

**Supporting Statement for the Notifications Related to Community Development and
Public Welfare Investments of State Member Banks
(FR H-6; OMB No. 7100-0278)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Notifications Related to Community Development and Public Welfare Investments of State Member Banks (FR H-6; OMB No. 7100-0278). Regulation H requires state member banks that want to make community development or public welfare investments to comply with the Regulation H notification requirements:

- if the investment does not require prior Board approval, a written notice must be sent to the appropriate Federal Reserve Bank;
- if certain criteria are not met, a request for approval must be sent to the appropriate Federal Reserve Bank; and,
- if the Board orders divestiture but the bank cannot divest within the established time limit, a request or requests for extension of the divestiture period must be submitted to the appropriate Federal Reserve Bank. 12 CFR 208.22.

A model form and checklist are available that banks may, at their option, use to notify the Reserve Banks of public welfare investments that do not require Board approval. The checklist is used to help banks determine whether they must submit a request for prior approval. The model form and checklist are provided as Attachment 1. The current burden associated with the notifications is estimated to be 86 hours for 40 respondents.

Background and Justification

On December 7, 1994, the Board added to Regulation H a new section entitled Community Development and Public Welfare Investments to implement a provision of the Depository Institutions Disaster Relief Act of 1992. The statutory provision authorizes state member banks to make investments designed primarily to promote the public welfare to the extent permissible under state law and subject to regulation by the Board. Regulation H permits state member banks to make certain public welfare investments without prior approval and to make other public welfare investments with specific Board approval.

A state member bank may make a public welfare investment without prior approval so long as the aggregate of such investments does not exceed 5 percent of the capital stock and surplus of the state member bank, and:

- the investment (a) previously has been determined to be a public welfare investment by the Board or the Comptroller of the Currency, (b) is in a community development financial institution as defined in the Community Development Banking and Financial Institutions Act of 1994, or (c) is in an entity established solely to engage in one or more of the following activities: developing low- and moderate-income residential housing; developing nonresidential real-estate in a low development in a low- or moderate-income area that is targeted towards low- and moderate-income persons; small business development in a low- or moderate-income area; job training or placement for low- and moderate-income persons; creating employment opportunities in a low- or moderate-income area for low- and moderate-income persons; and technical assistance and credit counseling to benefit community development;¹
- the investment is permitted by state law;
- the investment does not expose the state member bank to liability beyond the amount of the investment;
- the bank is at least adequately capitalized and rated a composite CAMELS 1 or 2 and at least 1 or 2 in its last consumer compliance examination; and
- the state member bank is not subject to any written agreement, cease and desist order, capital directive, prompt corrective action directive, or memorandum of understanding issued by the Board or a Reserve Bank acting under delegated authority.

If these conditions are not met, a state member bank must receive Board approval before making an investment. In no event may aggregate public welfare investments exceed 10 percent of the state member bank's capital stock and surplus. 12 U.S.C. 338a

If a public welfare investment ceases to meet the statutory requirements or certain regulatory requirements, the state member bank must divest itself of the investment to the extent that the investment ceases to meet those requirements. (Divestiture is not required if the investment ceases to meet the non-statutory requirements concerning capital, examination ratings, and enforcement actions.) This divestiture is governed by the same requirements as divestitures of interests acquired by a lending subsidiary of a bank holding company or a bank holding company itself in satisfaction of a debt previously contracted. 12 CFR 225.140. The Board will monitor the efforts of the company to effect an orderly divestiture and may order divestiture if supervisory concerns warrant such action.

Regulation H requires state member banks engaging in permissible public welfare and community development investments to provide notice of such investments to the Federal Reserve Bank in their District. The regulation specifies that the notice, which may be submitted on bank letterhead or on the optional FR H-6 model form, provides the amount of the investment and identity of the entity in which the investment was made. In addition to this information, banks typically

¹ Regulation H uses the U.S. Department of Housing and Urban Development's Chapter 69 Community Development definition of low- and moderate-income persons and the U.S. Small Business Administration's definition of a small business.

describe the mission and service area of the entity in which the investment was made and how the investment meets the definition of public welfare and community development.

Information about the identity and amount of public welfare investments that Regulation H requires the Board to collect is useful to the Community Affairs function of the Federal Reserve System. The mission of the Federal Reserve's Community Affairs Office (CAO) is to support the Federal Reserve System's economic growth objectives by promoting community development and fair and impartial access to credit. Toward this end, the CAO of each Reserve Bank develops specific products and services to meet its regional market's needs for information relating to community development activities. One such product is the *Directory of Community Development Investments*,² a compilation of investments by banks and bank holding companies that meet the regulatory definition of public welfare and community development. This publication serves as a guide to best practices for financial institutions seeking to initiate or engage in innovative investments that promote community development. The banks' written notices of their investments are the primary sources for the publication. The information derived from those notices also assists CAO staff in providing direct technical assistance to financial institutions seeking to identify and invest in qualified community development entities and projects.

Description of Information Collection

There are three types of notification requirements in 12 CFR 208.22: the public welfare investment notice, the request for prior approval, and the request for extension of the divestiture period. When a public welfare investment is made without prior approval, the state member bank must notify its Federal Reserve Bank within thirty days of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

In 2002, the divisions adopted a model form and checklist that banks could use, at their option, to report the information required by Regulation H for investments that do not require prior Board approval. The optional checklist is used to help banks determine whether they must submit a request for prior approval. When a public welfare investment requires prior Board approval, the state member bank must submit a request for approval to the Board. The request should include, at a minimum:

- the amount of the proposed investment;
- a description of the entity in which the investment is to be made;
- an explanation of how the investment meets the statutory definition of a public welfare investment;

² Additional information on community development investments by financial institutions can be found at the following sites:

- Federal Reserve Board of Governors Regulatory Guidance and Resource Information on Community Development Investments <http://www.federalreserve.gov/CommunityAffairs/cdi/default.htm>
- Federal Reserve Bank of San Francisco Center on Community Development Investments <http://www.sf.frb.org/cdinvestments/index.html>
- Office of the Comptroller of the Currency Part 24 Community Development Investments <http://www.occ.treas.gov/cdd/pt24toppage.htm>

- a description of the state member bank's potential liability under the proposed investment;
- the amount of the state member bank's aggregate outstanding public welfare investments;
- the amount of the state member bank's capital stock and surplus, and
- the reason(s) why the investment is ineligible to be made without prior approval.

When a public welfare investment exceeds the scope of, or ceases to meet, the public welfare investment requirements, a state member bank must divest itself of that investment within two years. Within the divestiture period it is expected that the state member bank will make a good faith effort to dispose of the investment at the earliest practicable date. The Board may, upon written request, extend the two-year period for up to three additional one-year periods.

Time Schedule for Information Collection

The three types of information collections (public welfare investment notice, request for approval, and request for extension of a divestiture period) are event generated. A state member bank must file a notice with the appropriate Bank within thirty days of making an investment that does not require prior approval. For investments requiring prior approval, the Board must act on the request within sixty days of receipt or notify the requesting state member bank that a longer period of time will be required. If a state member bank fails to accomplish a required divestiture within two years, it must file a request for extension. A bank may receive up to three one-year extensions.

Legal Status

The Board's Legal Division has determined that the public welfare investment notice, request for approval, and request for extension of the divestiture period are authorized by the Federal Reserve Act, 12 USC 338a, and by Regulation H, 12 CFR 208.22, and are required to obtain a benefit. Individual respondent data generally are not regarded as confidential, but information that is proprietary or concerns examination ratings would be considered confidential.

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Consultation Outside the Agency

On June 3, 2008, the Federal Reserve published a notice in the *Federal Register* (73 FR 31684) requesting public comment for 60 days on the extension, without revision, of the FR H-6 notification requirements. The comment period for this notice expired on August 4, 2008. The Federal Reserve did not receive any comments. On August 20, 2008, the Federal Reserve published a final notice in the *Federal Register* (73 FR 49204).

Estimate of Respondent Burden

The current annual reporting burden imposed on all institutions for the public welfare investment notice, the request for prior approval, and the request for extension of the divestiture period is 86 hours as shown in the table below. The estimated number of respondents listed in the table below is based on the number of requests and notices received by the Federal Reserve in 2007. The total annual burden of these reports represents less than 1 percent of total Federal Reserve System annual reporting burden.

	<i>Estimated number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Investment notice	38	1	2	76
Application (<i>Prior Approval</i>)	1	1	5	5
Extension of divestiture period	<u>1</u>	1	5	<u>5</u>
<i>Total</i>	40			86

The total annual cost to the public for these reports is estimated to be \$7,611.³

Sensitive Questions

There are no questions of a sensitive nature, as defined by OMB guidelines

Estimate of Cost to the Federal Reserve System

The annual costs associated with providing the instructions for and processing the investment notice, request for prior approval, and request for extension of the divestiture period are minimal. The Federal Reserve does not incur any mailing or printing cost in administering these requirements.

³ Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 50% Managerial or Technical @ \$55, 25% Senior Management @ \$100, and 25% Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.

Attachment 1

Optional Form
for
Notice of Public Welfare Investments by State Member Banks
to the Federal Reserve System