

**Supporting Statement for the
Reporting Requirements Associated with Regulation XX
(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 authority delegated by the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Reporting Requirements Associated with Regulation XX (FR XX; OMB No. 7100-0363) and the Financial Company (as defined) Report of Consolidated Liabilities (FR XX-1; OMB No. 7100-0363). The Board's Regulation XX - Concentration Limit (12 CFR Part 251) implements section 14 of the Bank Holding Company Act of 1956 (BHC Act),¹ which establishes 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 (a covered acquisition). Under section 14 of the BHC Act and Regulation XX, a financial company means (1) an insured depository institution, (2) a bank holding company, (3) a savings and loan holding company, (4) any other company that controls an insured depository institution, (5) a nonbank financial company designated by the Financial Stability Oversight Council (Council) for supervision by the Board, or (6) a foreign bank or company that is treated as a bank holding company for purposes of the BHC Act. Regulation XX includes certain reporting requirements that apply to financial companies, and the FR XX-1 report collects information from certain financial companies that do not otherwise report consolidated financial information to the Board or another Federal banking agency.

The Board proposes to revise the FR XX to account for section 251.3(e) of Regulation XX. This section provides that a financial firm that does not calculate its total consolidated assets or liabilities under U.S. generally accepted accounting principles (GAAP) may submit a request to the Board to use an accounting standard or method of estimation other than GAAP to measure compliance with section 14 of the BHC Act and Regulation XX. Additionally, the Board proposes to revise the FR XX-1 to make the report due annually by March 31st.

The current estimated total annual burden for this information collection is 94 hours, and would increase to 100 hours. The proposed revisions would result in an increase of 6 hours. There is no formal reporting form for the FR XX. The FR XX-1 form and instructions are available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/default.aspx>.

Background and Justification

Section 622 of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended the BHC Act to add a new section 14. Section 14 of the BHC Act establishes a

¹ 12 U.S.C. § 1852.

financial sector concentration limit that generally prevents a financial company from engaging in a covered acquisition. However, section 14 provides that such the Board may permit, through prior approval, a covered acquisition involving an acquisition (1) of a bank in default or in danger of default, (2) with respect to which assistance is provided by the Federal Deposit Insurance Corporation under 12 U.S.C. § 1823(c), or (3) that would result only in a de minimis increase in the liabilities of the acquirer.²

To implement section 14 of the BHC Act and the Council's recommendations, the Board promulgated Regulation XX, which sets forth the requirements for a request for prior Board approval of an acquisition and establishes reporting requirements for financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency, and created the FR XX-1.

Description of Information Collection

The reporting requirements associated with FR XX are found in sections 251.3(e) and sections 251.4(b) and (c) of Regulation XX and apply to financial companies. The reporting requirements associated with FR XX-1 are found in section 251.6 and apply to financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency.

FR XX

Section 251.3(e) of Regulation XX provides that a company does not calculate its total consolidated assets or liabilities under GAAP for any regulatory purpose (including compliance with applicable securities laws), the company may submit a request to the Board that the company use an accounting standard or method of estimation other than GAAP to calculate its liabilities for purposes of section 14 of the BHC Act and Regulation XX. Absent this approval by the Board, a financial company must use GAAP to calculate its compliance. As discussed below, the Paperwork Reduction Act clearance for FR XX does not currently account for the reporting provision in section 251.3(e) of Regulation XX, and the Board is proposing to revise FR XX to account for this provision.

Section 251.4(b) of Regulation XX provides that a financial company may request prior consent from the Board to conduct a covered acquisition. As discussed above, only certain acquisitions are eligible for prior consent from the Board.³ 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

² Section 14 provides that the concentration limit is subject to any recommendations made by the Council regarding modifications to the concentration limit that the Council determines would more effectively implement the concentration limit, and that the Board issue final regulations implementing section 14 that reflect such recommendations. On January 18, 2011, the Council recommended that the Board's regulations should, among other things, measure liabilities of financial companies not subject to consolidated risk-based capital rules by using GAAP or other appropriate accounting standards 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.

³ See 12 CFR 251.4(a).

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) of Regulation XX allows a financial company to engage in a covered acquisition without prior Board consent if a covered acquisition that would result in an increase in acquisition 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 prior 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 of Regulation XX requires financial companies that do not report consolidated financial information to the Board or other appropriate Federal banking agency 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.

This reporting requirement is implemented through the FR XX-1 reporting form.⁴ The form requires respondents to report the financial company's total liabilities, and the instructions to the form list each type of liability that respondents must include in this total. Respondents must report their liabilities on a consolidated basis under U.S. generally accepted accounting principles (GAAP), unless the Board permits the company to report its estimated total consolidated liabilities using an accounting standard or method of estimation other than GAAP pursuant to section 251.3(e) of Regulation XX.

Respondent Panel

The FR XX panel comprises financial companies, as defined above. The FR XX-1 panel comprises financial companies that do not otherwise report consolidated financial information to the Board or other appropriate Federal banking agency.

⁴ Specifically, the FR XX-1 must be filed by a financial company that is (1) a top-tier company that controls an insured depository institution, as defined in section 3(c)(2) of the Federal Deposit Insurance Act, but does not file the Consolidated Financial Statements for Holding Companies (FR Y-9C; OMB No. 7100-0128), Parent Company Only Financial Statements for Small Holding Companies (FR Y-9SP), Parent Company Only Financial Statements for Large Holding Companies (FR Y-9LP), Capital and Asset Report for Foreign Banking Organizations (FR Y-7Q; OMB No. 7100-0125), or consolidated total liabilities on the Quarterly Savings and Loan Holding Company Report (FR 2320; OMB No. 7100-0345) or (2) a nonbank financial company supervised by the Board that does not file the Consolidated Financial Statements for Holding Companies (FR Y-9C).

Proposed Revisions to the FR XX

The Board proposes to revise the FR XX to account for the reporting provision located at section 251.3(e), discussed above. This provision of the regulation implements the Council's recommendation to allow a financial company that does not use GAAP to use another appropriate accounting standard or method of estimation for determining compliance with section 14 of the BHC Act, while ensuring that the Board has an opportunity to review the appropriateness of the company's proposed approach.

Proposed Revisions to the FR XX-1

The Board proposes to revise the due date for the FR XX-1 report. The FR XX-1 report implements section 251.6(a) of Regulation XX, which requires a financial company that does not otherwise report consolidated financial information to the Board or another Federal banking agency to report to the Board its consolidated liabilities as of the previous calendar year-end. Regulation XX provides that this report must be submitted by March 31 of each year. However, the instructions to the FR XX-1 currently state that the report must be submitted 90 calendar days after the December 31 as of date or, if the submission deadline falls on a weekend or holiday, the first business day after the weekend or holiday. Under these instructions, the FR XX-1 could be due prior to March 31 (in a leap year) or after March 31 (if March 31 falls on a weekend or holiday). In order to ensure that the due date of the FR XX-1 report coincides with the date set forth in Regulation XX, the Board proposes to revise the FR XX-1 so that it is due by March 31st of the year following the December 31 as of date.

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 report is due by March 31 of the following year.

Public Availability of Data

Each submitted FR XX-1 and each request or post-notice made pursuant to Regulation XX generally is available to the public upon request on an individual basis.

Legal Status

The FR XX and the FR XX-1 are authorized by section 14 of the BHC Act, which, in relevant part, expressly authorizes the Board to "issue regulations implementing this section . . .," and it "may issue interpretations or guidance regarding the application of this section to an individual financial company or to financial companies in general" (12 U.S.C. § 1852(d)). The Board also has the authority to require reports from bank holding companies (12 U.S.C. § 1844(c)), savings and loan holding companies (12 U.S.C. §§ 1467a(b) and (g)), state member

banks (12 U.S.C. §§ 248(a) and 324), and state-licensed branches and agencies of foreign banks, other than insured branches (12 U.S.C. § 3105(c)(2)). The obligation to respond is mandatory.

Individual respondents may request that information submitted to the Board through the FR XX or FR XX-1 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. To the extent a respondent submits nonpublic commercial or financial information in connection with the FR XX or FR XX-1, which is both customarily and actually treated as private by the respondent, the respondent may request confidential treatment pursuant to exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(4)). The entity should separately designate such information as “confidential commercial information” or “confidential financial information, as appropriate, and the Board will treat such designated information as confidential to the extent permitted by law, including the FOIA.

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On August 21, 2020, the Board published an initial notice in the *Federal Register* (85 FR 51713) requesting public comment for 60 days on the extension, with revision, of the FR XX and FR XX-1. The comment period for this notice expires on October 20, 2020.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for this information collection is 94 hours, and would increase to 100 hours with the proposed revisions. The Board estimates that average hours per response for the section 251.3(e) reporting requirements would be 6 hours. These reporting requirements represent less than 1 percent of the Board’s total paperwork burden.

FR XX and FR XX-1	<i>Estimated number of respondents⁵</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Current Reporting				
FR XX				
Sections 251.4(b) and (c)	1	1	20	20
FR XX-1				
Section 251.6	37	1	2	<u>74</u>
	<i>Current Total</i>			94
Proposed Reporting				
FR XX				
Section 251.3(e)	1	1	6	6
FR XX				
Sections 251.4(b) and (c)	1	1	20	20
FR XX-1				
Section 251.6	37	1	2	<u>74</u>
	<i>Proposed Total</i>			100
	<i>Change</i>			6

The current estimated total annual cost to the public for this information collection is \$5,429 and would increase to \$5,775 with the proposed revisions.⁶

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 estimated cost to the Federal Reserve System for collecting and processing the FR XX-1 is \$24,700 per year.

⁵ Of these respondents, 9 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>.

⁶ 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 \$71, 15% Lawyers at \$70, 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 2019*, published March 31, 2020, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.