

Supporting Statement for the Reporting and Recordkeeping Requirements Associated with Regulation W (FR W; OMB No. 7100-0304)

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 Reporting and Recordkeeping Requirements Associated with Regulation W (FR W; OMB No. 7100-0304), which implements sections 23A and 23B of the Federal Reserve Act (FRA).¹ The information collections associated with the Board's Regulation W - Transactions Between Member Banks and Their Affiliates (12 CFR Part 223) are triggered by specific events, and there are no associated reporting forms (the FR W designation is for internal purposes only). Filings are required from insured depository institutions and uninsured member banks (collectively, "depository institutions")² that seek to request certain exemptions from the requirements of sections 23A and 23B. The FR W information collection is separate from the quarterly Holding Company Report of Insured Depository Institutions' Section 23A Transactions with Affiliates (FR Y-8; OMB No. 7100-0126), which collects information on transactions between an insured depository institution and its affiliates that are subject to section 23A of the Federal Reserve Act.

The Board proposes to revise the FR W information collection to account for two recordkeeping provisions in section 223.42 of Regulation W that have not been previously cleared by the Board under the Paperwork Reduction Act (PRA).

The current estimated total annual burden for the FR W is 24 hours and would increase by 4 hours to 28 hours.

Background and Justification

Sections 23A and 23B of the FRA are designed to protect a depository institution from exposure arising from certain transactions with affiliates.³ They also limit the ability of an insured depository institution to transfer the subsidy arising from access to the federal safety net to such affiliates. Sections 23A and 23B apply, by their terms, to banks that are members of the Federal Reserve System (member banks). As discussed in footnote 1, other federal law subjects insured nonmember banks and insured thrifts to sections 23A and 23B in the same manner and to

¹ This collection of information is currently titled "Reporting Requirements Associated with Regulation W." Under the proposal, the name of the collection would be changed to "Reporting and Recordkeeping Requirements Associated with Regulation W" in order to reflect that the clearance would include recordkeeping requirements.

² Sections 23A and 23B of the FRA and Regulation W apply by their terms to "member banks" – that is, any national bank, State bank, trust company, or other institution that is a member of the Federal Reserve System. In addition, the Federal Deposit Insurance Act (12 U.S.C. 1828(j)) applies sections 23A and 23B 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(a)) also applies sections 23A and 23B to insured savings associations in the same manner and to the same extent as if they were member banks (and imposes two additional restrictions). See generally 12 CFR 223.1.

³ See 12 U.S.C. §§ 371c and 371c-1.

the same extent as member banks. Regulation W implements sections 23A and 23B by defining terms used in the statute, explaining the statute's requirements, and exempting certain transactions.

As discussed below, the regulation includes provisions requiring the reporting of information to the Board under certain circumstances. This information is not available from other sources, and is critical to the Federal Reserve and other Federal banking agencies being able to determine whether a depository institution is complying with sections 23A and 23B and Regulation W and whether a proposed transaction is financially sound and consistent with the public interest.

Description of Information Collection

The FR W information collection comprises the reporting requirements of Regulation W that are found in sections 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is used to demonstrate compliance with sections 23A and 23B and to request certain exemptions from the Board.

Loan participation renewal notice (section 223.15(b)(4)). Generally, a depository institution is prohibited from purchasing a low-quality asset, as defined by Regulation W, from an affiliate unless, pursuant to an independent credit evaluation, the depository institution had committed itself to purchase the asset before the time the asset was acquired by the affiliate. However, a depository institution may renew or extend additional credit with respect to a loan participation if the loan was not a low-quality asset at the time the depository institution purchased its participation, if certain requirements are met. One such requirement is that the participating depository institution must provide its appropriate federal banking agency with a written notice of the renewal of, or the extension of additional credit in connection with, a low-quality asset not later than 20 calendar days after consummation.

Acquisition notice (section 223.31(d)(4)). In general, a depository institution's acquisition of a security issued by a company that was an affiliate of the depository institution before the acquisition is treated as a purchase of assets from an affiliate if, as a result of the transaction, the company becomes an operating subsidiary of the depository institution and the company either has liabilities or the depository institution gives cash or any other consideration in exchange for the security. However, such a transaction is exempt from the requirements of Regulation W if it is a "step transaction," as described in section 223.31(d) of Regulation W. In order to meet the requirements for this exemption, a depository institution must notify the appropriate federal banking agency and the appropriate Reserve Bank of its intention to acquire the company at or before the time that the company becomes an affiliate of the institution.

Internal-corporate-reorganization transactions notice (section 223.41(d)(2)). An internal corporate reorganization transaction is exempt from the quantitative limits and collateral requirements of Regulation W if certain conditions are met. The depository institution involved must provide the appropriate federal banking agency and the appropriate Reserve Bank with written notice of the transaction before consummation. The notice must describe the primary business activities of the affiliate and indicate the proposed date of the asset purchase.

Additional exemptions from the requirements of section 23A (section 223.43(b)). The Board may, at its discretion, by regulation or order, exempt transactions or relationships from the requirements of section 23A if it finds such exemptions to be in the public interest and consistent with the purposes of section 23A. A state member bank may request an exemption by submitting a written request to the General Counsel of the Board. Other depository institutions should contact their federal supervisor to determine the procedures that the institution needs to follow. The request must describe in detail the transaction or relationship for which the state member bank seeks exemption, explain why the Board should exempt the transaction or relationship, and explain how the exemption would be in the public interest and consistent with the purposes of section 23A.

Respondent Panel

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

Proposed Revisions to the FR W

The Board proposes to revise the FR W information collection to account for two recordkeeping provisions in section 223.42 of Regulation W that have not been previously cleared by the Board under the PRA. The Board is not proposing to create any forms associated with the FR W to address these provisions.

Certain transactions with affiliates are exempt from the quantitative limits, collateral requirements, and low-quality asset prohibition of Regulation W. Section 12 CFR 223.42(f) exempts from those provisions certain purchases by a depository institution of securities from a securities affiliate if, among other requirements, the depository institution maintains, for a period of two years, records and supporting information that are sufficient to enable the appropriate Federal banking agency to ensure the depository institution's compliance with the terms of the exemption.⁴ Separately, section 12 CFR 223.42(g)(3) exempts purchases by a depository institution of municipal securities from a securities affiliate if, among other requirements, the price of the security is quoted routinely on an unaffiliated electronic service that provides indicative data from real-time financial networks and the price paid for the security can be verified by reference to the written summary provided by the syndicate manager to syndicate members that discloses the aggregate par values and prices of all bonds sold from the syndicate account, so long as the depository institution obtains a copy of the summary from its securities affiliate and retains the summary for three years.⁵

Time Schedule for Information Collection

The notifications required under Regulation W are event-generated and must be provided to the appropriate federal banking agency and, if applicable, the Board within the time periods established by the law, as discussed above. The recordkeeping requirements of Regulation W also are event-generated.

⁴ 12 CFR 223.42(f)(6).

⁵ 12 CFR 223.42(g)(3)(iii).

Public Availability of Data

No data collected by this information collection is published.

Legal Status

Sections 23A and 23B of the FRA authorize the Board to issue these requirements. Compliance with the FR W requirements is required to obtain a benefit.

Information provided on the Loan Participation Renewal notice is confidential under exemption 4 of the Freedom of Information Act (“FOIA”) as confidential commercial or financial information that is both customarily and actually treated as private. Information provided on the Acquisition notice, the Internal Corporate Reorganization Transaction notice, and the Section 23A Additional Information request generally is not considered confidential, but respondents may request confidential treatment under exemption 4 of the FOIA if the information is confidential commercial or financial information that is both customarily and actually treated as private. Information collected under the FR W may also be considered confidential under the FOIA exemption 8 if it is obtained as part of an examination or supervision of a financial institution.

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On September 1, 2021, the Board published an initial notice in the *Federal Register* (86 FR 49031) requesting public comment for 60 day on the extension, with revision, of the FR W. The comment period for this notice expires on November 1, 2021.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR W is 24 hours and would increase to 28 hours with the proposed revisions. These reporting and recordkeeping requirements represent less than 1 percent of the Board’s total paperwork burden.

FR W	<i>Estimated number of respondents⁶</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Current				
Section 223.15(b)(4)	1	1	2	2
Section 223.31(d)(4)	1	1	6	6

⁶ Of these respondents required to comply with the information collection, none 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>.

Section 223.41(d)(2)	1	1	6	6
Section 223.43(b)	1	1	10	<u>10</u>
<i>Current Total</i>				24
Proposed				
<i>Reporting</i>				
Section 223.15(b)(4)	1	1	2	2
Section 223.31(d)(4)	1	1	6	6
Section 223.41(d)(2)	1	1	6	6
Section 223.43(b)	1	1	10	10
<i>Recordkeeping</i>				
Section 223.42(f)	1	1	2	2
Section 223.42(g)(3)	1	1	2	<u>2</u>
<i>Proposed Total</i>				28
<i>Change</i>				4

The estimated total annual cost to the public for the FR W is \$1,656.⁷

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.

⁷ 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/>.