

**Supporting Statement for the
Reporting and Disclosure Requirements Associated with Regulation H
(Securities of State Member Banks)
(FR H-1; OMB No. 7100-0091)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, without revision, the Reporting and Disclosure Requirements Associated with Regulation H (Securities of State Member Banks) (FR H-1; OMB No. 7100-0091). The Board's Regulation H - Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208) requires state member banks (SMBs) whose securities are subject to registration pursuant to the Securities Exchange Act of 1934 (Exchange Act)¹ to disclose certain information to shareholders and securities exchanges and to report information relating to their securities to the Board using forms adopted by the Securities and Exchange Commission (SEC) and in compliance with certain rules and regulations adopted by the SEC.

The estimated total annual burden for the FR H-1 is 6,649 hours. The forms and instructions used for this collection are available on the SEC's public website at <https://www.sec.gov/forms>.

Background and Justification

Section 12 of the Exchange Act requires an SMB with more than \$10 million in total assets and a class of equity security held by 2,000 or more shareholders, or which has a class of securities listed on a national exchange, to register such security with the SEC. Pursuant to section 12(i) of the Exchange Act, the Board has the authority to administer and enforce certain provisions of the Act with respect to SMBs with registered securities. Section 208.36(a) of the Board's Regulation H provides that SMBs with securities subject to registration pursuant to section 12 of the Exchange Act must comply with the rules, regulations, and forms adopted by the SEC pursuant to the relevant provisions of the Exchange Act and the Sarbanes-Oxley Act of 2002 (Sarbanes-Oxley),² except that any required reports must be filed with the Board, rather than the SEC. The reports, which are made public, provide the public with material financial information about the registered securities of SMBs, alert the public to ownership changes in and tender offers for those securities, and provide shareholders with information relevant to the solicitation of proxies. Additionally, the disclosures required by the relevant SEC regulations provide that an SMB with registered securities must provide certain relevant information to its shareholders and to the securities exchange on which the SMB's shares are registered.

Description of Information Collection

Under section 208.36 of Regulation H, SMBs must comply with the filing requirements set forth in any relevant SEC rules, regulations, releases, and reporting forms pursuant to certain

¹ 15 U.S.C. § 78a et seq.

² Pub.L. 107-204, 116 Stat. 745 (2002).

sections of the Exchange Act and Sarbanes-Oxley. All required financial statements of SMBs must comply with the requirements of the SEC's Regulation S-X (17 CFR Part 210). Certain of the required forms must also comply with the uniform disclosure requirements of the SEC's Regulation S-K (17 CFR Part 229).³ Respondent SMBs must comply with any changes to SEC filing requirements that may occur from time to time pursuant. Certain of the SEC filing requirements listed below may have been revised since the FR H-1 was last approved by the Board, and may be revised in the future. Changes to the SEC's reporting and recordkeeping requirements are made pursuant to notice-and-comment procedures pursuant to the Paperwork Reduction Act or Administrative Procedure Act, as appropriate.

All reports filed with the Board are submitted through the U.S. mail and then distributed to the Federal Reserve Banks of New York, Chicago, and San Francisco and the Reserve Bank in the district in which the reporting bank is located.

The FR H-1 information collection currently consists of the following SEC reporting and disclosure requirements.

Reporting Requirements

Form 10 (17 CFR 249.210)

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. If this registration is pursuant to section 12(b) of the Exchange Act, the form must also be disclosed to the relevant national exchange.

Form 8-A (17 CFR 249.208a)

Form 8-A is a registration statement used to register a class of securities under section 12(b) or section 12(g) of the Exchange Act for certain issuers. The form requests certain information concerning the class of securities being registered. If the registration is pursuant to section 12(b) of the Exchange Act, this form must also be disclosed to the relevant national exchange.

Form 8-A does not require as detailed a disclosure as Form 10 concerning the issuer's business because issuers using Form 8-A generally will provide more detailed information through periodic reports pursuant to section 13. The form requires disclosure of information concerning the particular class of securities being registered (such as dividend and voting rights in connection with common stock).

³ Regulation S-K specifies uniform disclosure requirements applicable to registration statements under section 12 of the Exchange Act, periodic reports under sections 13 and 15(d) of the Exchange Act, going-private transaction and tender offer statements under sections 13 and 14 of the Exchange Act, and proxy and information statements under section 14 of the Exchange Act. The disclosure requirements apply to the collections of information associated with Form 10, Form 8-A, Rule 13e-1, Rule 13e-3 and Schedule 13E-3, Regulation 14A and Schedule 14A, Regulation 14C and Schedule 14C, Regulation 14D and Schedule 14D-9, Form 8-K, Form 10-K, and Form 10-Q (See SEC Forms, <https://www.sec.gov/forms>).

Regulation 12B (17 CFR 240.12b-1 through 240.12b-37)

Regulation 12B contains the requirements for registration statements filed pursuant to sections 12(b) and 12(g) of the Exchange Act and all reports filed pursuant to section 13 of the Act,⁴ including all amendments to such statements and reports. To the extent that the specific requirements for any such statement or report differ from the terms of this regulation, respondents should comply with the requirements specific to the statement or report.

Rule 13e-1 (17 CFR 240.13e-1)

Rule 13e-1 describes the information that must be reported to the Board before an issuer of a registered security that is the subject of a tender offer made under section 14(d)(1) of the Exchange Act may purchase any of its equity securities during the tender offer.

Regulation 14D (17 CFR 240.14d-1 through 240.14d-103) and Schedule 14D-9 (17 CFR 240.14d-101)

Regulation 14D applies to any tender offer that is subject to section 14(d)(1) of the Exchange Act, including, but not limited to, any tender offer for securities of a class described in that section that is made by an affiliate of the issuer.

Regulation 14D implements section 14(d) of the Exchange Act and provides for the filing of Schedule 14D-9. Schedule 14D-9 must be filed when an issuer or its representative makes a solicitation or recommendation to the shareholders with respect to a tender offer that is subject to Regulation 14D. It contains background information about the offer and its purposes.

Form 8-K (17 CFR 249.308)

Form 8-K is the current report, which must be used to report the occurrence of any material events or corporate changes that are of importance to investors or security holders and previously have not been reported by the registrant. In particular, this form is used to file current reports required by Rule 13a-11 (17 CFR 240.13a-11) or Rule 15d-11 (17 CFR 240.15d-11) and for reports of nonpublic information required to be disclosed by regulation FD (17 CFR 243.100 and 243.101).

Form 10-Q (17 CFR 249.308a)

Pursuant to section 13 of the Exchange Act, every issuer of a security registered pursuant to section 12 of the Exchange Act must file periodic and current reports, including filing Form 10-Q for each of the first three fiscal quarters of the company's fiscal year. It includes unaudited financial statements and provides an overview of major changes in the company's financial position, as compared to the prior corresponding period. The report must be filed within 40 or 45 days of the end of the quarter, depending on the size and other characteristics of the reporting company.

⁴ For qualifying SMBs, the registration statement requirements apply to the collections of information associated with Form 10, Form 8-A, Rule 13e-1, Rule 13e-3 and Schedule 13E-3, Form 8-K, Form 10-K, and Form 10-Q.

SMBs that have no foreign offices and control total assets of \$150 million or less may substitute the quarterly financial statements they submit as part of their Consolidated Reports of Condition and Income (Call Report) (FFIEC 041 and FFIEC 051; OMB No. 7100-0036) in lieu of the financial statements required to be included as part of Form 10-Q. SMBs electing this option do not need to include any interim statements of cash flow or comparative balance sheets and income statements from prior fiscal years. These SMBs must include earnings per share or net loss per share prepared in accordance with generally accepted accounting principles and must report any material contingencies.

Form 10-K (17 CFR 249.310)

Pursuant to section 13 of the Exchange Act, every issuer of a security registered pursuant to section 12 of the Exchange Act must file periodic and current reports, including filing Form 10-K, annually. It provides a comprehensive overview of the registrant's business and includes audited annual financial statements. Depending on the reporting company's size and other characteristics, the report must be filed within 60, 75, or 90 days after the end of the company's fiscal year.

Reporting and Disclosure Requirements

Rule 13e-3 (17 CFR 240.13e-3) and Schedule 13E-3 (17 CFR 240.13e-100)

Rule 13e-3 describes the information that must be reported to the Board by an issuer of a registered security and disclosed by the issuer to holders of the relevant class of security before the issuer may engage in certain transactions or a series of such transactions that is reasonably likely to or has the purpose of (1) causing any class of equity securities of the issuer that is subject to section 12(g) of the Exchange Act to become eligible for termination of registration or causing the reporting obligations with respect to such class to become eligible for termination or suspension or (2) causing any class of equity securities of the issuer that is either listed on a national securities exchange or authorized to be quoted in an inter-dealer quotation system of a registered national securities association to be neither listed on any national securities exchange nor authorized to be quoted on an inter-dealer quotation system of any registered national securities association.

Schedule 13E-3 is to be filed by any issuer engaging in such a transaction.

Regulation 14A (17 CFR 240.14a-1 et seq.) and Schedule 14A (17 CFR 240.14a-101)

Regulation 14A sets forth the requirements for the disclosure, content, and reporting of proxy or consent solicitation materials in connection with annual or other meetings of holders of a class of securities registered under section 12 of the Exchange Act. State law governs the circumstances under which shareholders are entitled to vote. Copies of final proxy statements and proxy cards are filed with the Board and any national securities exchange on which the issuer's securities are registered at the time they are sent to shareholders. Certain preliminary proxy filings relating to mergers, consolidations, acquisitions, and similar matters are non-public

upon filing; all other proxy filings are publicly available. Schedule 14A contains the information required to be included in a proxy statement.

Regulation 14C (17 CFR 240.14c-1 et seq.) and Schedule 14C (17 CFR 240.14c-101)

Section 14(c) of the Exchange Act requires issuers of registered securities that do not solicit proxies or consents from any or all of the holders of record of a class of securities registered under section 12 of the Exchange Act and in accordance with the rules and regulations prescribed under section 14(a) in connection with a meeting of security holders (including action by consent) to disclose to any holders that were not solicited an information statement substantially equivalent to the information that would be required to be transmitted if a proxy or consent solicitation were made. Regulation 14C sets forth the requirements for the dissemination, content, and filing of the information statement. Schedule 14C contains the information required to be included in an information statement.

Rule 14f-1 (17 CFR 240.14f-1)

Rule 14f-1 requires that when, pursuant to any arrangement or understanding with the person or persons acquiring securities in a transaction subject to sections 13(d) or 14(d) of the Exchange Act, any persons are to be elected or designated as directors of the issuer of registered securities, other than at a meeting of security holders, and the persons so elected or designated will constitute a majority of the directors of the issuer, the issuer shall file with the Board and transmit to holders of securities of the issuer, information required by certain items of the SEC's proxy rules not less than 10 days prior to the time the persons elected or designated as directors of the issuer take office, or such shorter period as the Board may authorize upon a showing of good cause.

Rule 12b-25 (17 CFR 240.12b-25) and Form 12b-25 (17 CFR 249.322)

Rule 12b-25 requires that, if a registrant is unable to file timely all or any portion of a Form 10-K or Form 10-Q, the registrant must file a Form 12b-25 with the Board no later than one business day after the end of the specified period when the report is due. In Form 12b-25, the registrant must identify the report, or the portion thereof, that will not be filed timely and the reasons why the report cannot be filed on time.

Form 15 (17 CFR 249.323)

An SMB with registered securities must file Form 15 to certify the termination of the registration of a class of securities registered under section 12(g) of the Exchange Act by certifying that the number of holders of record of a class of security registered under section 12(g) of the Exchange Act is reduced to less than 300 persons, or that the number of holders of record of a class of security registered under section 12(g) of the Exchange Act was fewer 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. Additionally, Form 15 must be filed to provide notice of the suspension of the issuer's duty to file reports pursuant to section 13 of the Exchange Act when the conditions in 17 CFR 249.323(b) are met.

Disclosure Requirements

Forms 3, 4, and 5 (17 CFR 240.16a-3(k))

An SMB with registered securities that maintains a corporate website must post to that website any Form 3, 4, or 5 filed under section 16(a) of the Exchange Act relating to the equity securities of that SMB. Forms 3, 4, and 5 are filed by corporate insiders (a company's officers and directors, and any beneficial owners of more than ten percent of a class of the company's registered securities) to report their ownership of the SMB's securities. Form 3 is the initial filing, Form 4 is used to report changes in ownership, and Form 5 is the annual statement of beneficial ownership that is only required in certain cases. An SMB must post on its corporate website any filing of Forms 3, 4, or 5 relating to its registered securities by the end of the business day after the form is filed. The posted form must remain accessible on the corporate website for at least a 12-month period.

Respondent Panel

The FR H-1 panel comprises SMBs.

Frequency

The FR H-1 is submitted annually and on an event-generated basis (Form 10-Q is submitted 3 times a year), and disclosed on an event-generated basis.

Time Schedule for Information Collection

SMBs subject to section 208.36 of Regulation H must file securities reporting forms at the times indicated below:

- Form 10-Q must be filed for each of the first three fiscal quarters within 40 days after the end of the fiscal quarter for large accelerated filers and accelerated filers and within 45 days after the end of the fiscal quarter for all other filers.⁵
- Form 10-K annual report must be filed within 60 days after the end of the fiscal year covered by the report for large accelerated filers, within 75 days after the end of the fiscal year covered by the report for accelerated filers, and within 90 days after the end of the fiscal year covered by the report for all other filers.
- Form 8-K is required when certain material events occur, generally within four business days of the event.
- A proxy statement (Schedule 14A) is generally filed annually, prior to the bank's shareholders meeting. It is also filed prior to special shareholders meetings. An information statement (Schedule 14C) is filed at the same times for issuers that do not solicit proxies or consents from any or all of the holders of a class of securities registered under section 12 of the Exchange Act.
- All other reporting forms are event-generated.

⁵ Accelerated filers and large accelerated filers are defined in 17 CFR 240.12b-2.

SMBs subject to section 208.36 of Regulation H must also make certain disclosures to relevant parties, as outlined above. These disclosures are generally event-generated.

Public Availability of Data

Copies of the registration statement, definitive proxy solicitation materials, reports, and annual reports to shareholders required by this section (exclusive of exhibits) are made available by the Board for public inspection at the Board's offices in Washington, DC, as well as at the Federal Reserve Banks of New York, Chicago, and San Francisco and at the Reserve Bank in the district in which the reporting bank is located.⁶ Respondents may object to the public disclosure of any information in such filings in accordance with the procedure set forth in section 208.36(d) of the Board's Regulation H.

Legal Status

The FR H-1 is authorized under sections 12(c) and 23(a)(1) of the Exchange Act (15 U.S.C. §§ 78l(i) and 78w(a)(1)). The FR H-1 is also authorized by section 11 of the Federal Reserve Act, which authorizes the Board to require such statements and reports of SMBs as the Board may deem necessary (12 U.S.C. § 248(a)(1)). The FR H-1 is mandatory for SMBs whose securities are subject to registration pursuant to the Exchange Act.

Reports filed with the Board under the FR H-1 must be available for public inspection under Regulation H.⁷ An SMB may request confidential treatment for information contained within a report in accordance with the procedures established in Regulation H.⁸ Information may be kept confidential if it is nonpublic commercial or financial information that is both customarily and actually treated as private within the meaning of exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(4)). Information may also be considered confidential if it is obtained as part of an examination or supervision of a financial institution within the meaning of exemption 8 of the FOIA (5 U.S.C. § 552(b)(8)).

Consultation Outside of the Agency

The reporting and disclosure requirements discussed in this supporting statement were promulgated by the SEC. The Board has consulted with the SEC to confirm our coordinated burden estimates.

Public Comments

On July 8, 2022, the Board published an initial notice in the *Federal Register* (87 FR 40841) requesting public comment for 60 days on the extension, without revision, of the FR H-1. The comment period for this notice expired on September 6, 2022. The Board did not receive any comments. The Board adopted the extension, without revision, of the FR H-1 as originally proposed. On November 28, 2022, the Board published a final notice in the *Federal Register* (87

⁶ 12 CFR 208.36(c)(3).

⁷ 12 CFR 208.36(c)(3).

⁸ 12 CFR 208.36(d).

FR 72999).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR H-1 is 6,649 hours. The number of respondents and the times per response are estimated based on actual submissions and SEC's burden estimates as of January 2022. Very few SMBs have registered securities because most SMBs are controlled by a holding company that owns most or all of the bank's shares, meaning that most SMBs do not have a class of equity security held by 2,000 or more shareholders or listed on a national exchange. Accordingly, only two SMBs currently submit these data. As discussed above, each of the affected SMBs submits Form 10-K annually, Form 10-Q each quarter except for the quarter in which the Form 10-K is filed, and Form 8-K on occasion. The disclosure of Forms 3, 4, and 5 is also required occasionally. The rest of the forms and regulatory reporting requirements listed above have not been filed or triggered within the last five years, but because they are potentially required the table shows them as well. These reporting and disclosure requirements represent less than 1 percent of the Board's total paperwork burden.

FR H-1	<i>Estimated number of respondents⁹</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Reporting				
Form 10 (17 CFR 249.210)	2	1	219.53	439
Form 8-A (17 CFR 249.208a)	2	1	3	6
Regulation 12B (17 CFR 240.12b-1 through 240.12b-37)	2	1	1	2
Rule 13e-1 (17 CFR 240.13e-1)	2	1	13	26
Regulation 14D (17 CFR 240.14d-1 through 240.14d-103) and Schedule 14D-9 (17 CFR 240.14d-101)	2	1	65.14	130
Form 8-K (17 CFR 249.308)	2	1	9.21	18
Form 10-Q (17 CFR 249.308a)	2	3	185.08	1,110
Form 10-K (17 CFR 249.310)	2	1	2,281.4	4,563

⁹ Of these respondents, 1 is considered a small entity as defined by the Small Business Administration (i.e., entities with less than \$850 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 entities.

Reporting and Disclosure

Rule 13e-3 (17 CFR 240.13e) and Schedule 13E-3 (17 CFR 240.13e-100)	2	1	34.36	69
Regulation 14A (17 CFR 240.14a-1 et seq.) and Schedule 14A (17 CFR 240.14a-101)	2	1	12.75	26
Regulation 14C (17 CFR 240.14c-1 et seq.) and Schedule 14C (17 CFR 240.14c-101)	2	1	98.2	196
Rule 14f-1 (17 CFR 240.14f-1)	2	1	2	4
Rule 12b-25 (17 CFR 240.12b-25) and Form 12b-25 (17 CFR 249.322)	2	1	2.50	5
Form 15 (17 CFR 249.323)	2	1	1.50	3
Disclosure				
Form 3 (17 CFR 240.16a-3(k))	2	1	0.5	1
Form 4 (17 CFR 240.16a-3(k))	2	35	0.5	35
Form 5 (17 CFR 240.16a-3(k))	2	8	1	<u>16</u>
<i>Total</i>				6,649

The estimated total annual cost to the public for the FR H-1 is \$401,932.¹⁰

Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

¹⁰ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by a annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$21, 45% Financial Managers at \$74, 15% Lawyers at \$71, and 10% Chief Executives at \$102). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), *Occupational Employment and Wages, May 2021*, published March 31, 2022, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System for collecting and processing this information collection is negligible.