

**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 July 31, 2024.

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 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 March 5, 2024 (89 FR 15872). 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 FSI 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 2024 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.

In case a new entrant/product becomes covered by the compliance requirements of the QFC Stay Rule, the FDIC estimates that such burden will be half of the burden estimate reported in the 2021 ICR, as a result of automation and standardization of business processes.<sup>1</sup>. Therefore, FDIC estimates an hourly burden of ten hours per response, which is half of the estimate of 20 hours per response from the 2021 ICR.

The estimated total annual burden, in hours, is the product of the estimated number of annual respondents, number of responses per respondent per year, and time per response, as summarized in the table below. The total estimated annual burden for this ICR is 10 hours, a reduction of 10 hours from the 2021 ICR.

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<sup>1</sup> Details can be found in the SME analysis mentioned previously, “Draft - PRA Stay Rule Internal Analysis 14 November 2023\_v.2\_Clean.docx”.

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	10	10
Total Estimated Annual Burden					10

Estimated Hourly Labor Compensation Rates

To estimate the average cost of compensation per hour, FDIC uses the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates (OEWS) for the relevant occupations in the Depository Credit Intermediation sector. However, the latest OEWS wage data are as of May 2022 and do not include non-wage compensation. To adjust these wages for use in this estimate, FDIC multiplies the OEWS hourly wages by approximately 1.51 to account for non-wage compensation, using the BLS Employer Cost of Employee Compensation (ECEC) data as of March 2022 (the latest published release prior to the OEWS wage data). It then multiplies the resulting compensation rates by approximately 1.05 to account for the change in the seasonally adjusted Employment Cost Index for the Credit Intermediation and Related Activities sector (NAICS Code 522) between March 2022 and June 2023.

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 estimated allocation of labor below to find the estimated hourly cost of complying with this ICR. The FDICs' estimated allocation of labor is unchanged from the 2021 ICR. The estimated hourly compensation rates are reported in the following table.

Summary of Hourly Burden Cost Estimate (OMB No. 3064-0208)			
Information Collection (Obligation to Respond)	Hourly Weight (%)	Percentage Shares of Hours Spent by and Hourly Compensation Rates for each Occupation Group (by Collection)	Estimated Hourly Compensation Rate

		Exec. & Mgr. (\$169.85 / hour) (\$131.66)	Lawyer (\$169.85 / hour)	Compl. Ofc. (\$65.27 / hour)	IT (\$103.70 / hour)	Fin. (\$96.29 / hour)	Clerical (\$37.09 / hour)		
<p>FDIC estimates the total annual cost burden for OMB No. 3064-0208 by multiplying the total annual estimated burden hours by the weighted average hourly compensation estimate. The following table shows the total annual cost burden is estimated as: 10 hours / year * \$131.51 / hour = \$1,315 per year. This is a decrease of \$1,069 from the annual cost burden reported in the 2021 ICR. The decrease in the estimated cost is the result of a decrease in the estimated burden hours relative to the 2021 ICR, which occurred because FDIC assumes that institutions subject to the QFC Stay Rule would have complied with the requirements in that rule as of the effective date of that rule, which is January 1, 2020. The placeholder values of one annual respondent and one annual response per respondent reported in this ICR account for the possibility of a new entrant or a new product that could fall under the scope of the QFC Stay Rule.</p>									
		<b>Total Estimated Cost Burden (OMB No. 3064-0208)</b>							
Information Collection Request (Voluntary)		Annual Burden (Hours)	Weighted Average Hourly Compensation Rate				Annual Respondent Cost		
Restrictions on Qualified Financial Contracts of Certain FDIC-Supervised Institutions and Applicable Subsidiaries; Revisions to the Definition of Qualifying Master Netting Agreement and Related Definitions			<b>Weighted Average Hourly Compensation Rate:</b>				<b>\$131.51</b>		
		10	\$131.51				\$1,315		
<b>Total Annual Respondent Cost:</b>							<b>\$1,315</b>		
Source: FDIC.									

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.