

Supporting Statement for the Recordkeeping Provisions Associated with Guidance on Leveraged Lending (FR 4203; OMB No. 7100-0354)

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Recordkeeping Provisions Associated with Guidance on Leveraged Lending (FR 4203; OMB No. 7100-0354).¹ The Interagency Guidance on Leveraged Lending (Guidance)² outlines high-level principles related to safe-and-sound leveraged lending activities. The Guidance includes a number of voluntary recordkeeping provisions that apply to financial institutions that are engaged in leveraged lending activities and for which the Board is the primary federal supervisor, including bank holding companies, savings and loan holding companies, state member banks, and state-chartered branches and agencies of foreign banks that engage in these activities. The estimated total annual burden for the FR 4203 is 27,935 hours.

Background and Justification

The agencies issued the Guidance in 2013 to assist financial institutions in providing leveraged lending to creditworthy borrowers in a safe-and-sound manner.³ The Guidance outlines high-level principles related to safe-and-sound leveraged lending activities, including underwriting considerations, assessing and documenting enterprise value, risk management expectations for credits awaiting distribution, stress testing expectations and portfolio management, and risk management expectations. The Guidance applies to all financial institutions supervised by the Board that engage in leveraged lending activities.

Description of Information Collection

The FR 4203 covers all aspects of the Guidance that constitute an information collection; generally, these are provisions that suggest financial institutions engage in recordkeeping. The Guidance articulates expectations that, among other things, institutions should maintain:⁴

- a risk management framework that contains written risk objectives, risk acceptance criteria, and risk controls;
- in the credit file for a leveraged loan, a chronological rationale for and analysis of all substantive changes to the borrower's operating plan and variance from expected performance;

¹ There is no formal reporting form for this collection of information (the FR 4203 designation is for internal purposes only).

² "Interagency Guidance on Leveraged Lending," March 21, 2013, available at <https://www.federalreserve.gov/supervisionreg/srletters/sr1303a1.pdf>. The Guidance was published jointly by the Board, the Office of the Comptroller of the Currency, and the Federal Deposit Insurance Corporation (the agencies).

³ The Guidance updated and replaced prior interagency guidance issued by the agencies and the Office of Thrift Supervision in April 2001. See SR 13-3, "Interagency Guidance on Leveraged Lending," March 13, 2013 (discussing the relationship between the Guidance and the prior interagency guidance).

⁴ Previous documentation for this information collection mistakenly truncated the list of recordkeeping provisions in the Guidance.

- well-defined, written underwriting standards that, among other things, establish clear underwriting limits, define acceptable leverage levels, and describe amortization expectations for senior and subordinate debt;
- valuation standards that include documenting assumptions underlying enterprise-value estimates and conducting and documenting stress tests of enterprise values and their underlying assumptions at origination of the transaction and periodically thereafter;
- information about a deal sponsor, if any, that can document the sponsor's history of demonstrated support as well as the economic incentive, capacity, and stated intent to continue to support the transaction;
- sound management information systems that enable management to identify, aggregate, and monitor leveraged exposures and comply with policy across all business lines;
- strong pipeline management policies and procedures that, among other things, include written policies and procedures for defining and managing distribution failures and "hung" deals and discuss the financial institution's appetite for underwriting risk;
- guidelines for conducting periodic portfolio and pipeline stress tests to quantify the potential impact of economic and market conditions on the institution's asset quality, earnings, liquidity, and capital.

The Guidance does not contain any expectations regarding the manner in which records should be kept (e.g., physical or electronic media), but the Board anticipates that most respondents utilize information technology to reduce the burden of following the voluntary recordkeeping.

Respondent Panel

The FR 4203 panel comprises all bank holding companies, savings and loan holding companies, state member banks, and state-chartered branches and agencies of foreign banks that engage in leveraged lending activities.

Many community banks are not subject to the Guidance because they do not engage in leveraged lending. The limited number of community and smaller institutions that are involved in leveraged lending activities may discuss with the Federal Reserve System whether and, if so, how to implement these collections of information in a cost-effective manner that is appropriate for the complexity of their exposures and activities.

Time Schedule for Information Collection

The documentation suggested by the Guidance is maintained by each institution; therefore, the information is not collected or published by the Board. The Guidance does not specify the frequency with which institutions should update these documents, but it does suggest that institutions should occasionally review and revise relevant policies and procedures to ensure leveraged lending activities are conducted in a safe-and-sound manner.

Public Availability of Data

There is no data related to this information collection available to the public.

Legal Status

The recordkeeping provisions of the Guidance are authorized pursuant to sections 9(6), 25, and 25A of the Federal Reserve Act⁵ (for state member banks, agreement corporations, and Edge corporations, respectively); section 5(c) of the Bank Holding Company Act⁶ (for bank holding companies); sections 10(b)(2) and 10(b)(3) of the Home Owners' Loan Act⁷ (savings and loan holding companies), and section 7(c)(2) of the International Banking Act⁸ (state-licensed branches and agencies of foreign banks, other than insured branches).

The recordkeeping provisions contained in the FR 4203 are voluntary.

Because these records would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. If the records were obtained by the Board as part of an examination or supervision of a financial institution, this information may be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in "examination, operating, or condition reports" obtained in the bank supervisory process.⁹ In addition, to the extent that information contained in these records constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by a banking organization, it may be kept confidential under exemption 4 of the FOIA, which exempts "trade secrets and commercial or financial information obtained from a person and privileged or confidential."¹⁰

Consultation Outside of the Agency

There has been no consultation outside the Federal Reserve System with respect to the proposed extension, without revision, of this collection.

Public Comments

On April 6, 2022, the Board published an initial notice in the *Federal Register* (87 FR 19933) requesting public comment for 60 days on the extension, without revision, of the FR 4203. The comment period for this notice expires on June 6, 2022.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR 4203 is 21,895 hours. These recordkeeping provisions represent less than 1 percent of the Board's total paperwork burden.

⁵ 12 U.S.C. §§ 324, 602, and 625, respectively.

⁶ 12 U.S.C. § 1844(c).

⁷ 12 U.S.C. §§ 1467a(b)(2) and (b)(3).

⁸ 12 U.S.C. § 3105(c)(2).

⁹ 5 U.S.C. § 552(b)(8).

¹⁰ 5 U.S.C. § 552(b)(4).

Because no information is submitted to the Board by firms in connection with the leveraged lending guidance, the Board does not know precisely how many Board-supervised institutions have implemented the recordkeeping provisions of the Guidance. However, based on the information that is available, the Board estimates that approximately 37 Federal Reserve-supervised institutions will implement the recordkeeping provisions of the Guidance. This is a conservative estimate derived in part from the number of Federal Reserve-supervised institutions known to be engaged in certain types of leveraged lending. Specifically, the estimate is derived from a count of 29 institutions currently engaged in shared national credits (SNCs), which are credit exposures of \$100 million or more that, at inception, are shared by three or more supervised institutions. The SNC exposure for these institutions does not include exposure to commercial real estate, insurance, or construction. Because the count of institutions engaged in SNCs likely does not include all institutions that originate or participate in leveraged lending, the Board has estimated that an additional 8 respondents (for a total of 37) will implement the recordkeeping provisions in the guidance. The Board estimates that it would take the 37 Federal Reserve-supervised institutions that are expected to follow these recordkeeping provisions on average 755 hours to maintain the related records annually.

FR 4203	<i>Estimated number of respondents¹¹</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Maintain guidance provisions	37	1	755	27,935

The estimated total annual cost to the public for this information collection is \$1,652,355.¹²

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

Since the Guidance does not require the Federal Reserve System to collect any information, the cost to the Federal Reserve System is negligible.

¹¹ None of the probable respondents to this information collection are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 million in total assets), <https://www.sba.gov/document/support-table-size-standards>.

¹² 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 \$20, 45% Financial Managers at \$73, 15% Lawyers at \$72, and 10% Chief Executives at \$95). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages, May 2020, published March 31, 2021, <https://www.bls.gov/news.release/ocwage.t01.htm#>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.