

**Supporting Statement for the
Reporting Requirements Associated with Regulation XX Concentration Limit
(FR XX; OMB No. 7100-0363) and
Financial Company (as defined) Report of Consolidated Liabilities
(FR XX-1; OMB No. 7100-0363)**

Summary

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the mandatory Reporting Requirements Associated with Regulation XX Concentration Limit (FR XX; OMB No. 7100-0363) and Financial Company (as defined) Report of Consolidated Liabilities (FR XX-1; OMB No. 7100-0363). The Board adopted Regulation XX to implement section 14 of the Bank Holding Company Act of 1956 (BHC Act), which was added by section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act). Section 14 established a financial sector concentration limit that generally prohibits a financial company from merging or consolidating with, or otherwise acquiring, another company if the resulting company's liabilities upon consummation would exceed 10 percent of the aggregate liabilities of all financial companies. Regulation XX established certain reporting requirements for financial companies. The Board created the FR XX-1 reporting form to collect certain information required to be submitted by Regulation XX. The annual burden for this information collection is estimated to be 100 hours.

Background and Justification

Section 622 of the Dodd-Frank Act amended the BHC Act to add a new section 14. Section 622 established a financial sector concentration limit that prevents an insured depository institution, a bank holding company, a foreign bank or company that is treated as a bank holding company for purposes of the BHC Act, a savings and loan holding company, any other company that controls an insured depository institution, or a nonbank financial company designated by the Financial Stability Oversight Council (Council) for supervision by the Board from merging or consolidating with, acquiring all or substantially all of the assets of, or otherwise acquiring control of another company if the resulting company's consolidated liabilities would exceed 10 percent of the aggregate consolidated liabilities of all financial companies. The concentration limit supplements the nationwide deposit cap in Federal banking law by imposing an additional limit on liabilities of financial companies.

Section 622 of the Dodd-Frank Act provided that the concentration limit is "subject to" any recommendations made by the Council that the Council determines would more effectively implement section 622 and required the Board to issue final regulations implementing section 622 that "reflect any recommendations made by the Council." On January 18, 2011, the Council recommended that the Board's regulations should

- Measure liabilities of financial companies not subject to consolidated risk-based capital rules by using U.S. generally accepted accounting principles or other applicable accounting standards,

- Use a two-year average in calculating aggregate financial sector liabilities and that the Board publish annually by July 1 the current aggregate financial sector liabilities, and
- Extend the “failing bank exception” to the acquisition of any type of insured depository institution in default or in danger of default, rather than only banks in default or danger of default.

To implement section 622 of the Dodd-Frank Act and the Council’s recommendations, the Board promulgated Regulation XX, which established reporting requirements for financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agencies, and created the FR XX-1.

Description of Information Collection

The reporting requirements associated with FR XX are found in sections 251.4(b) and (c) of Regulation XX and apply to insured depository institutions, bank holding companies, foreign banking organizations, savings and loan holding companies, companies that control insured depository institutions, and nonbank financial companies supervised by the Board (collectively, financial companies). The reporting requirements associated with FR XX-1 are found in section 251.6 and apply to U.S. and foreign financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency.

FR XX

Section 251.4(b) of Regulation XX requires a financial company to request that the Board provide prior written consent before the financial company consummates certain transactions. The request for prior written consent must contain a description of the covered acquisition, the projected increase in the company’s liabilities resulting from the acquisition, the projected aggregate increase in the company’s liabilities from acquisitions during the twelve months preceding the projected date of the acquisition (if the request is made pursuant to section 251.4(a)(3)), and any additional information requested by the Board.

Section 251.4(c) authorizes the Board to provide prior written consent for a covered acquisition that would result in an increase in the liabilities of the financial company that does not exceed \$100 million, when aggregated with all other covered acquisitions by the financial company made pursuant to section 251.4(c) during the twelve months preceding the date of the acquisition. A financial company that relies on the prior written consent pursuant to section 251.4(c) must provide within 10 days after consummating the covered acquisition a notice to the Board that describes the covered acquisition, the increase in the company’s liabilities resulting from the acquisition, and the aggregate increase in the company’s liabilities from covered acquisitions during the twelve months preceding the date of the acquisition.

FR XX-1

Section 251.6 requires financial companies that do not report consolidated financial information to the Board or other appropriate Federal banking agencies to report information on their total liabilities. These institutions include savings and loan holding companies where the

top-tier holding company is an insurance company that only prepares financial statements in accordance with Statutory Accounting Principles, holding companies of industrial loan companies, limited-purpose credit card banks, and limited-purpose trust banks. Because this information is necessary to implement section 622 of the Dodd-Frank Act, Regulation XX established reporting requirements for financial companies and created the FR XX-1, on which a financial company that does not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency is required to report information on its total consolidated liabilities.

Time Schedule for Information Collection

The reporting requirements for FR XX in sections 251.4(b) and (c) are event-generated. A financial company that relies on prior written consent pursuant to section 251.4(c) must provide a notice to the Board within 10 days after consummating the covered acquisition. Since the Board is required to report a final calculation based on data collected as of the end of each calendar year, the FR XX-1 reporting form is completed by respondent financial companies annually as of December 31. The submission date is 90 calendar days after the December 31 as-of-date.

Legal Status

The Board's Legal Division has determined that this information collection is authorized by section 14 of the Bank Holding Company Act (12 U.S.C. 1852(d)) and Regulation XX (12 C.F.R. Part 251). The obligation of financial companies to comply with the consolidated liabilities reporting requirement is mandatory. Compliance by financial companies with the transactional reporting requirements is required in order to obtain the benefit of Board consent to consummation of the transactions.

Section 251.6 and FR XX-1. As noted, the required reporting of calendar year-end liabilities under section 251.6 of Regulation XX can be satisfied by many financial companies through their continued reporting of consolidated financial information to the Board or other appropriate Federal banking agency through the various reports listed above. The information collected on those forms has been the subject of separate authorization and confidentiality determinations. With regard to the collection of the specific information at issue, calendar year-end liabilities (including as collected on the FR XX-1), such information generally is not considered confidential, but some information, depending on the circumstances, may be the type of confidential commercial and financial information that may be withheld under exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(4)). As required information, it may be withheld under exemption 4 on a case-by-case basis only if public disclosure could result in substantial competitive harm to the submitting institution, under National Parks and Conservation Association v. Morton (498 F.2d 765 (D.C. Cir. 1974)). Any request from a submitter for confidential treatment should be accompanied by a detailed justification for confidentiality.

Section 251.4. The information collected under section 251.4 (under both its prior written consent provision for individual transactions and the general consent authority) consists of (1) a

description of the acquisition and (2) the change in and resultant aggregate amount of financial company liabilities. The reported liabilities information, in like fashion to the liabilities information reported under section 251.6, generally is not considered confidential but, depending on the circumstances, may be the type of confidential commercial and financial information that may be withheld under exemption 4 of FOIA. The description of the individual acquisitions provided under the prior written consent provisions generally would not be deemed confidential, but some such information may be of the type that could be withheld under exemption 4 on a case-by-case basis, under the standards enumerated above.

Consultation Outside the Agency

On August 16, 2017, the Board published a notice in the *Federal Register* (82 FR 38906) requesting public comment for 60 days on the extension, without revision, of the FR XX and FR XX-1. The comment period for this notice expires on October 16, 2017.

Estimate of Respondent Burden

The total annual burden for FR XX is estimated to be 20 hours and the FR XX-1 is estimated to be 80 hours. The FR XX and FR XX-1 reporting requirements represent less than 1 percent of the total Federal Reserve System paperwork burden.

	<i>Number of respondents¹</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
FR XX				
Reporting Burden				
Section 251.4(b)	1	1	10	10
Section 251.4(c)	1	1	10	10
FR XX-1				
Reporting Burden				
Section 251.6	43	1	2	<u>86</u>
<i>Total</i>				106

The total cost to the public for this information collection is estimated to be \$5,819.²

¹ Of these respondents, 20 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards.

² 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 \$18, 45% Financial Managers at \$67, 15% Lawyers at \$67, and 10% Chief Executives at \$93). 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 2016*, published March 31, 2017, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

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

The current cost to the Federal Reserve System for collecting and processing the FR XX-1 is estimated to be \$24,688 per year.