

**Supporting Statement for the
Notifications Related to Community Development and
Public Welfare Investments of State Member Banks
(FR H-6; OMB No. 7100-0278)**

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 Notifications Related to Community Development and Public Welfare Investments of State Member Banks (FR H-6; OMB No. 7100-0278). Regulation H requires state member banks (SMBs) planning to make community development or public welfare investments to comply with the following Regulation H notification requirements:

- If the investment does not require prior Board approval per 12 CFR 208.22(b), a written notice must be sent to the appropriate Federal Reserve Bank in accordance with 12 CFR 208.22(c).
- If the investment does require prior Board approval per 12 CFR 208.22(d), a request for approval must be sent to the appropriate Federal Reserve Bank in accordance with 12 CFR 208.22(d).

The Board proposes to revise the FR H-6 by removing the notification requirement to submit the request for extension of the divestiture period when the bank cannot divest within the established time limit. This requirement has been listed on the form and in the supporting statement for a number of years, but is not contained in the regulations.

The current estimated total annual burden for the FR H-6 is 639 hours and would decrease to 634 hours. The proposed revision would result in a decrease of five hours. No form is required for these notification requirements, although the Board supplies a model form that banks may use to notify the appropriate Federal Reserve Bank of investments that do not require prior approval per 12 CFR 208.22(b). The model form is available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/default.aspx>.

Background and Justification

On December 7, 1994, the Board added to Regulation H a new section entitled "Community Development and Public Welfare Investments" to implement a provision of the Depository Institutions Disaster Relief Act of 1992. The statutory provision authorizes SMBs to make investments designed primarily to promote the public welfare to the extent permissible under state law and subject to regulation by the Board. Regulation H permits SMBs to make certain public welfare investments without prior approval and to make other public welfare investments with specific Board approval.

An SMB may make a public welfare investment without prior approval so long as the aggregate of such investments does not exceed five percent of the capital stock and surplus of the SMB, and:

- the investment (a) previously has been determined to be a public welfare investment by

the Board or the Office of the Comptroller of the Currency (OCC), (b) is in a community development financial institution (CDFI) as defined in the Community Development Banking and Financial Institutions Act of 1994, or (c) is in an entity established solely to engage in one or more of the following activities: developing low- and moderate-income residential housing, developing nonresidential real estate in a low- or moderate-income area that is targeted towards low- and moderate-income persons, developing small business opportunities in a low- or moderate-income area, job training or placement for low- and moderate-income persons, creating employment opportunities in a low- or moderate-income area for low- and moderate-income persons, and providing technical assistance and credit counseling to benefit community development;¹

- the investment is permitted by state law;
- the investment is in a corporation, limited partnership, or other entity;
- the investment does not expose the SMB to liability beyond the amount of the investment;
- the bank is at least adequately capitalized and rated a composite CAMELS 1 or 2 and at least, 1 or 2 in its last consumer compliance examination; and
- the SMB is not subject to any written agreement, cease and desist order, capital directive, prompt corrective action directive, or memorandum of understanding issued by the Board or a Reserve Bank acting under delegated authority.

If these conditions are not met, an SMB must receive Board approval before making an investment. In no event may aggregate public welfare investments exceed five percent of the SMB's capital stock and surplus (12 U.S.C. 338a).

If a public welfare investment ceases to meet the statutory requirements or certain regulatory requirements, the SMB must divest itself of the investment to the extent that the investment ceases to meet those requirements. Divestiture is not required if the investment ceases to meet the non-statutory requirements concerning capital, examination ratings, and enforcement actions. This divestiture is governed by the same requirements as divestitures of interests acquired by a lending subsidiary of a bank holding company or a bank holding company itself in satisfaction of a debt previously contracted (12 CFR 225.140). The Board will monitor the efforts of the company to effect an orderly divestiture and may order divestiture if supervisory concerns warrant such action. Information about the identity and amount of public welfare investments that Regulation H requires the Board to collect is used for supervisory compliance and informs the Community Affairs function of the Federal Reserve System. The mission of the Federal Reserve's Community Affairs Office (CAO) is to support the Federal Reserve System's economic growth objectives by promoting community development and fair and impartial access to credit. Toward this end, the CAO of each Reserve Bank develops specific projects and services to meet its regional market's needs for information relating to community development activities.

¹ Regulation H uses the U.S. Department of Housing and Urban Development's Chapter 69 Community Development definition of low- and moderate-income persons and the U.S. Small Business Administration's definition of a small business.

This information is not available from other sources.

Description of Information Collection

There are three types of notification requirements in 12 CFR 208.22: (1) the public welfare investment notice, (2) the request for prior approval, and (3) the request for extension of the divestiture period. When a public welfare investment is made without prior approval, the SMB must notify its Federal Reserve Bank within 30 calendar days of the investment, including the amount of the investment and the identity of the entity in which the investment is made.

Regulation H requires SMBs engaging in certain public welfare and community development investments to provide notice of such investments to the Federal Reserve Bank of which it is a member. The regulation specifies that the notice, which may be submitted on bank letterhead or on the optional FR H-6 model form, provide the amount of the investment and identity of the entity in which the investment was made. In addition to this information, banks typically describe the mission and service area of the entity in which the investment was made and how the investment meets the definition of public welfare and community development. Even though this information is not required by Regulation H, Reserve Bank staff contact the investing bank to obtain such information to evaluate the permissibility of the investment, imposing additional burden for both Reserve Bank staff and bank management.

In 2002, a model form was adopted that banks may use, at their option, to report the information required by Regulation H for investments that do not require prior Board approval.

When a public welfare investment requires prior Board approval, the SMB must submit a request for approval to the appropriate Federal Reserve Bank. The request should include, at a minimum:

- the amount of the proposed investment;
- a description of the entity in which the investment is to be made;
- an explanation of how the investment meets the statutory definition of a public welfare investment;
- a description of the SMB's potential liability under the proposed investment;
- the amount of the SMB's aggregate outstanding public welfare investments;
- the amount of the SMB's capital stock and surplus; and
- the reason(s) why the investment is ineligible to be made without prior approval.

Respondent Panel

The FR H-6 panel is comprised of SMBs.

Proposed Revisions to the FR H-6

The Board proposes to revise the FR H-6 to remove the notification requirement for SMB to file a request for extension if they fail to accomplish a required divestiture.

Time Schedule for Information Collection

The three notifications (public welfare investment notice, request for approval, and request for extension of a divestiture period) are event generated. An SMB must file a notice with the appropriate Reserve Bank within 30 calendar days of making an investment that does not require prior approval. For investments requiring prior approval, the Board must act on the request within 60 calendar days of receipt or notify the requesting SMB that a longer period of time will be required.

Public Availability of Data

There is no data related to this information collection available to the public.

Legal Status

The FR H-6 is authorized by section 9(23) of the Federal Reserve Act authorizes the Board to prescribe regulations with regard to state member banks making investments primarily devoted to public welfare endeavors.² The obligation to respond is mandatory.

Individual respondents may request that information submitted to the Board through the FR H-6 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. Information collected through the FR H-6 may be kept confidential under exemption 4 for the Freedom of Information Act (FOIA), which protects privileged or confidential commercial or financial information.³ Additionally, to the extent the FR H-6 contains information used in examination reports, it may be withheld from disclosure under FOIA Exemption 8, which protects information “related to examination, operating, or condition reports.”⁴

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On September 17, 2020, the Board published an initial notice in the *Federal Register* (85 FR 58052) requesting public comment for 60 days on the extension, with revision, of the FR H-6. The comment period for this notice expires on November 16, 2020.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR H-6 is 639 hours, and would decrease to 634 hours with the proposed revisions. The estimated number of

² 12 U.S.C. § 338a. The Board also has the authority to require reports from state member banks (12 U.S.C. §§ 248(a) and 324).

³ 5 U.S.C. § 552(b)(4).

⁴ 5 U.S.C. § 552(b)(8).

respondents listed is based on the number of requests and notices received by the Federal Reserve in 2019. These reporting requirements represent less than 1 percent of the Board’s total paperwork burden.

FR H-6	<i>Estimated number of respondents⁵</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Current				
FR H-6 Post Notifications	132	1	2	264
Application (Prior Approval)	74	1	5	370
Extension of divestiture period	<u>1</u>	1	5	<u>5</u>
<i>Total</i>	207			639
Proposed				
FR H-6 Post Notification	132	1	2	264
Application (Prior Approval)	<u>74</u>	1	5	<u>370</u>
<i>Total</i>	206			634

The estimated total annual cost to the public for this collection of information is \$36,614.⁶

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 this information collection is negligible.

⁵ 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>. There are no special accommodations given to mitigate the burden on small institutions.

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 www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.