

Supporting Statement for the Recordkeeping and Disclosure Requirements Associated with Regulation O (FR O; OMB No. 7100-0382)

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, with revision, the Recordkeeping and Disclosure Requirements Associated with Regulation O (FR O; OMB No. 7100-0382). The Board's Regulation O - Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks (12 CFR Part 215) governs any extension of credit made by a member bank¹ to an insider of the member bank, of any company of which the member bank is a subsidiary, and of any other subsidiary of that company. Insiders include executive officers, directors, principal shareholders, and any related interest² of such person. Consistent with statute, the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller of the Currency (OCC) have issued regulations generally requiring the depository institutions that they supervise to comply with Regulation O.³ Regulation O prohibits extensions of credit to insiders unless they are made on substantially the same terms (including interest rates and collateral) as those prevailing at the time for comparable transactions by the bank with other persons who are not employed by the bank and do not involve more than the normal risk of repayment or present other unfavorable features, limits extensions of credit by a member bank to individual insiders and to all insiders, requires a member bank's board of directors to approve certain large extensions of credit, and sets forth recordkeeping and disclosure requirements.

The Board proposes to revise the FR O to include depository institutions that are not member banks as respondents.

The current estimated total annual burden for the FR O is 9,420 hours and would increase to 21,932 hours. The proposed revisions would result in an increase of 12,512 hours. While the proposed revision would not substantively increase burden for any institution, the administrative change would result in a larger reported burden as indicated.

Background and Justification

Sections 22(g) and (h) of the Federal Reserve Act restrict certain transactions between member banks and their insiders or insiders of their affiliates.⁴ Insiders include executive

¹ 12 U.S.C. § 221 defines a "member bank" as "any national bank, state bank, or bank or trust company which has become a member of one of the Federal reserve banks."

² A related interest of a person is a company or a political or campaign committee that is controlled by that person or the funds or services of which will benefit that person. 12 CFR 215.2(n).

³ By their terms, sections 22(g) and 22(h) of the Federal Reserve Act (12 U.S.C. §§ 375a and 375b) and Regulation O set forth restrictions for "member banks," which includes national banks and state banks that are members of the Federal Reserve System. However, other provisions of federal law subject state banks that are not members of the Federal Reserve System and savings associations to sections 22(g) and 22(h) of the Federal Reserve Act in the same manner and to the same extent as member banks. 12 CFR 31.2 (OCC); 12 CFR 337.3 (FDIC); see also 12 U.S.C. §§ 1468(b) and 1828(j).

⁴ 12 U.S.C. §§ 375a and 375b.

officers, directors, principal shareholders, and related interests of such persons. Congress enacted sections 22(g) and (h) to deter bank insiders from abusing their positions to gain favorable treatment from their associated banks and authorized the Board to prescribe rules and regulations as necessary to effectuate the purposes and to prevent evasions. The Board has promulgated the Board's Regulation O to implement sections 22(g) and (h) of the Federal Reserve Act. Consistent with statute,⁵ the FDIC and OCC have issued regulations generally requiring the other depository institutions that they supervise – state non-member banks, federal savings associations, and state savings associations – to comply with Regulation O.⁶ The regulation contains recordkeeping and disclosure requirements related to depository institutions' compliance with Regulation O. This information is not available from other sources.

Description of Information Collection

Regulation O contains certain recordkeeping and disclosure requirements. Pursuant to section 215.8 of Regulation O, respondents must maintain records necessary for compliance with the requirements of Regulation O. Any recordkeeping method adopted by a respondent shall identify, through an annual survey, all insiders of the respondent and maintain records of all extensions of credit to insiders of the respondent, including the amount and terms of each such extension of credit. Additionally, any recordkeeping method adopted by a respondent shall maintain records of extensions of credit to insiders of the respondent's affiliates by using either the survey method or borrower inquiry method, as set forth in Regulation O, or a different recordkeeping method if the appropriate federal banking agency determines that the respondent's method is at least as effective as the listed methods.⁷ Respondents using the survey method or borrower inquiry method for affiliates must maintain records of the amount and terms of each extension of credit by the member bank to such insiders. These records must be retained for at least five years after the end of the extension of credit. This retention period is appropriate in order to monitor compliance with the limits of sections 22(g) and (h) of the Federal Reserve Act and Regulation O and to allow for enforcement of those provisions, given applicable statutes of limitations.

Pursuant to section 215.9 of Regulation O, upon receipt of a written request from the public, a respondent must make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or \$500,000, whichever amount is less. Respondents are not required to disclose the specific amounts of individual extensions of credit.

⁵ The Federal Deposit Insurance Act (12 U.S.C. § 1828(j)) applies sections 22(g) and (h) to insured state nonmember banks in the same manner and to the same extent as if they were member banks. The Home Owners' Loan Act (12 U.S.C. § 1468(b)) also applies sections 22(g) and (h) to insured savings associations in the same manner and to the same extent as if they were member banks.

⁶ 12 CFR 31.2 (OCC); 12 CFR 337.3 (FDIC).

⁷ A member bank that is prohibited by law or by an express resolution of the board of directors of the bank from making an extension of credit to any company or other entity that is covered by Regulation O as a company is not required to maintain any records of the related interests of the insiders of the bank or its affiliates or to inquire of borrowers whether they are related interests of the insiders of the bank or its affiliates. 12 CFR 215.8(d).

No disclosure is required if the aggregate amount of all extensions of credit outstanding at such time from the respondent to the executive officer or principal shareholder and to all related interest of such a person does not exceed \$25,000. Additionally, each respondent must maintain records of all requests for the information described above and the disposition of such requests. These records may be disposed of after two years from the date of the request.

Respondent Panel

The FR O panel comprises insured depository institutions and uninsured member banks.

Frequency

The FR O disclosure is event-generated.

Proposed Revisions to the FR O

The Board proposes to revise the FR O information collection to include as respondents depository institutions that are not members banks. Although these depository institutions are not explicitly included within the scope of Regulation O, they are required to comply with the requirements of Regulation O, including the information collections discussed above, as a result of statute and the regulations issued by the FDIC and OCC. Therefore, the Board believes it is appropriate to consider these depository institutions to be respondents for purposes of the FR O.

Time Schedule for Information Collection

The time schedule for when the records associated with this collection are produced and maintained is contingent on the method of compliance with Regulation O chosen by the member bank, and can include annually, upon an extension of credit, or on an ongoing basis. Certain disclosure is required when requests by the public are received by the member bank.

Public Availability of Data

As noted above, upon receipt of a written request from the public, a member bank shall make available the names of each of its executive officers and each of its principal shareholders to whom, or to whose related interests, the member bank had outstanding as of the end of the latest previous quarter of the year, an extension of credit that, when aggregated with all other outstanding extensions of credit at such time from the member bank to such person and to all related interests of such person, equaled or exceeded 5 percent of the member bank's capital and unimpaired surplus or \$500,000, whichever amount is less. Other data associated with this collection of information is not made publicly available.

Legal Status

Section 7 of the Federal Deposit Insurance Act (section 7)⁸ and Sections 22(g) and 22(h) of the Federal Reserve Act authorize the Board to issue these requirements.⁹ Section 7

⁸ 12 U.S.C. § 1817(k).

⁹ 12 U.S.C. §§ 375a and 375b. The Board also has the authority to require reports from state member banks (12 U.S.C. §§ 248(a) and 324).

authorizes the Board to require state member banks to report and publicly disclose information concerning extensions of credit by the state member bank to its executive officers, principal shareholders, or related interests of those persons. Sections 22(g) and 22(h) of the Federal Reserve Act authorize the Board to prescribe rules related to extensions of credit to executive officers, directors, and principal shareholders.¹⁰ The obligation to respond is mandatory.

The information disclosed under the disclosure requirements of FR O is not confidential. Records retained by institutions under FR O would generally be maintained at each institution. The Freedom of Information Act (“FOIA”) would be implicated only if the Board obtained such records or disclosures 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.¹¹ Information retained pursuant to the recordkeeping requirements under FR O that is obtained by the Board 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,¹² or pursuant to FOIA exemption 6, if it relates to personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.¹³

Consultation Outside the Agency

The Board consulted with the OCC and the FDIC with respect to the extension, with revision, of the FR O.

Public Comments

On September 28, 2023, the Board published an initial notice in the *Federal Register* (88 FR 66843) requesting public comment for 60 days on the extension, with revision, of the FR O. The comment period for this notice expires on November 27, 2023.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR O is 9,420 hours, and would increase to 21,932 hours with the proposed revisions. While the proposed revision would not substantively increase burden for any institution, the administrative change would result in a larger reported burden as indicated. The estimated number of respondents is based on the current total of depository institutions, and the time per response is based on an estimate of how long it is expected to take to fulfill each requirement. These recordkeeping and disclosure requirements represent less than 1 percent of the Board’s total paperwork burden.

FR O	<i>Estimated number of</i>	<i>Estimated Annual</i>	<i>Estimated average hours</i>	<i>Estimated annual burden</i>
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¹⁰ Section 306(o) of the Federal Deposit Insurance Corporation Improvement Act of 1991 contains a similar authorization.

¹¹ 5 U.S.C. § 552(b)(8).

¹² 5 U.S.C. § 552(b)(4).

¹³ 5 U.S.C. § 552(b)(6).

	<i>respondents</i> 14	<i>frequency</i>	<i>per response</i>	<i>hours</i>
Current				
Recordkeeping				
Sections 215.8 and 215.9	1,570	1	4	6,280
Disclosure				
Section 215.9	1,570	1	2	<u>3,140</u>
<i>Current Total</i>				9,420
Proposed				
Recordkeeping				
Sections 215.8 and 215.9	4,867	1	4	19,468
Disclosure				
Section 215.9	1,232	1	2	<u>2,464</u>
<i>Proposed Total</i>				21,932
<i>Change</i>				12,512

The estimated total annual cost to the public for these collections of information is \$527,729 and would increase to \$1,452,995 with the proposed revisions.¹⁵

Sensitive Questions

These collections of information contain 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 for collecting and processing this information collection is negligible.

¹⁴ Of these respondents to this information collection, 3,615 respondents are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets), <https://www.sba.gov/document/support-table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions.

¹⁵ 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/>.