, would benefit the FDIC as receiver by improving its ability to meet its tax obligations and obtain tax refunds that are due and owed to the failed insured depository institution in a timely manner.

3. Consideration of the use of improved information technology:

Respondents may use any information technology that permits review by FDIC examiners.

4. Efforts to identify duplication:

There is no duplication. The information is not available elsewhere..

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

This proposed information collection would not have a significant impact on a substantial number of small entities.

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

In the absence of tax allocation agreements meeting the requirements of the proposal results in disputes that can reduce or prevent recoveries by the FDIC on behalf of failed insured depository institutions which consequently increase costs to the Deposit Insurance Fund, and thus could lead to higher FDIC deposit insurance premiums charged to solvent insured depository institutions.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320.5(d)(2):

There are no special circumstances. 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 May 10, 2021, the agencies published a notice of proposed rulemaking in the Federal Register (86 FR 24755) requesting comment on the information collection requirements contained in the proposed rule. Any comments received will be considered and addressed in the final rule.

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<sup>5</sup> See, e.g., Internal Revenue Manual 11.3.2.4.4 (09-17-2020).

<sup>6</sup> See 26 U.S.C. 6103(e).

9. Payment or Gift to Respondents

None.

10. Any assurance of confidentiality:

Information will be kept private to the extent allowed by law.

11. Justification for questions of a sensitive nature:

No sensitive information is to be collected.

12. Estimate of hour burden including annualized hourly costs:

<b>Table 1. Summary of Annual Burden and Internal Cost (OMB-3064-NEW)</b>						
IC Description	Type of Burden (Obligation to Respond)	Frequency of Response	Number of Respondents	Number of Responses / Respondent	Hours per Response	Annual Burden (Hours)
Initial Setup of a Tax Allocation Agreement (Implementation)	Recordkeeping (Mandatory)	One Time	1,590	1	20	31,800
Revising an Existing Tax Allocation Agreement – (Ongoing)	Recordkeeping (Mandatory)	Annual	1,590	1	1	1,590
Total Annual Burden Hours:						33,390
Source: FDIC.						

**Annualized Cost of Internal Hourly Burden:**

To estimate the weighted average hourly cost of compensation, 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 September 2020. The reported hourly wage rates do not include non-monetary compensation. According to the September 2020 Employer Cost of Employee Compensation data, compensation rates for health and other benefits are 33.9 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 1.64 percent based on changes in the Consumer Price Index for Urban Consumers (CPI-U) from May 2019 to September 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 four occupations (Executives and Managers, Accountants and Auditors, Lawyers, and Clerical) using the estimated allocation of labor indicated to find the estimated hourly

cost of complying with this information collection. The estimated hourly compensation rates are reported in the following table:

<b>Summary of Hourly Burden Cost Estimate Tax Allocation Agreements</b>			
Estimated Category of Personnel Responsible for Complying with the PRA Burden	Total Estimated Hourly Compensation	Estimated Weights	Weighted Hourly Compensation
Executives and Managers <sup>7</sup>	\$123.02	25%	\$30.76
Accountants and Auditors <sup>8</sup>	\$74.50	25%	\$18.63
Lawyers <sup>9</sup>	\$151.10	40%	\$60.44
Clerical <sup>10</sup>	\$33.37	10%	\$3.34
Weighted Average		100%	\$115 <sup>11</sup>
Source: Bureau of Labor Statistics: "National Industry-Specific Occupational Employment and Wage Estimates: Credit Intermediation and Related Activities (5221 And 5223 only)" (May 2019), Employer Cost of Employee Compensation (September 2020), Consumer Price Index (September 2020).			

The total estimated annual cost burden for this information collection is calculated by multiplying the total annual estimated burden hours by the weighted average hourly compensation estimate. The total annual cost burden is estimated as: 33,390 hours / year \* \$115 / hour = **\$3,839,850 per year.**

13. Estimate of start-up costs to respondents:

None.

14. Estimate of annualized costs to the government:

None.

15. Analysis of change in burden:

This is a new information collection.

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

No publication will be made of this information.

7 Occupation (SOC Code): Management Occupations (110000)

8 Occupation (SOC Code): Business and Financial Operations Occupations (130000)

9 Occupation (SOC Code): Legal Occupations (230000)

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

11 Estimate rounded to the nearest five, following discussions with staff on the interagency team.

17. Display of expiration date:

Not applicable.

18. Exceptions to Certification

None.

B. Collection of Information Employing Statistical Methods

Not Applicable.