

SUPPORTING STATEMENT
Part 364, Appendix C
Guidelines Establishing Standards for Corporate Governance
(OMB Control No. 3064-NEW)

INTRODUCTION

The Federal Deposit Insurance Corporation (FDIC) is requesting approval from the Office of Management and Budget (OMB) to establish a new information collection comprised of reporting and recordkeeping requirements contained in a notice of proposed rulemaking on “Guidelines Establishing Standards for Corporate Governance and Risk Management for Covered Institutions with Total Consolidated Assets of \$10 Billion or More” (proposed rule). The proposed rule seeks to impose reporting and recordkeeping requirements under the Paperwork Reduction Act (PRA),¹ for each insured state nonmember bank, state-licensed insured branch of foreign banks, and insured state savings association subject to the provisions of Section 39 of the Federal Deposit Insurance Act (FDI Act), with total consolidated assets of \$10 billion or more (covered institution). As a result, the FDIC is requesting approval from the OMB and asks that the OMB assign an OMB control number.

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

Strong corporate governance is the foundation for an insured depository institution’s safe and sound operations. An effective governance framework is necessary for an insured depository institution to remain profitable, competitive, and resilient through changing economic and market conditions. The board of directors serves a critical role in maintaining an insured depository institution’s safety and soundness and continued financial and operational resilience.

The FDIC observed during the 2008 financial crisis and more recent bank failures in 2023 that financial institutions with poor corporate governance and risk management practices were more likely to fail.² Reports reviewing the recent 2023 bank failures noted that poor corporate governance and risk management practices were contributing factors.³ Failures of insured depository institutions

¹ 44 U.S.C. 3501 *et seq.*

² *Lessons Learned and a Framework for Monitoring Emerging Risks and Regulatory Response*, GAO Report to Congress, GAO-15-365, June 2015; FDIC OIG Reports – Bank Failures, <https://www.fdicigo.gov/reports-publications/bank-failures>; Remarks by Martin J. Gruenberg, Chairman, FDIC to the American Association of Bank Directors, May 12, 2015, <https://archive.fdic.gov/view/fdic/1717>; *Review of the Federal Reserve’s Supervision and Regulation of Silicon Valley Bank*, April 2023, <https://www.federalreserve.gov/publications/files/svb-review-20230428.pdf>; *FDIC’s Supervision of Signature Bank*, April 2023, <https://www.fdic.gov/news/press-releases/2023/pr23033a.pdf>.

³ The FDIC report on the failure of Signature Bank in 2023 found that the root cause of the failure was poor management without adequate risk management practices and controls. The institution’s management did not prioritize good corporate governance practices (*FDIC’s Supervision of Signature Bank*, April 28, 2023, p. 2). The Federal Reserve Board’s report on the failure of Silicon Valley Bank also identified governance and risk management failures that led to the failure. (*Review of the Federal Reserve’s Supervision and Regulation of Silicon*

(IDIs) impose costs on the Deposit Insurance Fund (DIF) and negatively affect a wide variety of stakeholders including the institution's depositors and shareholders, employees, customers (including consumers and businesses that rely on the institution's services and the availability of credit), regulators, and the public as a whole. Insufficient attention and responsiveness to internal controls and governance processes can result in noncompliance with laws and regulations going undetected or unaddressed.

In order to strengthen the corporate governance and risk management practices of large institutions, the FDIC is proposing to issue corporate governance and risk management guidelines (Guidelines) as a new Appendix C to part 364 to address corporate governance and risk management practices and board oversight.

The proposed Guidelines would apply to all covered institutions. The proposed Guidelines would apply in addition to any other requirements established by law or regulation. The FDIC's supervisory experience has shown that institutions with assets greater than \$10 billion are larger, more complex and present a higher risk profile. The proposed Guidelines are intended to raise the FDIC's standards for corporate governance, risk management, and control to help ensure these larger institutions effectively anticipate, evaluate, and mitigate the risks they face.

2. Use of the information:

The FDIC believes that the proposed rule will benefit covered institutions by reducing the likelihood and magnitude of losses and the likelihood of failure. The FDIC does not have access to information that would enable a quantitative estimate of the benefits of the proposed rule. Although there are existing regulations and guidance related to corporate governance and risk management, the FDIC has not previously issued supervisory guidelines or regulations specifically on corporate governance and risk management for covered institutions. The FDIC believes that adoption of the proposed Guidelines would benefit covered institutions by establishing clear expectations for covered institutions and strengthening corporate governance and risk management. Additionally, by adopting the proposed Guidelines in Appendix C to part 364, the FDIC could require a compliance plan or take other corrective action if warranted further reducing the likelihood and magnitude of loss, and the likelihood of failure.

3. Consideration of the use of improved information technology:

Covered institutions may use technology to the extent feasible and/or desirable or appropriate to make the required reports.

4. Effort to identify duplication:

No other federal law mandates these reporting requirements and therefore the reporting requirements are not otherwise duplicated.

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

The proposed rule will not have a significant impact on a substantial number of small entities. As of the quarter ending March 31, 2023, the FDIC supervised 3,012 depository institutions, of which 2,306 are considered “small” for the purposes of RFA. As of the quarter ending March 31, 2023, there are no small, FDIC-insured institutions with \$10 billion or more in total consolidated assets.

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

Although the FDIC has not previously issued supervisory guidelines or regulations specifically on corporate governance and risk management for covered institutions, the FDIC expects these larger IDIs to have more detailed and formal guidance frameworks, given their size and complexity. The requirements in these proposed Guidelines generally reflect existing principles and what examiners consider necessary for the safe and sound operation of a covered institution. In addition, these proposed Guidelines are intended to be generally consistent with the goals communicated through the Office of Comptroller’s and the Board of Governors of the Federal Reserve System’s published issuances in an effort to harmonize corporate governance and risk management requirements for covered institutions that present a higher risk profile with those applicable to entities supervised by the other Federal banking agencies.

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

None. 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 October 11, 2023, the FDIC has issued a Notice of Proposed Rulemaking in the Federal Register (88 FR 70391) seeking comment on the reporting and recordkeeping requirements under the PRA. The FDIC will consider any received during the comment when finalizing the proposed rule.

9. Payment or gift to respondents:

None.

10. Any assurance of confidentiality:

Information collected is kept private to the extent allowed by law. All required records are subject to the confidentiality requirements of the Privacy Act. In addition, any information deemed to be of a confidential nature is exempt from public disclosure in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552).

11. Justification for questions of a sensitive nature:

No questions of a sensitive nature are included in the collection.

12. Estimate of Hour Burden:

The FDIC's estimated burden for the respondents for complying with the collection of information is 91,375 hours.

ESTIMATED HOURLY BURDEN - Part 364, Appendix C NPR							
Number	Information Collection Description and Citation	Type of Burden	Frequency	Number Respondents	Number of Responses Per Respondent	Time Per Response	Total Estimated Annual Burden
1	Audit Committee, Review and Approval of the Internal Audit Unit's Charter Section I(D)(7)(b) One-Time	Recordkeeping	One-Time	1	1	40	40
2	Audit Committee, Annual Review and Approval of the Internal Audit Unit's Charter Section I(D)(7)(c) Ongoing	Recordkeeping	Annually	1	1	20	20
3	Development of a Written Strategic Plan Section II(C)(2) One-Time	Recordkeeping	One-Time	1	1	120	120
4	Annual Evaluation and Approval of Strategic Plan Section II(C)(2) Ongoing	Recordkeeping	Annually	57	1	60	3,420
5	Board, Establishment and Approval of Policies Governing Operations Section II(C)(3) One-Time	Recordkeeping	One-Time	1	1	40	40
6	Board, Annual Review Policies Governing Operations Section II(C)(3) Ongoing	Recordkeeping	Annually	57	1	20	1,140
7	Establishment of a Written Code of Ethics Section II(C)(4) One-Time	Recordkeeping	One-Time	1	1	40	40
8	Annual Review Written Code of Ethics Section II(C)(4) Ongoing	Recordkeeping	Annually	57	1	20	1,140

Number	Information Collection Description and Citation	Type of Burden	Frequency	Number Respondents	Number of Responses Per Respondent	Time Per Response	Total Estimated Annual Burden
9	Establishment of a Management Performance Review Process Section II(C)(7) One-Time	Recordkeeping	One-Time	1	1	40	40
10	Annual Review of Management Performance Review Process Section II(C)(7) Ongoing	Recordkeeping	Annually	57	1	20	1,140
11	Development of a Succession Plan Section II(C)(7) One-Time	Recordkeeping	One-Time	1	1	40	40
12	Annual Review Succession Plan Section II(C)(7) Ongoing	Recordkeeping	Annually	57	1	20	1,140
13	Establishment of a Training Program for Directors Section II(C)(8) One-Time	Recordkeeping	One-Time	1	1	50	50
14	Annual Review Training Program for Directors Section II(C)(8) Ongoing	Recordkeeping	Annually	57	1	25	1,425
15	Board Annual Self-Assessment Section II(C)(9) Ongoing	Recordkeeping	Annually	57	1	20	1,140
16	Establishment of a Compensation and Performance Management Program Section II(C)(10) One-Time	Recordkeeping	One-Time	1	1	100	100
17	Annual Review of Compensation and Performance Management Program Section II(C)(10) Ongoing	Recordkeeping	Annually	57	1	50	2,850
18	Establishment of a Written Charter for Board Committees Section II(D) One-Time	Recordkeeping	One-Time	1	1	40	40
19	Annual Review of Written Charter for Board Committees Section II(D) Ongoing	Recordkeeping	Annually	57	1	20	1,140
20	Board Approval of Charter of Internal Audit Function Section II(D)(1)(e) One-Time	Recordkeeping	One-Time	1	1	20	20
21	Board Annual Review of Charter of Internal Audit Function Section II(D)(1)(f) Ongoing	Recordkeeping	Annually	57	1	10	570
22	Audit Committee, Approval of all Audit Services Section II(D)(1)(b) Ongoing	Recordkeeping	On Occasion	57	1	40	2,280

Number	Information Collection Description and Citation	Type of Burden	Frequency	Number Respondents	Number of Responses Per Respondent	Time Per Response	Total Estimated Annual Burden
23	Audit Committee, Approval all Decisions Regarding the Appointment or Removal and Annual Compensation and Salary Adjustment for the CAO Section II(D)(1)(d) Ongoing	Recordkeeping	On Occasion	57	1	40	2,280
24	Risk Committee, Approval of Risk Management Policies Section II(D)(4) One-Time	Recordkeeping	One-Time	1	1	40	40
25	Risk Committee, Annual Review of Charter of Internal Audit Function Section II(D)(4) Ongoing	Recordkeeping	Annually	57	1	20	1,140
26	Risk Committee, Quarterly Review of CRO Reports Section II(D)(4)(e) Ongoing	Recordkeeping	Quarterly	57	4	40	9,120
27	Risk Committee, Quarterly Documentation of Proceedings and Risk Management Decisions Section II(D)(4)(f) Ongoing	Recordkeeping	Quarterly	57	4	40	9,120
28	Risk Committee, Approval of Decisions Regarding Appointment or Removal of CRO Section II(D)(4)(g) Ongoing	Recordkeeping	On Occasion	57	1	40	2,280
29	Board Establishment of a Comprehensive Risk Management Program Section III(A) One-Time	Recordkeeping	One-Time	1	1	100	100
30	Board Annual Review of Comprehensive Risk Management Program Section III(A) Ongoing	Recordkeeping	Annually	57	1	50	2,850
31	Board Establishment of a Risk Profile Section III(B) One-Time	Recordkeeping	One-Time	1	1	40	40
32	Board Quarterly Review of Risk Profile Section III(B) Ongoing	Recordkeeping	Quarterly	57	4	40	9,120
33	Establishment of a Comprehensive Written Statement that Establishes Risk Appetite Limits Section III(B) One-Time	Recordkeeping	One-Time	1	1	40	40
34	Board Quarterly Review and Approval of Risk Appetite Statement Section III(B) Ongoing	Recordkeeping	Quarterly	57	4	20	4,560
35	Report Risk Limit Breaches to the FDIC Section III(C)(2)(c)(iii) Ongoing	Reporting	On Occasion	57	1	20	1,140
36	Front Line Unit, Establishment of Written Policies that Include Risk Limits Section III(C)(3)(a)(ii) One-Time	Recordkeeping	One-Time	1	1	40	40

Number	Information Collection Description and Citation	Type of Burden	Frequency	Number Respondents	Number of Responses Per Respondent	Time Per Response	Total Estimated Annual Burden
37	Front Line Unit, Annual Review of Written Policies that Include Risk Limits Section III(C)(3)(a)(ii) Ongoing	Recordkeeping	Annually	57	1	20	1,140
38	Front Line Unit, Establish Procedures and Processes, as Necessary to Ensure Compliance with Board Policies Section III(C)(3)(a)(iii) One-Time	Recordkeeping	One-Time	1	1	40	40
39	Front Line Unit, Annual Review of Procedures and Processes, as Necessary to Ensure Compliance with Board Policies Section III(C)(3)(a)(iii) Ongoing	Recordkeeping	Annually	57	1	20	1,140
40	Front Line Unit, Quarterly Monitor and Report Compliance with Respective Risk Limits Section III(C)(3)(a)(v) Ongoing	Recordkeeping	Quarterly	57	4	40	9,120
41	Independent Risk Management Unit, Quarterly Monitor and Report on the Covered Institution's Risk Profile Relative to Risk Appetite and Concentration Limits Section III(C)(3)(b)(iii) Ongoing	Recordkeeping	Quarterly	57	4	40	9,120
42	Independent Risk Management Unit, Establishment of Policies Relative to Concentration Risk Limits Section III(C)(3)(b)(iv) One-time	Recordkeeping	One-Time	1	1	40	40
43	Independent Risk Management Unit, Review and Update of Policies Relative to Concentration Risk Limits Section III(C)(3)(b)(iv) Ongoing	Recordkeeping	Annually	57	1	40	2,280
44	Independent Risk Management Unit, Establishment of Procedures and Processes to Ensure Compliance with Board Risk Management Policies Section III(C)(3)(b)(v) One-time	Recordkeeping	One-Time	1	1	20	20
45	Independent Risk Management Unit, Review and Update of Procedures and Processes to Ensure Compliance with Board Risk Management Policies Section III(C)(3)(b)(v) Ongoing	Recordkeeping	Annually	57	1	10	580
46	Independent Risk Management Unit, Quarterly Monitor and Report to CEO and Risk Committee Front Line Units' Compliance with Risk Limits Section III(C)(3)(b)(vii) Ongoing	Recordkeeping	Quarterly	57	4	10	2,280
47	Internal Audit Unit, Establishment of an Audit Plan Section III(C)(3)(c)(ii) One-Time	Recordkeeping	One-Time	1	1	40	40

Number	Information Collection Description and Citation	Type of Burden	Frequency	Number Respondents	Number of Responses Per Respondent	Time Per Response	Total Estimated Annual Burden
48	Internal Audit Unit, Quarterly Report Changes to Audit Plan Section III(C)(3)(c)(ii) Ongoing	Recordkeeping	Quarterly	57	4	10	2,280
49	Board, Establishment of Processes that Require the Front Line and Independent Risk Management Units to Identify and Distinguish Breaches, as well as Establishment of Accountability for Reporting and Resolving Breaches Section III(E) One-Time	Recordkeeping	One-Time	1	1	40	40
50	Board, Annual Review Processes that Require the Front Line and Independent Risk Management Units to Identify and Distinguish Breaches, as well as Establish Accountability for Reporting and Resolving Breaches Section III(E) Ongoing	Recordkeeping	Annually	57	1	20	1,140
51	Front Line and Independent Risk Management Units Report to the FDIC Breach of a Risk Limit or Noncompliance with the Risk Appetite Statement or Risk Management Program Section III(E)(3) Ongoing	Reporting	On Occasion	57	1	20	1,140
52	Board, Establishment of Processes that Require Front Line and Independent Risk Management Units to Identify, Distinguish, Document and Report Violations of Law or Regulations Section III(F) One-Time	Recordkeeping	One-Time	1	1	40	40
53	Board, Annual Review of Processes that Require Front Line and Independent Risk Management Units to Identify, Distinguish, Document and Report Violations of Law or Regulations Section III(F) Ongoing	Recordkeeping	Annually	57	1	20	1,140
						TOTAL HOURLY BURDEN	91,375 hours

Estimated hourly cost is 91,375 hours x \$139.33⁴ = \$12,731,278.75.

⁴The recordkeeping, reporting, and disclosure compliance burden is expected to be distributed between executives, lawyers and financial analysts. The estimated weighted average hourly compensation cost of these employees are found by using 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 May 2022. These wages are adjusted to account for inflation and compensation rates for health and other benefits, as of March 2023, to provide an estimate of overall compensation.

13. Estimate of Start-up Costs to Respondents:

None.

14. Estimate of annualized costs to the government:

None.

15. Analysis of change in burden:

Since this is the first time the FDIC will be submitting an information collection in connection with the proposed rule, there is no change in burden. However, the burden associated with this new information collection is 91,375 hours.

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

The results of this collection will not be published for statistical use.

17. Display of Expiration Date

This information collection is contained in a regulation.

18. Exceptions to Certification Statement

None.

B. STATISTICAL METHODS

Statistical methods are not employed in these collections.