

**Supporting Statement for the  
Recordkeeping Provisions Associated with the  
Interagency Statement on Complex Structured Finance Activities  
(FR 4022; OMB No. 7100-0311)**

## **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 the Interagency Statement on Complex Structured Finance Activities (FR 4022; OMB No. 7100-0311).<sup>1</sup> This interagency guidance<sup>2</sup> states that certain financial institutions should establish and maintain written policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with complex structured finance transactions (CSFTs) and should retain certain documents related to elevated risk CSFTs,<sup>3</sup> which are a subcategory of CSFTs. The FR 4022 covers these information collections for financial institutions that are subject to the Statement and that are supervised by the Board, which are state member banks, bank holding companies (other than foreign banking organizations), savings and loan holding companies (SLHCs), and U.S. branches and agencies of foreign banks.

The estimated total annual burden for the FR 4022 is 180 hours.

## **Background and Justification**

When a financial institution participates in a CSFT, it bears the usual market, credit, and operational risks associated with the transaction. In some circumstances, a financial institution also may face heightened legal or reputational risks due to its involvement in a CSFT. For example, a financial institution involved in a CSFT may face heightened risk if the customer's regulatory, tax, or accounting treatment for the CSFT, or disclosures concerning the CSFT in its public filings or financial statements, do not comply with applicable laws, regulations, or accounting principles.

In some cases, certain CSFTs appear to have been used in illegal schemes that misrepresented the financial condition of public companies to investors and regulatory authorities. Those cases highlight the substantial legal and reputational risks that financial institutions may face when they participate in a CSFT that is used by the institutions' customers to circumvent regulatory or financial reporting requirements or further other illegal behaviors. For example, in July 2003, the Board, Office of the Comptroller of the Currency (OCC), and Securities and Exchange Commission (SEC) imposed significant financial penalties on financial institutions that engaged in CSFTs that appeared to have been designed or used to shield their

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<sup>1</sup> There is no formal reporting form for this collection of information (the FR 4022 designation is for internal purposes only).

<sup>2</sup> Interagency Statement on Sound Practices Concerning Elevated Risk Complex Structured Finance Activities (the Statement) (January 11, 2007), available at <https://www.federalregister.gov/documents/2007/01/11/07-55/interagency-statement-on-sound-practices-concerning-elevated-risk-complex-structured-finance>.

<sup>3</sup> See section III, part A, "Identifying Elevated Risk CSFTs," of the final interagency statement for more details.

customers' true financial health from the public. The complex structured finance relationships involving these financial institutions also resulted in numerous lawsuits against those financial institutions by private litigants.

In January 2007, the Board, OCC, Federal Deposit Insurance Corporation (FDIC), SEC, and the former Office of Thrift Supervision (OTS) published the Statement. The Statement is meant to describe the types of risk management principles that may help a financial institution to identify CSFTs that may pose heightened legal or reputational risks to the institution and to evaluate, manage, and address these risks within the institution's internal control framework.

## **Description of Information Collection**

The Statement provides that state member banks, bank holding companies (other than foreign banking organizations), SLHCs, and U.S. branches and agencies of foreign banks supervised by the Board should establish and maintain a set of formal, written, firm-wide policies and procedures for identifying, evaluating, assessing, documenting, and controlling risks associated with CSFTs. These policies and procedures should address the full range of credit, market, operational, legal, and reputational risks associated with such transactions. The policies may be developed specifically for CSFTs or included in the set of broader policies governing the institution generally. A financial institution operating in foreign jurisdictions may tailor its policies and procedures as appropriate to account for, and comply with, the applicable laws, regulations, and standards of those jurisdictions.

A financial institution's policies and procedures should establish a clear framework for the review and approval of individual CSFTs. These policies and procedures should set forth the responsibilities of the personnel involved in the origination, structuring, trading, review, approval, documentation, verification, and execution of CSFTs. A financial institution should define what constitutes a new complex structured finance product and establish a control process for the approval of such new products. An institution's policies also should provide for new complex structured finance products to receive the approval of all relevant control areas that are independent of the profit center before the products are offered to customers. With respect to the institution's elevated risk CSFTs, policies and procedures should provide for the appropriate levels of management and the board of directors to receive sufficient information and reports to perform their oversight functions.

### *Due Diligence, Approval, and Documentation Retention for Elevated Risk CSFTs*

A financial institution's transaction and new product approval controls should include policies, procedures, and systems to identify elevated risk CSFTs. The goal of each institution's policies and procedures should be to identify those CSFTs that warrant additional scrutiny in the transaction or new product approval process due to concerns regarding legal or reputational risks.

Having developed a process to identify elevated risk CSFTs, a financial institution should implement policies and procedures to conduct a heightened level of due diligence for these transactions. The financial institution should design these policies and procedures to allow personnel at an appropriate level to understand and evaluate the potential legal or reputational

risks presented by the transaction to the institution and to manage and address any heightened legal or reputational risks ultimately found to exist with the transaction.

A financial institution's policies and procedures should provide that CSFTs identified as having elevated legal or reputational risk are reviewed and approved by appropriate levels of control and management personnel. The institution's control framework should have procedures to deliver the necessary or appropriate information to the personnel responsible for reviewing or approving an elevated risk CSFT to allow them to properly perform their duties. Such information may include, for example, the material terms of the transaction, a summary of the institution's relationship with the customer, and a discussion of the significant legal, reputational, credit, market, and operational risks presented by the transaction.

A financial institution should create and collect sufficient documentation associated with elevated risk CSFTs to allow the institution to: document the material terms of the transaction; enforce the material obligations of the counterparties; confirm that the institution has provided the customer any disclosures concerning the transaction that the institution is otherwise required to provide; and verify that the institution's policies and procedures are being followed and allow the internal audit function to monitor compliance with those policies and procedures. When an institution's policies and procedures require an elevated risk CSFT to be submitted for approval to senior management, the institution should maintain the transaction-related documentation provided to senior management as well as other documentation that reflect management's approval (or disapproval) of the transaction, any conditions imposed by senior management, and the reasons for such action. The institution should retain documents created for elevated risk CSFTs in accordance with its record retention policies and procedures as well as applicable statutes and regulations.

### **Respondent Panel**

The FR 4022 panel comprises state member banks, bank holding companies (other than foreign banking organizations), SLHCs, and U.S. branches and agencies of foreign banks.

### **Time Schedule for Information Collection**

The maintenance of policies and procedures concerning CSFTs and the retention of documents related to elevated risk CSFTs is ongoing.

### **Public Availability of Data**

No data collected pursuant to this information collection is made available to the public.

### **Legal Status**

The Board's recordkeeping guidance associated with the Statement relates to information that the Board is authorized to collect under the Federal Reserve Act (with respect to state member banks),<sup>4</sup> under the Bank Holding Company Act (with respect to bank holding

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<sup>4</sup> 12 U.S.C. § 248(a).

companies),<sup>5</sup> under the Home Owners' Loan Act (with respect to SLHCs),<sup>6</sup> and under the International Banking Act (with respect to U.S. branches and agencies of foreign banks).<sup>7</sup>

Any policies, procedures, or other records voluntarily created based on the Statement would be maintained at the financial institution that created them. The Freedom of Information Act (FOIA) would be implicated only if the Board obtained such records 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.<sup>8</sup> Information provided on the FR 4022 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.<sup>9</sup>

The FR 4022 recordkeeping provisions are voluntary.<sup>10</sup>

### **Consultation Outside the Agency**

There has been no consultation outside the Federal Reserve System with respect to the proposed extension of this information collection.

### **Public Comments**

On January 25, 2022, the Board published an initial notice in the *Federal Register* (87 FR 3809) requesting public comment for 60 days on the extension, without revision, of the FR 4022. The comment period for this notice expires on March 28, 2022.

### **Estimate of Respondent Burden**

As shown in the table below, the estimated total annual burden for the FR 4022 is 180 hours. Since CSFTs are typically conducted by a limited number of large financial institutions, the Board estimates that only 18 of the institutions it supervises are affected by the Statement. The Board estimates that each of the 18 respondents will spend 10 hours each year to engage in the recordkeeping recommended by the Statement. Based on the Board's experience in supervising the CSFT activities of financial institutions, the Board believes that the recordkeeping provisions included in the Statement are generally consistent with the types of policies and procedures that large financial institutions actively involved in CSFTs already have developed and implemented as part of their usual and customary business practices. The burden estimate for the recordkeeping provisions reflects the time to revisit CSFT policies and procedures on a periodic basis to ensure that an institution's risk management systems continue to address the CSFT guidance, as well as the time associated with retaining records associated

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<sup>5</sup> 12 U.S.C. § 1844(c).

<sup>6</sup> 12 U.S.C. §§ 1467a(b) and 1467a(g).

<sup>7</sup> 12 U.S.C. §§ 3105(c) and 3108(a).

<sup>8</sup> 5 U.S.C. § 552(b)(8).

<sup>9</sup> 5 U.S.C. § 552(b)(4).

<sup>10</sup> See SR 18-5 / CA 18-7: Interagency Statement Clarifying the Role of Supervisory Guidance (Sept. 11, 2018).

with elevated risk CSFTs. These recordkeeping provisions represent less than 1 percent of the Board’s total paperwork burden.

<b>FR 4022</b>	<i>Estimated number of respondents</i> <sup>11</sup>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Maintain records associated with the compliance program	18	1	10	180

The estimated total annual cost to the public for the FR 4022 is \$10,647.<sup>12</sup>

### **Sensitive Questions**

This information collection contains 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 this information collection is negligible.

<sup>11</sup> Of these respondents, 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>.

<sup>12</sup> 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/>.