

**Supporting Statement for the
Reporting and Recordkeeping Requirements Associated with Regulation KK
(FR KK; OMB No. 7100-0364)**

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 Recordkeeping Requirements Associated with Regulation KK (FR KK; OMB No. 7100-0364).¹ Pursuant to sections 731 and 764 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act), the Board, Office of the Comptroller of the Currency (OCC), Federal Deposit Insurance Corporation (FDIC), Farm Credit Administration (FCA), and Federal Housing Finance Agency (FHFA) (collectively, the agencies) have adopted regulations, including the Board's Regulation KK - Swaps Margin and Swaps Push-out (12 CFR Part 237), establishing capital requirements and initial and variation margin requirements for certain entities on certain non-cleared swaps and non-cleared security-based swaps. These regulations include reporting and recordkeeping requirements.² Regulation KK applies to a swap entity³ that is a state member bank, bank holding company, savings and loan holding company, foreign banking organization, foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank, or Edge or agreement corporation, as well as any other entity determined to be a covered swap entity by the Board (collectively, covered swap entities).

The estimated total annual burden for the FR KK is 5,452 hours. There is no formal reporting form for this information collection.

Background and Justification

Title VII of the Dodd-Frank Act established a comprehensive new regulatory framework for derivatives, which are generally characterized as swaps and security-based swaps. Sections 731 and 764 of the Dodd-Frank Act added a new section, section 4s, to the Commodity Exchange Act and a new section, section 15F, to the Securities Exchange Act, respectively, which require the registration with the CFTC of swap dealers and major swap participants and

¹ The Board has modified the title of this information collection to reflect that the Board's Regulation KK does not include any disclosure collections of information, as defined by the Paperwork Reduction Act (PRA). Specifically, the Board has determined that section 237.1(h), previously cleared as part of the FR KK, no longer includes a disclosure collection of information, because the conditions triggering the disclosure will not occur. In addition, the Board has determined to omit from the FR KK the following provisions of Regulation KK that were formerly referenced in the clearance, because it has determined that they do not constitute collections of information under the PRA: sections 237.1(d); 237.5(c)(2)(i); 237.8(c)(2); 237.8(d)(5), (12), and (13); 238.8(e); and 237.8(f)(2), (3), and (4).

² See 80 FR 74839 (November 30, 2015); see also 79 FR 340 (January 3, 2014). The Board specific rules have been codified in Regulation KK.

³ A "swap entity" means a person that is registered with the Commodity Futures Trading Commission (CFTC) as a swap dealer or major swap participant pursuant to the Commodity Exchange Act of 1936 (Commodity Exchange Act), or a person that is registered with the U.S. Securities and Exchange Commission (SEC) as a security-based swap dealer or a major security-based swap participant pursuant to the Securities Exchange Act of 1934 (Securities Exchange Act). 12 CFR 237.2.

the SEC of security-based swap dealers and major security-based swap participants (collectively swap entities). For swap entities that are prudentially regulated by one of the agencies, sections 731 and 764 of the Dodd-Frank Act required the agencies to adopt rules jointly for swap entities under their respective jurisdictions imposing (1) capital requirements and (2) initial and variation margin requirements on all swaps not cleared by a registered derivatives clearing organization or a registered clearing agency. The Board's regulations pursuant to sections 731 and 764 of the Dodd-Frank Act are codified in Regulation KK, and include certain reporting and recordkeeping requirements.

Relatedly, section 716 of Title VII of the Dodd-Frank Act generally prohibits the provision of Federal assistance to any swaps entity with regard to any swap, security-based swap, or other activity of the swaps entity. Swaps entities that become subject to this prohibition may request relief during the pendency of transition period in order to conform its swaps activities to the requirements of section 716. The Board's regulation implementing this aspect of section 716 of the Dodd-Frank Act is codified section 237.22 of Regulation KK and includes a reporting requirement. This information collected from the swap margin and push-out rule is not available from other sources.

Description of Information Collection

The reporting requirements are found in sections 237.8(c), 237.8(d), 237.8(f)(3), 237.9(e), 237.22(a)(1), and 237.22(e) of Regulation KK and the recordkeeping requirements are found in sections 237.2 (definition of "eligible master netting agreement," item 4), 237.7(c), 237.8(g), 237.8(h), and 237.10. These reporting and recordkeeping requirements implemented sections 716, 731, and 764 of the Dodd-Frank Act. No other Federal law mandates these reporting and recordkeeping requirements. At this time, there are no required reporting forms associated with this information collection.

Reporting Requirements

Section 237.8 establishes standards for initial margin models. These standards include (1) a requirement that the covered swap entity receive prior approval from the Board (237.8(c)(1)), (2) a requirement that a covered swap entity notify the Board in writing 60 days before extending use of the model to additional product types, making certain changes to the initial margin model, or making material changes to modeling assumptions (237.8(c)(3)), (3) a requirement that the covered swap entity demonstrate to the satisfaction of the Board that the omission of any risk factor from the calculation of its initial margin is appropriate prior to omitting such risk factor (237.8(d)(10)), and demonstrate to the satisfaction of the Board that incorporation of any proxy or approximation used to capture the risks of the covered swap entity's non-cleared swaps or non-cleared security-based swaps is appropriate prior to incorporate such proxy or approximation (237.8(d)(11)). Also, if the validation process reveals any material problems with the initial margin model, the covered swap entity must promptly notify the Board of the problems, describe to the Board any remedial actions being taken, and adjust the initial margin model to ensure an appropriately conservative amount of required initial margin is being calculated (237.8(f)(3)).

Section 237.9(e) allows a covered swap entity to request that the agencies make a substituted compliance determination. A request for a substituted compliance determination must include a description of the scope and objectives of the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps; the specific provisions of the foreign regulatory framework for non-cleared swaps and security-based swaps (scope of transactions covered; determination of the amount of initial and variation margin required; timing of margin requirements; documentation requirements; forms of eligible collateral; segregation and rehypothecation requirements; and approval process and standards for models); the supervisory compliance program and enforcement authority exercised by a foreign financial regulatory authority or authorities in such system to support its oversight of the application of the non-cleared swap and security-based swap regulatory framework; and any other descriptions and documentation that the prudential regulators determine are appropriate. A covered swap entity may make a request under this section only if directly supervised by the authorities administering the foreign regulatory framework for non-cleared swaps and non-cleared security-based swaps.

Section 237.22(a)(1) provides that an insured depository institution for which the Board is the appropriate Federal banking agency may request a transition period of up to 24 months from the date on which it becomes a swaps entity, to conform its swaps activities to the requirements of section 716 of the Dodd-Frank Act, which prohibits Federal assistance to any swaps entity with respect to their swaps activities.⁴ Such insured depository institution may request a transition period by submitting a request in writing to the Board. Any request submitted must, at a minimum, include the following information: (1) the length of the transition period requested, (2) a description of the quantitative and qualitative impacts of divestiture or cessation of swap or security-based swaps activities on the insured depository institution, including information that addresses the factors in section 237.22(c), and (3) a detailed explanation of the insured depository institution's plan for conforming its activities to the requirements of section 716 of the Dodd-Frank Act.

Section 237.22(e) allows an insured depository institution to request an extension of the transition period via a written request containing the information set forth in section 237.22(a) no later than 60 days before the end of the transition period.

Recordkeeping Requirements

Section 237.2 defines terms used in the rule, including the definition of "eligible master netting agreement," which provides that a covered swap entity that relies on such agreement for purpose of calculating required margin must (1) conduct sufficient legal review of the agreement to conclude with a well-founded basis that the agreement meets specified criteria and maintain sufficient written documentation of that legal review and (2) establish and maintain written procedures for monitoring relevant changes in law and to ensure that the agreement continues to satisfy the requirements of this section. In order to demonstrate compliance, these records must be retained for as long as the covered swap entity relies on such agreement. The term "eligible master netting agreement" is used elsewhere in the rule to specify instances in which a covered swap entity may (1) calculate variation margin on an aggregate basis across multiple non-cleared

⁴ The insured depository institution must also qualify as a "swaps entity" and be subject to the "Federal assistance" prohibition in section 716(a) of the Dodd-Frank Act.

swaps and security-based swaps and (2) calculate initial margin requirements under an initial margin model for one or more swaps and security-based swaps.

Section 237.7(c) requires the custodian to act pursuant to a custody agreement that (1) prohibits the custodian from rehypothecating, repledging, reusing, or otherwise transferring (through securities lending, securities borrowing, repurchase agreement, reverse repurchase agreement or other means) the collateral held by the custodian, except that cash collateral may be held in a general deposit account with the custodian if the funds in the account are used to purchase an asset, such asset is held in compliance with this section 237.7, and such purchase takes place within a time period reasonably necessary to consummate such purchase after the cash collateral is posted as initial margin and (2) is a legal, valid, binding, and enforceable agreement under the laws of all relevant jurisdictions, including in the event of bankruptcy, insolvency, or a similar proceeding. A custody agreement may permit the posting party to substitute or direct any reinvestment of posted collateral held by the custodian, provided that, with respect to collateral collected by a covered swap entity pursuant to section 237.3(a) or posted by a covered swap entity pursuant to section 237.3(b), the agreement requires the posting party to substitute only funds or other property that would qualify as eligible collateral under section 237.6, and for which the amount net of applicable discounts described in appendix B would be sufficient to meet the requirements of section 237.3 and direct reinvestment of funds only in assets that would qualify as eligible collateral under section 237.6, and for which the amount net of applicable discounts described in appendix B would be sufficient to meet the requirements of section 237.3.

Section 237.8 establishes standards for initial margin models. These standards include (1) a requirement that the covered swap entity adequately document all material aspects of its initial margin model (237.8(g)), and (2) that the covered swap entity must adequately document internal authorization procedures, including escalation procedures, that require review and approval of any change to the initial margin calculation under the initial margin model, demonstrable analysis that any basis for any such change is consistent with the requirements of this section, and independent review of such demonstrable analysis and approval (237.8(h)).

Section 237.10 requires a covered swap entity to execute trading documentation with each counterparty that is either a swap entity or financial end user regarding credit support arrangements that (1) provides the contractual right to collect and post initial margin and variation margin in such amounts, in such form, and under such circumstances as are required; and (2) specifies the methods, procedures, value of each non-cleared swap or non-cleared security-based swap for purposes of calculating variation margin requirements, and the procedures for resolving any disputes concerning valuation.

Respondent Panel

The FR KK panel comprises any swap entity that is a state member bank (as defined in 12 CFR 208.2(g)), bank holding company (as defined in 12 U.S.C. § 1841), savings and loan holding company (as defined in 12 U.S.C. § 1467a), foreign banking organization (as defined in 12 CFR 211.21(o)), foreign bank that does not operate an insured branch, state branch or state agency of a foreign bank (as defined in 12 U.S.C. §§ 3101(b)(11) and (12)), or Edge or

agreement corporation (as defined in 12 CFR 211.1(c)(2) and (3)), as well as any other entity determined to be a covered swap entity by the Board.

Frequency and Time Schedule

The FR KK is submitted and retained on an event-generated basis.

Public Availability of Data

No data collected by this information collection are published.

Legal Status

The recordkeeping requirements under the FR KK and the reporting requirements under sections 237.8 and 237.9(e) of the Board's Regulation KK are authorized pursuant to sections 731 (7 U.S.C. § 6s) and 764 (15 U.S.C. § 78o-10) of the Dodd-Frank Act. The reporting requirement under section 237.22 of Regulation KK is authorized pursuant to section 716 of the Dodd-Frank Act (15 U.S.C. § 8305(f)). The recordkeeping requirements under the FR KK are mandatory. The reporting requirements under section 237.8 are also mandatory, while the reporting requirements under sections 237.9(e), 237.22(a)(1), and 237.22(e) are required to obtain a benefit.

Records retained pursuant to the recordkeeping requirements under the FR KK would generally be maintained at the financial institution that created them. The Freedom of Information Act (FOIA) would be implicated only if the Board obtained such records as part of the examination or supervision of a financial institution, in which case the records would be protected from disclosure under FOIA exemption 8, which protects information contained in "examination, operating, or condition reports" obtained in the bank supervisory process (5 U.S.C. § 552(b)(8)). Information retained pursuant to the recordkeeping requirements under the FR KK may also be exempt from disclosure pursuant to FOIA exemption 4, if it is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent (5 U.S.C. § 552(b)(4)).

Information submitted to the Board under the mandatory reporting requirements of the FR KK is collected as part of the Board's supervisory process and therefore is protected from disclosure pursuant to exemption 8 of the FOIA (5 U.S.C. § 552(b)(8)). Additionally, individual respondents under the FR KK may request confidential treatment of information submitted to the Board under any of the FR KK's reporting requirements in accordance with the Board's Rules Regarding Availability of Information.⁵ Such information may be protected from disclosure pursuant to exemption 4 of the FOIA to the extent that it is nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent (5 U.S.C. § 552(b)(4)).

⁵ 12 CFR 261.17.

Consultation Outside the Agency

The Board consulted with the OCC and FDIC with respect to the extension, without revision, of this information collection.

Public Comment

On March 1, 2023, the Board published an initial notice in the *Federal Register* (88 FR 12936) requesting public comment for 60 days on the extension, without revision, of the FR KK. The comment period for this notice expired on May 1, 2023. The Board did not receive any comments relevant to this collection or to the PRA. The Board adopted the extension, without revision, of the FR KK as originally proposed. On July 19, 2023, the Board published a final notice in the *Federal Register* (88 FR 46163).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR KK is 5,452 hours. These reporting and recordkeeping requirements represent less than 1 percent of the Board's total paperwork burden.

FR KK	<i>Estimated number of respondents⁶</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Reporting				
Sections 237.8(c) and 237.8(d)	1	1	240	240
Section 237.8(f)(3)	1	1	50	50
Section 237.9(e)	1	3	10	30
Sections 237.22(a)(1) and 237.22(e) (Board only)	1	1	7	7
Recordkeeping				
Section 237.2 (definition of "eligible master netting agreement," item 4)	41	1	1	41
Section 237.7(c)	41	1	100	4,100
Section 237.8(g)	41	1	2	82
Section 237.8(h)	41	1	20	820
Section 237.10	41	1	2	82
<i>Total</i>				<u>5,452</u>

⁶ Of these respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets). Size standards effective March 17, 2023. See <https://www.sba.gov/document/support-table-size-standards>.

The estimated total annual cost to the public for the FR KK is \$361,195.⁷

Sensitive Questions

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

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System is negligible.

⁷ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$22, 45% Financial Managers at \$80, 15% Lawyers at \$79, and 10% Chief Executives at \$118). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), *Occupational Employment and Wages, May 2022*, published April 25, 2023, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.