

**Supporting Statement for the
Notice Requirements in Connection with Regulation W
(12 CFR Part 223 Transactions Between Member Banks and Their Affiliates)
(Reg W; OMB No. 7100- 0304)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the notice requirements in connection with Regulation W, which implements comprehensively sections 23A and 23B of the Federal Reserve Act (OMB No. 7100-0304). The Paperwork Reduction Act (PRA) classifies reporting, recordkeeping, or disclosure requirements of a regulation as an information collection.¹ The PRA requires the Federal Reserve to renew authority for information collections every three years. If approved by the Board, a notice of the renewal will be published in the *Federal Register* for public comment.

The information collection pursuant to Regulation W is triggered by specific events, and there are no required reporting forms associated with these transactions. The respondents are all insured depository institutions and uninsured member banks. The total estimated annual burden for the 28 respondents is 220 hours.

Background and Justification

Sections 23A and 23B of the Federal Reserve Act are statutory provisions designed to protect against a depository institution suffering losses in transactions with affiliates.² They also limit the ability of an insured depository institution to transfer to its affiliates the subsidy arising from the institution's access to the federal safety net. Sections 23A and 23B apply, by their terms, to banks that are members of the Federal Reserve System (member banks). Other federal law subjects insured nonmember banks and insured thrifts to sections 23A and 23B in the same manner and to the same extent as if they were member banks.

On December 12, 2002, the Federal Reserve published a *Federal Register* notice³ adopting Reg W to implement sections 23A and 23B. The Regulation was effective April 1, 2003. The Board issued Reg W for several reasons. First, the regulatory framework established by the Gramm-Leach-Bliley Act⁴ emphasizes the importance of sections 23A and 23B as a means to protect depository institutions from losses in transactions with affiliates. Second, adoption of a comprehensive rule simplified the interpretation and application of sections 23A and 23B, ensured that the statute is consistently interpreted and applied, and minimized burden on banking organizations to the extent consistent with the statute's goals. Third, issuing a comprehensive rule

¹ 44 U.S.C. § 3501 *et seq*

² 12 U.S.C. §§ 371c and 371c-1

³ (67 FR 76603)

⁴ Pub. L. No. 106-102, 113 Stat. 1338 (1999).

allowed the public an opportunity to comment on Federal Reserve interpretations of sections 23A and 23B.

Description of Information Collection

The information collection requirements in Regulation W are found in 12 CFR 223.15(b)(4), 223.31(d)(4), 223.41(d)(2), and 223.43(b). This information is required to evidence compliance with sections 23A and 23B of the Federal Reserve Act (12 U.S.C. 371c(f) and 371c-1(e)) or to request an exemption from the Board. The notice requirements associated with Regulation W are described below.

Loan Participation Renewal notice (12 CFR 223.15(b)(4)) is a condition to an exemption for renewals of loan participations involving problem loans. The participating depository institution must provide its appropriate federal banking agency with written notice of the renewal of, or the extension of additional credit in connection with, a low-quality asset not later than 20 days after consummation.

Acquisition notice (12 CFR 223.31(d)(4)) is a condition to an exemption for a depository institution's acquisition of an affiliate that becomes an operating subsidiary of the institution after the acquisition. The institution must provide the appropriate federal banking agency and the Federal Reserve Board with written notice of its intention to acquire the company at or before the time that the company becomes an affiliate of the institution. The notice also must describe the primary business activities of the company.

Internal Corporate Reorganization Transactions notice (12 CFR 223.41(d)(2)) is a condition to an exemption for internal corporate reorganization transactions. The depository institution must provide the appropriate federal banking agency and the Federal Reserve Board 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 reorganization.

Section 23A Additional Exemption notice (12 CFR 223.43(b)) provides procedures for requesting additional exemptions from the requirements of section 23A. The insured depository institution must submit a written request to the General Counsel of the Federal Reserve Board. The request must describe in detail the transaction or relationship for which the institution seeks an 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.

Time Schedule for Information Collection

These notifications are event-generated and must be provided to the appropriate federal banking agency and, if applicable, the Federal Reserve Board within the time periods established by the law and regulation as discussed above. This information collection is mandatory.

Legal Status

The Board's Legal Division has determined that sections 23A and 23B of the Federal Reserve Act authorize the Board to issue regulations to carry out the provisions of that Act. 12 U.S.C. §§ 371c and 371c-1. The Board's Legal Division also determined that confidential and proprietary information collected for the purposes of the Loan Participation Renewal notice 12 CFR 223.15(b)(4) may be protected under the authority of the Freedom of Information Act (FOIA) [5 U.S.C. § 552(b)(4)]. Section (b)(4) of FOIA exempts information deemed competitively sensitive from disclosure. However, respondents who desire that the information on these notice be kept confidential in accordance with section (b)(4) can request confidential treatment under the Board's rules at 12 C.F.R. § 261.15. In addition, information that is obtained as part of an examination or supervision of a bank is exempt from disclosure under FOIA exemption (b)(8), for examination material. 5 U.S.C. § 552(b)(8).

Estimate of Respondent Burden

The estimated total annual burden for the notice requirements of this information collection is 220 hours, as shown in the table below. The number of respondents is estimated based on notices submitted the Federal Reserve Board during 2008. The burden represents less than 1 percent of the total Federal Reserve System paperwork burden.

Regulation W notice requirements	<i>Estimated number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
12 CFR 223.15(b)(4)	1	1	2 hours	2
12 CFR 223.31(d)(4)	1	1	6 hours	6
12 CFR 223.41(d)(2)	12	1	6 hours	72
12 CFR 223.43(b)	<u>14</u>	1	10 hours	<u>140</u>
<i>Total</i>	28			220

The total cost to the public is estimated to be \$13,563.⁵

Estimate of Cost to the Federal Reserve System

The cost to the Federal Reserve System to process these notifications is negligible.

⁵ Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% Administrative/Junior Analyst @ \$25, 45% Managerial or Technical @ \$55, 15% Senior Management @ \$100, and 10% Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, Occupational Employment Consumer cost of \$20 is based on the U.S. Department of Labor Bureau of Labor Statistics, Quarterly Census of Employment and Wages and Wages, news release.

Consultation Outside of the Agency

On March 4, 2009, the Federal Reserve published a notice in the *Federal Register* (74 FR 9401) requesting public comment for 60 days on the Reg W information collection. The comment period for this notice expires on May 4, 2009.

Sensitive Questions

This information collection contains no questions of a sensitive nature, as defined by OMB guidelines.