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31 CFR Part 148
Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority; Proposed Rule

DEPARTMENT OF THE TREASURY

31 CFR Part 148

RIN 1505–AC36

Qualified Financial Contracts Recordkeeping Related to Orderly Liquidation Authority

AGENCY: The Secretary of the Department of the Treasury, as Chairperson of the Financial Stability Oversight Council.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Secretary of the Treasury (the ''Secretary''), as Chairperson of the Financial Stability Oversight Council, is proposing rules (the ''Proposed Rules'') to implement the qualified financial contract (''QFC'') recordkeeping requirements of the Dodd–Frank Wall Street Reform and Consumer Protection Act (''Act'' or the ''Dodd–Frank Act''). The Act provides that if the federal primary financial regulatory agencies do not prescribe joint final or interim final regulations requiring financial companies to maintain records with respect to QFCs to assist the Federal Deposit Insurance Corporation (''FDIC'') as receiver for a covered financial company to exercise its rights and fulfill its obligations under the Act within 24 months of the enactment of the Act, the Chairperson of the Financial Stability Oversight Council (the ''Council'') shall prescribe, in consultation with the FDIC, such regulations. The Secretary, as Chairperson of the Council, is proposing the Proposed Rules in consultation with the FDIC because the federal primary financial regulatory agencies did not so prescribe joint final or interim final regulations. The Proposed Rules would require recordkeeping with respect to positions, counterparties, legal documentation and collateral. This information is necessary to assist the FDIC as receiver to: Fulfill its obligations under the Dodd–Frank Act in deciding whether to transfer QFCs; assess the consequences of decisions to transfer, disaffirm or repudiate, or allow the termination of, QFCs with one or more counterparties; determine if any financial systemic risks are posed by the transfer, disaffirmance or repudiation, or termination of such QFCs; and otherwise exercise its rights under the Act. The Secretary is requesting comment on all aspects of the Proposed Rules.

DATES: Written comments must be received by April 7, 2015.

ADDRESSES: Submit comments electronically through the Federal eRulemaking Portal: *http://www.regulations.gov,* or by mail (if hard copy, preferably an original and two copies) to: The Treasury Department, Attn: Qualified Financial Contracts Recordkeeping Comments, 1500 Pennsylvania Avenue NW., Washington, DC 20220. Because paper mail in the Washington, DC area may be subject to delay, it is recommended that comments be submitted electronically. Please include your name, affiliation, address, email address, and telephone number in your comment. Comments will be available for public inspection on *www.regulations.gov.* In general, comments received, including attachments and other supporting materials, are part of the public record and are available to the public. Do not submit any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Monique Rollins, Acting Deputy Assistant Secretary for Capital Markets; Patricia Kao, Director, Office of Financial Institutions Policy: (202) 622–4948.

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I. Introduction

A. Executive Summary

The Dodd-Frank Act was enacted on July 21, 2010.[1] As part of a new and comprehensive regulatory framework, Title II of the Dodd-Frank Act (''Title II'') generally establishes a mechanism for the orderly resolution of a financial company whose failure and resolution under otherwise applicable federal or state law would have serious adverse effects on financial stability in the United States. A ''financial company'' under Title II is a company that is incorporated or organized under any provision of federal law or the laws of any State (as defined in 12 U.S.C. 5301(16)) that is:

- A bank holding company;
- A nonbank financial company supervised by the Board of Governors of the Federal Reserve System (''Board'');
- Any company that is predominantly engaged in activities that the Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956 (''BHC Act''); [2] or
- Any subsidiary of such financial company that is itself predominantly engaged in activities that the Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act, other than an insured depository institution or an insurance company.[3]

The Title II orderly liquidation mechanism is modeled in part on

[1] Dodd-Frank Wall Street Reform and Consumer Protection Act, Pub. L. 111–203, 124 Stat. 1376 (2010).

[2] The FDIC has published a final rule that identifies the activities listed in section 4(k) of the BHC Act and the Board's Regulation Y (12 CFR part 225) that would be considered financial in nature or incidental thereto for purposes of Title II. *See* 78 FR 34712 (June 10, 2013).

[3] Dodd-Frank Section 201(a)(11), 12 U.S.C. 5381(a)(11). The definition excludes Farm Credit System institutions chartered under and subject to the provisions of the Farm Credit Act; governmental entities; and regulated entities, as defined under section 1303(20) of the Federal Housing Enterprises Financial Safety and Soundness Act of 1992.

provisions of the Federal Deposit Insurance Act (''FDIA'') [4] regarding insolvencies of insured depository institutions. Under Title II, the FDIC has been given similar responsibilities as under the FDIA, including receivership authority over financial companies in default or in danger of default for which a determination has been made by the Secretary (in consultation with the President) to seek the appointment of the FDIC as receiver pursuant to section 203(b) of the Dodd-Frank Act.

Title II includes provisions, set forth at section 210(c)(8), concerning the QFCs held by covered financial companies. A ''QFC'' is a securities contract, commodities contract, forward contract, repurchase agreement, swap agreement, or any similar agreement that the FDIC determines by regulation, resolution, or order to be a qualified financial contract; [5] and a ''covered financial company'' is a financial company, other than an insured depository institution, for which the Secretary has made a determination to seek the appointment of the FDIC as receiver under the Dodd-Frank Act.[6]

The treatment afforded to QFCs under Title II parallels the treatment afforded to them under section 11(e) of the FDIA.[7] Under Title II and the FDIA, from the time the FDIC is appointed as receiver until 5 p.m. (eastern time) on the business day following the date of the appointment, a QFC counterparty is prohibited from exercising any contractual rights (including termination) triggered by the appointment of the receiver.[8]

After its appointment as receiver and prior to 5 p.m. on the following business day, the FDIC has three options for a QFC to which a covered financial company is a party:

(1) Transfer the QFC to another financial institution;

(2) Retain the QFC within the receivership and allow the counterparty to terminate; or

(3) Retain the QFC within the receivership and disaffirm or repudiate the QFC and pay compensatory damages.[9]

In order to assess the options that would be available following its appointment as receiver, the FDIC needs detailed information about the covered financial company's QFCs. Section 210(c)(8)(H) therefore requires that the Federal primary financial regulatory agencies, as defined in the Act [10] (the ''PFRAs''), to jointly prescribe, by July 21, 2012, final or interim final regulations that require financial companies to maintain such records with respect to QFCs that the PFRAs determine to be necessary or appropriate to assist the FDIC as receiver for a covered financial company. Section 210(c)(8)(H) further provides that if the PFRAs do not so prescribe such joint regulations by July 21, 2012, the Secretary, as Chairperson of the Council, shall prescribe such regulations in consultation with the FDIC.

As the PFRAs did not prescribe such regulations by the statutory deadline, the Secretary, as Chairperson of the Council, in consultation with the FDIC, is publishing the Proposed Rules. As described in greater detail below, the Proposed Rules would apply to a ''records entity,'' which is defined in the Proposed Rules to include certain types of financial companies that are parties to an open QFC or guarantee, support, or are linked to an open QFC and that meet certain size or other thresholds (such as risk, complexity, and interconnectedness), or other conditions or are certain affiliates in the same corporate group as a financial company that meets these thresholds or conditions (referred throughout this release as ''affiliated financial companies'') and that are party to an open QFC or that guarantee, support, or are linked to an open QFC of an affiliate.[11]

The Proposed Rules would require these records entities to maintain detailed information about their QFC positions and be capable of providing this information to their PFRAs within 24 hours of request by their PFRAs. This would assist the FDIC in resolving financial companies that may be subject to an orderly liquidation under Title II of the Dodd-Frank Act based on consideration of such financial companies' size, risk, complexity, leverage, frequency and dollar amount of QFCs and interconnectedness to the financial system, and any other factors deemed appropriate.[12] To that end, it is necessary that financial companies that qualify as records entities maintain the capacity to generate, on an ongoing basis, QFC information in a common data format. To facilitate the resolution of QFC portfolios, the FDIC needs to analyze such data upon being appointed as receiver under Title II. The information must be sufficient to allow the FDIC to estimate the financial and operational impact on the covered financial company or its affiliated companies of the FDIC's decision to transfer, disaffirm or repudiate, or retain the QFCs. It must also allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole. The standardized data format would reduce the time and effort needed by the FDIC to perform the analysis and would facilitate comparison of QFC data across financial companies with large complex QFC portfolios.

The Proposed Rules also would allow the Secretary to issue conditional or unconditional general and specific exemptions from one or more requirements in the rule as the Secretary determines to be necessary or appropriate, including whether application of one or more requirements of the rule would not be necessary to achieve the purpose of the rule. The issuance of a conditional or unconditional exemption would be consistent with section 210(c)(8)(H)(iv) of the Act which provides that the regulations required by section 210(c)(8)(H)(i) differentiate among financial companies, as appropriate, by taking into consideration a number of factors. Specifically, the Secretary would consider whether to grant an exemption after receiving a recommendation from the FDIC, prepared in consultation with the applicable PFRAs, that takes into consideration the financial company's or financial companies' size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system and any other factors deemed necessary or appropriate.

The proposed recordkeeping requirements of the Proposed Rules are based, in part, on 12 CFR part 371, Recordkeeping Requirements for Qualified Financial Contracts,[13] which

[4] 12 U.S.C. 1811 *et seq.*

[5] 12 U.S.C. 5390(c)(8)(D)(i).

[6] 12 U.S.C. 5381(a)(8).

[7] 12 U.S.C. 1821(e).

[8] *See e.g.,* 12 U.S.C. 5390(c)(9) and (10).

[9] 12 U.S.C. 5390(c)(1), (10) and (11).

[10] 12 U.S.C. 5301(12). *See* the term ''primary financial regulatory agency.''

[11] The term ''affiliated financial companies'' used in this release is the combination of two defined terms in the Proposed Rules: ''affiliate'' is defined in § 148.2(a) and ''financial company'' is defined in § 148.2(f) of the Proposed Rules. An affiliated financial company of a records entity would itself be a records entity if it is not an exempt entity and is a party to an open QFC or guarantees, supports, or is linked to an open QFC of an affiliate. An ''open'' QFC is a QFC which has not been fully performed.

[12] See 12 U.S.C. 5390(c)(8)(H)(iv).

[13] 73 FR 78170 (Dec. 22, 2008). Part 371 requires an insured depository institution in troubled condition, upon written notification by the FDIC, to produce immediately at the close of processing of the institution's business day, for a period provided in the notification, the electronic files for certain position level and counterparty level data; electronic or written lists of QFC counterparty and

Continued

implements section 11(e)(8)(H) of the FDIA.[14] The Proposed Rules also have been informed by the FDIC's experience with both large and small portfolios of QFCs of failed insured depository institutions.

The recent financial crisis demonstrated that management of QFC positions, including steps undertaken to close out such positions, can be an important element of a resolution strategy which, if not handled properly, may magnify market instability. The recordkeeping requirements of the Proposed Rules are designed to ensure that the FDIC, as receiver of a covered financial company, will have comprehensive information about the QFC portfolio maintained by such financial company subject to orderly resolution, and to enable the FDIC to plan the rapid and orderly resolution of a financial company's QFC portfolio in the event of insolvency. The Proposed Rules are also designed to provide the FDIC with information necessary for the FDIC as receiver to comply with the statutory requirements for the transfer, disaffirmance, or repudiation of the QFCs of a financial company, within any applicable time periods mandated under Title II of the Dodd-Frank Act.

B. Publication of the Notice of Proposed Rulemaking

The Secretary is publishing this notice of proposed rulemaking in light of his responsibilities under section 210(c)(8)(H) of the Dodd-Frank Act. The Secretary is seeking comment on all aspects of the Proposed Rules.

The Proposed Rules provide that the compliance date for most of the provisions will be the day that is 270 days after a records entity becomes subject to the final rule. Thus, for entities that would be subject to the final rule on its effective date, the compliance date would be the day that is 270 days after the effective date of the final rule (which is 330 days after the date of publication). However, one aspect of the Proposed Rules will require compliance in 60 days. Specifically, on the effective date of the final rule, a records entity must provide up-to-date contact information to the FDIC and each of its PFRAs. A financial company that becomes a records entity after the effective date of the final rule would be required to provide such contact information within 60 days of becoming a records entity.

portfolio location identifiers, certain affiliates of the institution and the institution's counterparties to QFC transactions, contact information and organizational charts for key personnel involved in QFC activities, and contact information for vendors for such activities; and copies of key agreements and related documents for each QFC.

[14] 12 U.S.C. 1821(e)(8)(H).

II. Background—QFCs and Receivership

A QFC is a type of financial contract and is defined in section 210(c)(8) of the Act. As further described below, QFCs are treated differently than other types of contracts in the event of the failure of a financial company.[15] The treatment afforded to QFCs under Title II parallels the treatment afforded to QFCs under section 11(e) of the FDIA.[16]

Under section 210(c)(8), QFCs include five specific types of financial contracts: securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements.[17] The FDIC is empowered to define other similar agreements as QFCs by rule, regulation or order.[18] In addition, a master agreement that governs any contracts in these five categories is treated as a QFC.[19] Security agreements, guarantees, credit enhancements or reimbursement obligations that relate to QFCs are also defined to be QFCs.[20] All swaps and security-based swaps defined in Title VII of the Act qualify as QFCs under section 210(c)(8).

The filing of a bankruptcy petition or the appointment of the FDIC as receiver triggers an automatic stay that precludes a party to most types of contracts with an insolvent company from taking actions under that contract.[21] Therefore, most types of contracts with a financial company cannot be terminated based solely upon the appointment of the FDIC as receiver.[22] Under Title II, the FDIA, and other U.S. insolvency statutes, however, a party to a QFC with an insolvent entity can exercise any of its contractual rights to terminate such QFC, offset or net any amounts due, and apply any pledged collateral for payment of such amounts subject to certain conditions.[23] Further, under Title 11 of the United States Bankruptcy Code (''Bankruptcy Code''), this right to terminate is immediate upon initiation of bankruptcy proceedings.[24] However, Title II and the FDIA do not permit counterparties to exercise a contractual right of termination based solely upon insolvency or the appointment of a receiver until after 5 p.m. (eastern time) on the first business day following the appointment of the FDIC as receiver,[25] nor do they permit counterparties to terminate a QFC because of its transfer to a bridge entity or another financial institution.[26]

[15] 12 U.S.C. 5390(c)(8), (9), and (10).

[16] 12 U.S.C. 1821(e).

[17] 12 U.S.C. 5390(c)(8)(D)(i). The term ''securities contract'' includes contracts ''for the purchase, sale or loan of a security[.]'' 12 U.S.C. 5390(c)(8)(D)(ii).

[18] 12 U.S.C. 5390(c)(8)(D)(i).

[19] 12 U.S.C. 5390(c)(8)(D)(viii).

[20] 12 U.S.C. 5390(c)(8)(D)(ii)–(vi).

[21] *See* 11 U.S.C. 361; 12 U.S.C. 1821(e)(13); 12 U.S.C. 5390(c)(13).

[22] 12 U.S.C. 5390(c)(13) and 12 U.S.C. 1821(e)(13)(A).

[23] *See e.g.,*12 U.S.C. 5390(c)(8)(A).

[24] 11 U.S.C. 362(b)(6), (7) and (17).

After its appointment as receiver and prior to the close of the 5 p.m. window, the FDIC has three options in managing a covered financial company's QFC portfolio. With respect to all of the covered financial company's QFCs with a particular counterparty, and its affiliates, the FDIC may:

(1) Transfer the QFCs to another institution, including a bridge financial company established by the FDIC;[27]

(2) Retain the QFCs within the receivership and allow the counterparty to terminate; or

(3) Retain the QFCs within the receivership, disaffirm or repudiate the QFCs, and pay compensatory damages.[28]

Within certain constraints,[29] the FDIC can take different approaches to QFCs with different counterparties. However, the receiver's power to transfer or repudiate a QFC is limited. If the FDIC as receiver desires to transfer any QFC with a particular counterparty, it must transfer all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty to a single financial institution. Similarly, if the FDIC desires to repudiate any QFC with a particular counterparty, it must repudiate all QFCs between the covered financial company and such counterparty and any affiliate of such counterparty as a group.[30]

Transfer: The FDIC may transfer a QFC to any other financial institution not subject to a bankruptcy or insolvency proceeding. Such financial

[25] 12 U.S.C. 1821(e)(10)(B)(i) and 12 U.S.C. 5390(c)(10)(B)(i). This time frame in which QFC counterparties are stayed from acting is in contrast to parties to other contracts with a failed financial company, who are stayed from terminating such other contracts for 90 days.

[26] Id. There is an exception to this general rule in section 210(c)(8)(G) with respect to cleared QFCs, which provides in relevant part that a clearing organization would not be stayed from exercising its rights to liquidate all positions and collateral of the covered financial company under the company's QFCs in certain circumstances. See 12 U.S.C. 5390(c)(8)(G).

[27] 12 U.S.C. 5390(c)(9). The FDIC as receiver of an insolvent financial company may establish a bridge financial company and transfer to such company assets and certain liabilities as the FDIC generally deems appropriate. 12 U.S.C. 5390(h).

[28] 12 U.S.C. 5390(c)(11).

[29] 12 U.S.C. 5390(c)(11)(A).

[30] For transfer, *see* 12 U.S.C. 5390(c)(9)(A); for repudiation, *see* 12 U.S.C. 5390(c)(11).

institutions include, but are not limited to, banks, foreign banks,[31] and bridge financial companies operated by the FDIC. If the FDIC as receiver transfers a QFC to a financial institution within the specified period of time, the counterparty cannot exercise its contractual right to terminate the QFC solely by reason of or incidental to the appointment of the FDIC as receiver, or the insolvency or financial condition of the covered financial company.[32] If the FDIC as receiver decides to transfer any QFCs, it must take steps reasonably calculated to provide notice of the transfer of the QFCs of the failed financial company to the relevant counterparties.[33] The counterparties must accept the transferee as a counterparty and cannot terminate the QFC solely by reason of such transfer.[34]

Disaffirmance or Repudiation: The FDIC as receiver may disaffirm or repudiate a QFC within a reasonable period of time if the receiver determines that the contract is burdensome.[35] If the receiver does not elect to transfer all QFCs with a given counterparty (and with its affiliates), under the law the receiver has a ''reasonable time'' in which to repudiate such QFCs. However, as a practical matter, the receiver must promptly decide whether to repudiate all QFCs involving such counterparty (and its affiliates), in order to minimize the potential for an adverse change in the market value of such QFCs. For example, although counterparties to QFCs that are not transferred are not required to terminate the contracts immediately after the expiration of a one-business day stay,[36] they may decide to exercise any contractual right they have to terminate in order to protect against the potential adverse change in the market value of the QFCs (especially if the counterparties have sufficient collateral to cover the termination value of the QFCs).

If the receiver repudiates the QFCs, it must pay actual direct compensatory damages,[37] which may include the normal and reasonable costs of cover or other reasonable measure of damages used in the industry for such claims (after giving effect to any contractual netting rights of the counterparty). Such damages are calculated as of the date of repudiation.[38]

Retention: The FDIC's retention of a QFC in the receivership would allow a counterparty to terminate the contract after 5 p.m. (eastern time) on the first business day after the appointment of the FDIC as receiver.[39] If the counterparty then terminates QFCs with the financial company, the counterparty may exercise any contractual right it may have to net any payment the counterparty owes to the receivership against any payment owed by the receivership to the counterparty with respect to QFCs as set forth in any netting agreement.

In order to assess by 5 p.m. on the business day following the date of its appointment as receiver of a financial company its options to retain and allow the counterparty to terminate, retain and disaffirm or repudiate, or transfer QFCs, the FDIC needs detailed information about the company's QFCs. To make a well-informed decision on these three options, the FDIC needs access to the information required to be maintained under the Proposed Rules. The information must be sufficient to allow the FDIC to estimate the financial and operational impact on the covered financial company or its affiliated financial companies of the receiver's decision to transfer, repudiate or retain the QFCs. It must also allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole.

Under the Act, the FDIC as receiver has additional powers with respect to contracts of subsidiaries or affiliates of a covered financial company that are guaranteed or otherwise supported by or linked[40] to such covered financial company.[41] Such contracts can be enforced by the FDIC as receiver notwithstanding the insolvency, financial condition, or receivership of the financial company. Contracts which are guaranteed or otherwise supported by the covered financial company remain enforceable by the FDIC if the FDIC transfers any such guaranty or other support and all related assets and liabilities to a bridge financial company or third-party financial institution not subject to a bankruptcy or insolvency proceeding within the period of time provided under section 210(c)(10), or if the FDIC provides adequate protection[42] with respect to the support of such contracts.[43] The FDIC as receiver may also need to make sure that affiliates[44] of the covered financial company continue to perform their QFC obligations in order to preserve the critical operations of the covered financial company and its affiliates. In such cases, the FDIC may need to provide additional liquidity, support, or collateral to the affiliates to enable them to meet collateral obligations and generally perform their QFC obligations.[45] The Proposed Rules therefore would impose recordkeeping requirements on affiliated financial companies in a corporate group because the Secretary, as informed by the FDIC,

[31] The FDIC as receiver of a covered financial company may not transfer QFCs to a foreign bank unless, under applicable law, the contractual rights of the parties to such QFCs and any netting contracts, security agreements or arrangements or other credit enhancements related to any such QFCs are enforceable substantially to the same extent as under 12 U.S.C. 5390. 12 U.S.C. 5390(c)(9)(B).

[32] 12 U.S.C. 5390(c)(10)(B) and 12 U.S.C. 5390(c)(16).

[33] *See* 12 U.S.C. 5390(c)(10)(B).

[34] 12 U.S.C. 5390(c)(10)(B).

[35] 12 U.S.C. 5390(c)(1).

[36] See 12 U.S.C. 5390(c)(8)(F)(ii), which provides that any payment or delivery obligations otherwise due from a party pursuant to the QFC shall be suspended from the time at which the FDIC is appointed as receiver under the earlier of (I) the time at which such party receives notice that such contract has been transferred pursuant to section 210(c)(10)(A), or (II) 5 p.m. (eastern time) on the business day following the date of the appointment of the FDIC as receiver.

[37] The receiver's payment obligation is subject to the claims process of 12 U.S.C. 5390(a)(2). Therefore, if the counterparty does not have a perfected security interest in collateral sufficient to satisfy its claim, the counterparty might not receive cash payment in full.

[38] 12 U.S.C. 5390(c)(3).

[39] 12 U.S.C. 5390(c)(10)(B)(i).

[40] 12 U.S.C. 5390(c)(16). Section 210(c)(16) does not define the terms ''linked'' to, or ''guaranteed or supported'' by, the covered financial company. As explained later in this preamble, the Proposed Rules include definitions of ''guaranteed or supported'' and ''linked'' that are consistent with the definitions of such terms in the FDIC final rule implementing section 210(c)(16) of the Orderly Liquidation Authority provisions of the Dodd-Frank Act. The FDIC published a final rule addressing all aspects of section 210(c)(16) on October 16, 2012. 77 FR 63205 (''FDIC Final Rule'').

[41] 12 U.S.C. 5390(c)(16). This section provides for the enforcement of contracts guaranteed by a financial company subject to orderly liquidation under Title II.

[42] Under the FDIC final rule, contracts ''supported by'' a covered financial company may also be enforced by providing ''adequate protection'' either in the alternative to transferring any related support or in combination with a partial transfer of such support. Adequate protection, with respect to the covered financial company's support of the obligations under such contracts, means: (1) making a cash payment or periodic cash payments to counterparties to the extent that the failure to cause the assignment and assumption of the covered financial company's support and related assets and liabilities causes a loss to the counterparties; (2) provision by the FDIC as receiver of a guarantee of the subsidiary or affiliate's obligations; or, (3) provision of relief that will result in realization by the counterparty of the ''indubitable equivalent of the covered financial company's support of such obligations or liabilities.'' The definition of the term ''adequate protection'' is consistent with the definition under section 361 of the United States Bankruptcy Code. 77 FR 63205.

[43] 12 U.S.C. 5390(c)(16)(A)(ii). See also 77 FR 63205.

[44] The term ''affiliate'' is defined in § 148.2(a) of the Proposed Rules as any entity that controls, is controlled by, or is under common control with a financial company or counterparty.

[45] *See* 12 U.S.C. 5384(d). Section 204(d) of the Act authorizes the FDIC, for example, to make loans to and guarantee the obligations of the covered financial company and its covered subsidiaries.

believes that the information would be necessary or appropriate in assisting the FDIC in exercising its rights as receiver for a financial company with affiliates. In addition, the imposition of recordkeeping requirements on affiliated financial companies could also assist the FDIC as receiver of one or more of such affiliated financial companies of the Act in fulfilling its obligations under section 210(c)(8), (9), or (10).[46]

Under Title II, the FDIC may become receiver for financial companies of a substantial size or complexity. These large and complex companies and certain of their affiliates that enter into QFCs may hold large and complex portfolios of QFCs. Such financial companies and their affiliates often have counterparties that are themselves members of large, complex, and interconnected corporate financial groups. Therefore QFCs tend to increase the interconnectedness of the financial system and systemic risk. They are also an important and integral component of a Title II resolution, presenting multiple challenges to an orderly liquidation process. Given the limited post-receivership time frame allowed by Title II for the FDIC to make decisions regarding QFCs, it is important that the FDIC has adequate time to obtain QFC data, conduct necessary analysis, and make informed decisions on a QFC portfolio.

Therefore, the Secretary in consultation with the FDIC is proposing the Proposed Rules described below. The Proposed Rules are similar to the FDIC's Part 371 but the information requirements of the Proposed Rules are more extensive. Unlike the FDIC's Part 371 (which requires that only banks in ''troubled condition'' maintain records of QFCs) the Proposed Rules do not contain such a ''troubled financial condition'' trigger. The recordkeeping requirements of the Proposed Rules have been informed by the FDIC's experience in dealing with multiple QFC portfolios of insured depository institutions. The data requirements were also informed by efforts to standardize regulatory data.

Given the short time frame for the FDIC to make decisions regarding a QFC portfolio of significant size or complexity, the Proposed Rules would also require the use of an updated and standardized format to allow the FDIC to obtain and process the large amount of QFC information quickly. In the absence of updated and standardized information, it is possible that QFCs could be left in the receivership, when transfer to a solvent financial institution or a bridge financial company would be a preferred course of action. The absence of QFC data may reduce the FDIC's flexibility in managing the QFC portfolio, and may increase systemic risk.

However, to reduce the burdens on financial companies, the Proposed Rules provide that upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agencies for the applicable records entities, the Secretary may grant conditional or unconditional exemptions as the Secretary determines to be necessary or appropriate. Such exemptions could include a conditional exemption to allow for a different recordkeeping format than that set forth in the Proposed Rules. For example, financial companies are required to report some QFC data to swap data repositories (''SDRs''),[47] and some data may be available through derivatives clearing organizations registered with the CFTC or clearing agencies registered with the SEC (collectively referred to in this release as ''clearing organizations'').[48] The Secretary notes that the FDIC would need to be able to manipulate and analyze such data to determine the effect of FDIC decisions under Title II with respect to a covered financial company's QFC portfolio.

III. The Proposed Rules

The following section describes the requirements in the Proposed Rules and the rationale underlying the requirements. The Proposed Rules set forth the general requirements for financial companies, while the detailed lists of the records that would be required to be maintained are provided in the Appendix in the Proposed Rules.

The Proposed Rules are organized into four parts:

- Section 148.1 Scope, purpose, effective date, and compliance dates
- Section 148.2 Definitions
- Section 148.3 Form, availability and maintenance of records
- Section 148.4 Content of records

The Appendix in the Proposed Rules list the records that would be required to be maintained and provide the file structure for the QFC recordkeeping requirements. The Appendix is organized as follows:

- Table A–1—Position-Level Data
- Table A–2—Counterparty Collateral Data
- Table A–3—Legal Agreements
- Table A–4—Collateral Detail Data

The discussion in this section of the release is based on the organization of the Proposed Rules and the Appendix is discussed in a separate subsection below. The Secretary asks questions and solicits comment in each subsection with respect to the related parts of the Proposed Rules or the Appendix.

A. Scope, Purpose, Effective Date and Compliance Dates

Section 148.1(a) of the Proposed Rules defines the scope of the rules and provides that the rules apply to each financial company that is a ''records entity.'' Section 148.1(b) explains the purpose of the rules. Section 148.1(c) sets forth the rule's effective and compliance dates. The Proposed Rules are discussed below, followed by the Secretary's questions regarding their subject matter.

1. Scope

a. Key Definitions

The scope of the Proposed Rules is established by certain key definitions which determine the entities that would be subject to the rules. Specifically section 148.1(a) of the Proposed Rules provides that the rules would apply to any ''financial company'' that is a ''records entity'' as those terms are defined in the Proposed Rules. The definitions of ''financial company,'' ''records entity,'' and other related definitions are explained below, followed by an illustrative discussion of the records entities within a U.S. bank holding company structure, a summary of the application of the Proposed Rules to clearing organizations, and a discussion of the records entities that may come within the scope section of the Proposed Rules.

Financial Company: The Proposed Rules incorporate the definition of a ''financial company'' set forth in section 201(a)(11) of the Dodd-Frank Act. Entities that are not included in the section 201(a)(11) definition of ''financial company'' would not be included in the definition of ''records entity'' and, therefore, would not be subject to the rules. Entities that are included in the section 201(a)(11) definition of ''financial company'' would be subject to the rules if they also meet the other criteria in the definition of records entity. In addition, the definition of ''covered financial company'' in section 201(a)(8)(B) of the Dodd-Frank Act excludes insured

[46] For example, the FDIC could be appointed as receiver of an affiliated financial company under section 210(a)(1)(E) of the Act.

[47] Not all QFC data would be reported under Title VII of the Dodd-Frank Act. Some QFCs may not have central reporting repositories.

[48] Clearing organizations would include central counterparties and security-based swap clearing organizations.

depository institutions,[49] which as a result are ineligible for orderly liquidation under Title II. Thus, based on the section 201(a)(11) definition of ''financial company'' and the section 201(a)(8)(B) definition of ''covered financial company,'' the following entities would not be required to maintain records under the Proposed Rules:

• Financial companies that are not incorporated or organized under U.S. federal or state law;
• Farm Credit System institutions;
• Governmental entities, and regulated entities under the Federal Housing Enterprises Financial Safety and Soundness Act of 1992 (''FHA''); [50] and
• Insured depository institutions.

The following financial companies would be subject to the rules if they are incorporated or organized under any provision of federal law or the laws of any State and meet the definition of ''records entity'' in the rules:

• A bank holding company;
• A nonbank financial company supervised by the Board;
• Any company that is predominantly engaged in activities that the Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act; and
• Any subsidiary (other than an insured depository institution or insurance company) of such financial company where such subsidiary is predominantly engaged in activities that the Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the BHC Act.[51]

Records Entity: Each records entity would be required to maintain records with respect to all of its QFCs unless such records entity receives an exemption under the rules.[52] In developing the definition of a records entity, the Secretary took into consideration factors such as financial company size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system in addition to other factors described herein.[53] The records entity definition would include a financial company that is a party to an open QFC or guarantees, supports, or is linked to an open QFC of an affiliate and is a member of a corporate group in which at least one financial company meets one of three other criteria for being a records entity. Because affiliated financial companies that are part of the same corporate group may play an important role in determining risks that are present, the information about the affiliates' QFCs could assist the FDIC as receiver. Furthermore, the FDIC has authority to enforce the QFCs of affiliates of covered financial companies, the obligations of which are guaranteed or otherwise supported by or linked to the covered financial company.[54]

A ''records entity'' is defined in section 148.2(l) of the Proposed Rules as a financial company that: is not an exempt entity; is a party to an open QFC, or guarantees, supports or is linked to an open QFC; and meets one of the following requirements: (a) Is determined pursuant to 12 U.S.C. 5323 (Title I of the Dodd-Frank Act) to be an entity that could pose a threat to the financial stability of the United States; (b) Is designated pursuant to 12 U.S.C. 5463 (Title VIII of the Dodd-Frank Act) as a financial market utility [55] that is, or is likely to become, systemically important; or (c) Has total assets equal to or greater than $50 billion,[56] or (d) Is a party to an open QFC or guarantees, supports, or is linked to an open QFC of an affiliate and is a member of a corporate group within which at least one affiliate meets one of the requirements in (a), (b), or (c).

The Secretary has adequately considered the factors referenced in section 210(c)(8)(H)(iv) in developing the scope of the definition of records entity. The Secretary has decided to include in the scope of the definition of records entity those financial companies that: (1) the Council determines could pose a threat to U.S. financial stability; (2) the Council designates as systemically important financial market utilities; and (3) financial companies that have at least $50 billion in assets, for several reasons. First, the factors the Council must consider in designating a nonbank financial company as posing a threat to financial stability under section 113 of the Act, or a financial market utility as systemically important under section 804, are similar to the factors listed in section 210(c)(8)(H)(iv). The Council may make a determination under section 113 if it finds that material financial distress at the nonbank financial company, or the nature, scope, size, scale, concentration, interconnectedness, or mix of the activities of the nonbank financial company could pose a threat to the financial stability of the United States.[57] Similarly, in making a determination that a financial market utility is or is likely to become systemically important, the Council is required to consider the effect that the failure of or a disruption to the financial market utility would have on critical markets, financial institutions, or the broader financial system.[58] The Secretary believes that it would be unnecessary to create a different scheme for determining the scope of financial companies subject to recordkeeping for the purposes of this rulemaking.[59]

[49] 12 U.S.C. 5381(a)(8)(B).

[50] 12 U.S.C. 4502(20). This provision, therefore, excludes from the orderly liquidation authority of Title II the Federal National Mortgage Association and any affiliate thereof, the Federal Home Loan Mortgage Corporation and any affiliate thereof, and any Federal Home Loan Bank.

[51] *See* 12 U.S.C. 1843(k)(4)(C).

[52] Exemptions would be available as outlined in § 148.3(c) of the Proposed Rules. For example, the Secretary may consent to the use of electronic records maintained in an SDR or internally at the records entity which are not in the format set forth in the Appendices to the Proposed Rules if such alternative format is sufficient to enable the FDIC as receiver to exercise its rights and fulfill its obligations under 12 U.S.C. 5390(c)(8), (9), or (10). See discussion below in subsection III.3.C of this Supplementary Information.

[53] See 12 U.S.C. 5390(c)(8)(H)(iv).

[54] 12 U.S.C. 5390(c)(16).

[55] *See* Title VIII, ''Payment, Clearing, and Settlement Supervision Act of 2010.'' 12 U.S.C. 5461, *et seq.* A financial market utility is defined in section 802(6) of Title VIII as any person that manages or operates a multilateral system for the purpose of transferring, clearing, or settling payments, securities, or other financial transactions among financial institutions or between financial institutions and such person. 12 U.S.C. 5461(6)(A).

[56] Total assets would be determined based on the most recent year-end consolidated statements of financial condition filed with a primary financial regulatory agency. For financial companies that are not required to file such statements, total assets would be determined based on the consolidated balance sheet for the most recent fiscal year-end. An entity, such as an investment adviser, that acts as agent on behalf of a client and is not a party to that client's QFC or does not support, guarantee or is not otherwise linked to that client's QFC would not be subject to the rule.

[57] Section 113 authorizes the Council to make determinations for U.S. nonbank financial companies and foreign nonbank financial companies pursuant to two separate paragraphs, but the considerations related to the financial stability of the United States are nearly identical. *See* 12 U.S.C. 5323(a) and (b). A determination under section 113 would mean that the nonbank financial company would be subject to supervision by the Board of Governors of the Federal Reserve System and to enhanced prudential standards established in accordance with Title I. *See* 12 U.S.C. 5365.

[58] 12 U.S.C. 5463(a)(2)(D).

[59] The first proposed prong under § 148.2(l)(3) of the Proposed Rules includes those entities that the Council designates as posing a threat to U.S. financial stability. The Council takes into consideration each of the factors expressly referenced in section 210(c)(8)(H)(iv) as follows: leverage of a company is expressly considered under rule 1310.11(a)(1) and (b)(1); complexity is addressed in a variety of ways, including under rules 1310.11(a)(2) and (b)(2) regarding the extent and nature of off-balance-sheet exposures; interconnectedness to the financial system is addressed in several of the rules including rules 1310.11(a)(3)–(5) and (b)(3)–(5); size is expressly addressed in rules 1310.11(a)(7) and (b)(7); frequency and dollar amount of QFCs, to the extent relevant, is addressed through rules 1310.11(a)(9) and (10) and (b)(9)(10); and risk is addressed

Continued

The Secretary also believes that the $50 billion threshold is a useful means for identifying entities that are of a sufficient size that they could potentially be considered for orderly liquidation under Title II, and therefore should be incorporated in the definition of a records entity. A $50 billion asset threshold has been separately established for similar purposes under the Dodd-Frank Act.[60] In particular, the Council applies a $50 billion threshold as an initial evaluation tool for determining whether a nonbank financial company could pose a threat to the financial stability of the United States and should be subject to heightened supervision under Title I of the Dodd-Frank Act, citing the potential for these types of firms to pose a threat to U.S. financial stability.[61]

Finally, a nonbank financial company supervised by the Board, a designated financial market utility, or a financial company (including a bank holding company) with total assets of $50 billion or more are the types of financial companies that potentially would be the most likely to be considered for orderly liquidation under Title II. Therefore, the Secretary proposes including this set of financial companies in the definition of records entity for purposes of the Proposed Rules. The definition of records entity is thus designed to reduce recordkeeping burdens by only capturing those financial companies with QFC positions for which the FDIC is most likely to be appointed as receiver. It does not, however, capture an entity, such as an investment adviser, that acts as agent on behalf of a client and is not a party to or does not support, guarantee or is not otherwise linked to that client's QFC. These criteria would serve to exclude from the scope of the rule small financial company corporate groups that are unlikely to be subject to the orderly liquidation authority of Title II.

Exempt Entity: An exempt entity that would be excluded from the definition of ''records entity'' and, therefore, the scope of the rules is defined in section 148.2(e) of the Proposed Rules as:

(1) An insured depository institution as defined in 12 U.S.C. 1813(c)(2);

(2) A subsidiary of an insured depository institution that is not a functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5), a security-based swap dealer as defined in 15 U.S.C. 78c(a)(71), or a major security-based swap participant as defined in 15 U.S.C. 78c(a)(67); or

(3) A financial company that is not a party to a QFC and controls only exempt entities as defined in clause (1) of this definition.

Insured depository institutions are proposed to be exempt because they are excluded from the definition of covered financial company and thus from the scope of Title II regardless of whether they are also a major swap or security-based swap participant or a swap or security-based swap dealer.[62] In addition, subsidiaries of an insured depository institution which are supervised on a consolidated basis with the insured depository institution are also proposed to be exempt for purposes of consistency with the insured depository institution exemption. However, functionally regulated subsidiaries, security-based swap dealers, and major security-based swap participants are not supervised on a consolidated basis with the parent insured depository institution and are not already required to maintain records under Part 371, as discussed above. These subsidiaries meet the definition of financial company in Title II, and would be required to comply with the recordkeeping requirements of the rules if they are ''records entities.'' Finally, a financial company that controls only insured depository institutions and is not itself a party to a QFC is also proposed to be exempt for purposes of consistency with the insured depository institution exemption.

Guaranteed, Supported, or Linked: Under section 210(c)(16), the FDIC as receiver for the covered financial company may enforce contracts of subsidiaries or affiliates that are ''guaranteed,'' ''supported'' by, or ''linked'' to the covered financial company. However, section 210(c)(16) does not define these terms. The Proposed Rules thus include a definition of ''guaranteed or supported'' and a definition of ''linked,'' each of which is consistent with the definition of similar terms in the FDIC's final rule implementing section 210(c)(16) of the Orderly Liquidation Authority provisions of the Dodd-Frank Act.[63] Under the FDIC final rule, a contract is ''linked'' to a covered financial company if it contains a ''specified financial condition clause,'' which is any provision that permits a contract counterparty to terminate, accelerate, liquidate, or exercise any other remedy under any contract to which the subsidiary or affiliate is a party or to obtain possession of or exercise control over any property of the subsidiary or affiliate or affect any contractual rights of the subsidiary or affiliate based on enumerated conditions related to the insolvency or financial condition of the covered financial company. The FDIC final rule also defines the term ''support'' as undertaking any of the following for the purpose of supporting the contractual obligations of a subsidiary or affiliate of a covered financial company: guaranteeing, indemnifying, or undertaking to make any loan or advance to or on behalf of the subsidiary or affiliate; undertaking to make capital contributions to the subsidiary or affiliate; or being contractually obligated to provide any other financial assistance to the subsidiary or affiliate. In some instances, ''support'' may itself constitute a QFC.[64]

The terms ''linked'' and ''guarantees, supports'' are also used to define the financial companies that are records entities under the Proposed Rules. A financial company that guarantees or supports open QFCs would be a records entity, provided that the other conditions of the definition are met, because its exposure is connected to the exposure of the financial company that is the counterparty to the QFC. A

directly and indirectly through various rules, including for instance rules 1310.11(a)(1), (a)(2), (a)(10) and (11), (b)(1), (b)(2) and (b)(10) and (11). See 12 CFR part 1310. See also 77 FR 21637. The second proposed prong under § 148.2(l)(3) of the Proposed Rules includes those entities that the Council designates as systemically important financial market utilities under 12 CFR part 1320. The Council's rulemaking regarding financial market utilities takes into consideration various factors, which are directly or effectively the factors referenced in section 210(c)(8)(H)(iv). See 12 CFR 1320.10. See also 76 FR 44763. In the third proposed prong of § 148.2(l)(3) of the Proposed Rules, the stand-alone test of assets equal to or greater than $50 billion is used because that size threshold, by itself, together with other aspects of the definition of records entity is sufficient to differentiate financial companies or their corporate groups that might be subject to orderly liquidation under Title II. The test in the fourth proposed prong of § 148.2(l)(3) of the Proposed Rules includes a requirement that the entity be a member of a corporate group in which at least one financial company meets one of the first three prongs, thus taking the various factors into account. To the extent a general or specific exemption from the rules may be necessary or appropriate, it is expected that the Secretary would consider these factors in determining whether to grant an exemption.

[60] 12 U.S.C. 5365(a).

[61] *See* Authority to Require Supervision and Regulation of Certain Nonbank Financial Companies. 12 CFR part 1310. In adopting this threshold, the Council noted that it is consistent with the Dodd-Frank Act threshold of $50 billion in assets for subjecting bank holding companies to enhanced prudential standards. 77 FR 21637, 21661.

[62] 12 U.S.C. 5381(a)(8)(B).

[63] See 77 FR 63205 (October 16, 2012).

[64] See, *e.g.,* section 210(c)(8)(D)(ii)(XII) (defining ''securities contract'' to include ''any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause'').

financial company that is linked to an open QFC would also be a records entity, provided that the other conditions of the definition are met, because its financial condition or other circumstances are connected to such counterparty. Moreover, the financial company providing support or a guarantee is exposed, along with, depending on the circumstances, its corporate group, to the risk of termination of QFCs. Therefore, the Proposed Rules would require each records entity that guarantees or supports QFCs to keep records with respect to all such guaranteed or supported QFCs. The records entity that links its QFCs to another entity would be responsible for keeping records related to the specified financial condition clause. In each case, a records entity would be responsible for obtaining from its affiliates all information necessary to enable it to maintain these records.

Including affiliated financial companies as records entities under the Proposed Rules is necessary: (1) To assist the FDIC in exercising its right to enforce contracts of subsidiaries and affiliates under section 210(c)(16), and fulfilling its obligations under section 210(c)(9) and section 210(c)(10) with respect to the timing and notification of the transfer of any guarantee or other support and related assets and liabilities in connection with any agreement or transaction referred to in any such QFC; and (2) to assist the FDIC in fulfilling its obligations under section 210(c)(9) and section 210(c)(10) in the event the FDIC is appointed as receiver of an affiliated financial company. In connection with the transfers and notifications under section 210(c)(9) and section 210(c)(10), the FDIC will need the same information with respect to such QFCs (including guaranteed or supported QFCs) of an affiliate as it does with respect to QFCs to which the financial company was a party.

Affiliate, Subsidiary, and Control: The definitions of the terms ''subsidiary'' and ''affiliate'' in the Proposed Rules are consistent with the definitions given to such terms in the Dodd-Frank Act. Section 2(18) of the Act provides that these terms will have the same meanings as in section 3 of the FDIA (12 U.S.C. 1813). Under the FDIA, the term ''subsidiary'' is broadly defined as ''any company which is owned or controlled directly or indirectly by another company.'' Similarly, the term ''affiliate'' is defined by reference to the BHC Act, 12 U.S.C. 1841(k) as ''any company that controls, is controlled by, or is under common control with another company.''

The definition of ''control'' is provided in the FDIA, which in turn, refers to the definition provided in the BHC Act, 12 U.S.C. 1841(a). The Proposed Rules would define ''control'' to include a company that directly or indirectly or acting through one or more persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of the company, controls in any manner the election of a majority of the directors or trustees of the company, or must consolidate another entity for financial or regulatory reporting purposes. The first two prongs of this definition are consistent with the BHC Act definition. The third prong reflects the fact that, in certain situations, a controlling interest may be achieved through arrangements that do not involve voting interests,[65] and, unlike the BHC Act definition, provides an objective test that does not require a determination by the Board.

Non-U.S. Entities. Because the Proposed Rules would incorporate the Title II definition of ''financial company,'' the Proposed Rules apply only to entities incorporated or organized in the United States that are considered records entities under the Proposed Rules. For example, a U.K.-incorporated London affiliate of a U.S. broker-dealer would not be a records entity because it is a separate legal entity that is not incorporated or organized within the United States.

b. Records Entities Within a U.S. Holding Company

Figure 1 below illustrates how the definition of financial company affects whether various affiliates in a U.S. holding company corporate group would qualify under the Proposed Rules as records entities based on the application of the definition of financial company in the Dodd-Frank Act and the Proposed Rules. The holding company and some affiliates would qualify as records entities as shown below, while the other affiliates would not.

[65] See, *e.g.,* Financial Accounting Standards Board, Statement of Financial Accounting Standards No. 167 (2009).

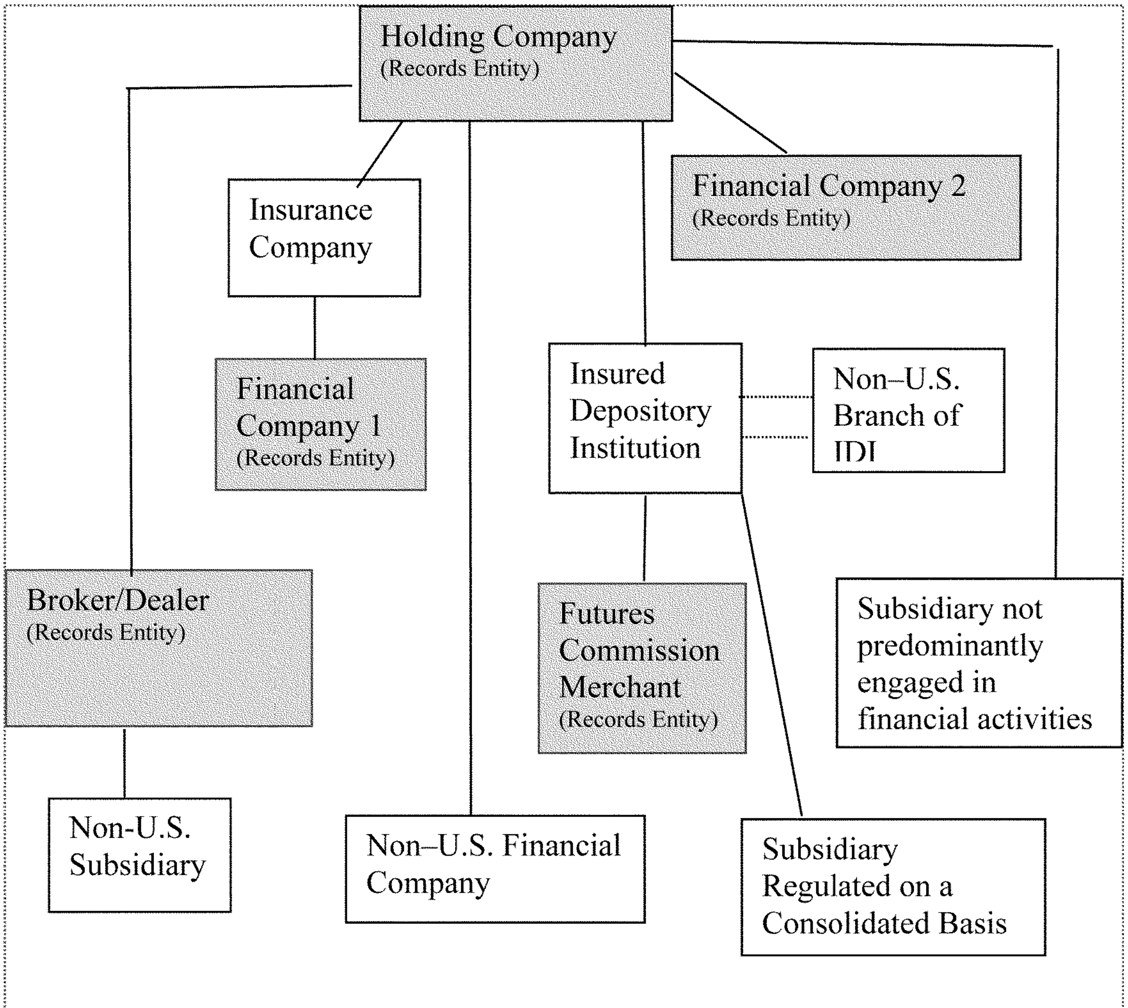

Figure 1. Scope of the Rules (for illustration purposes only)

c. Clearing Organizations

The Proposed Rules would not exclude from their scope any records entity that is a clearing organization with respect to derivatives cleared for its members. As part of fulfilling its responsibilities, a clearing organization must keep, on a near real-time basis, thorough and well-organized records of the contracts with each of its members. The FDIC, as receiver for a clearing organization under Title II, would have access to this information to analyze clearing organization positions. Taking into consideration a clearing organization's functions and that its role is to interpose itself between counterparties to transactions, some of the data elements that would be required by the Proposed Rules may not be relevant for clearing organizations. The Appendix to the Proposed Rules provides that a records entity may leave an entry blank or insert N/A in a data field that does not apply to a given QFC transaction or agreement.

Accordingly, the Secretary seeks comment on the following: (i) Whether the Proposed Rules should provide a different set of data requirements for clearing organizations and/or for centrally cleared transactions; (ii) whether such different data elements should contain fields in addition to those included in Tables A–1 through A–4 of the Appendix in the Proposed Rules, should exclude some of the fields listed in Tables A–1 through A–4, or some combination of the two; and (iii) whether any required data set should be maintained in a form or fashion different from the format contained in the Proposed Rules. The Secretary seeks comment on whether, and if so, how best to modify those data elements and general recordkeeping requirements set forth in the Proposed Rules with respect to clearing organizations and/or centrally cleared transactions. For example, should the Secretary establish a different set of data elements, data format, or other general recordkeeping requirements for clearing organizations and/or centrally cleared transactions? If yes, how should the format and the content of data fields listed in Tables 1–4 of the Appendix in the Proposed Rules be modified for clearing organizations? Which fields should be deleted, modified, or replaced with other data fields? Are there any data fields that should be added for clearing organizations and/or centrally cleared transactions?

Upon the written recommendation of the FDIC, prepared in consultation with the primary financial regulatory agencies for the applicable records entities, the Secretary may also issue exemptions of general applicability to address the issues that are relevant to clearing organizations. In addition, the Secretary notes that for data elements and recordkeeping requirements that may adversely affect a specific clearing organization, rather than all clearing organizations, the specific exemption process set forth in the Proposed Rules would be available. The decision to grant such an exemption could be conditioned upon the ability of the clearing organization to demonstrate and ensure that appropriate records are kept.

d. Scope of Proposed Rules

The ''scope'' subsection of the Proposed Rules provides that the rules apply to each entity that qualifies as a records entity. Section 210(c)(8)(H) of the Dodd-Frank Act gives the Secretary broad flexibility in determining the scope of the recordkeeping requirements based on factors that are deemed necessary or appropriate in order to assist the FDIC as a receiver for a covered financial company in being able to exercise its rights and fulfill its obligations under section 210(c)(8), (9) or (10) of the Dodd-Frank Act. Section 210(c)(8)(H) also requires the regulations to differentiate among financial companies, as appropriate, by taking into consideration their size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system and any other factors deemed appropriate. As discussed earlier, the Secretary has complied with these requirements.

The Secretary anticipates that records entities would include the following types of financial companies (i) broker-dealers, investment advisers, investment companies,[66] security-based swap dealers, security-based swap participants, and clearing agencies; [67] (ii) a bank holding company or bank holding company subsidiary (that is not an insured depository institution or other type of exempt entity); a savings and loan holding company or a savings and loan holding company subsidiary (that is not an insured depository institution or other type of exempt entity); a U.S. affiliate of a foreign bank; a noninsured state member bank; an agency or commercial lending company other than a federal agency; any organization organized and operated under section 25A of the Federal Reserve Act or operating under section 25 of the Federal Reserve Act; (iii) any entity that the Council has determined to be either (A) a nonbank financial company that could pose a threat to the financial stability of the United States pursuant to 12 U.S.C. 5323 or (B) a financial market utility that is, or is likely to become, systemically important pursuant to 12 U.S.C. 5463; (iv) subsidiaries of State non-member insured banks that are not supervised on a consolidated basis with the State non-member insured bank, or financial companies that are not supervised by a PFRA.

2. Purpose

Section 148.1(b) of the Proposed Rules provides that the purpose of the rules is to establish QFC recordkeeping requirements for a records entity in order to assist the FDIC as receiver for a covered financial company.

3. Effective Date and Compliance Dates

Section 148.1(c) of the Proposed Rules provides that the rule would become effective 60 days after publication of the final rule in the **Federal Register**. Section 148.1(d) of the Proposed Rules provides that each entity that constitutes a records entity on the date the final rule becomes effective would be required to comply with the rule not later than the 270th day after the date on which the final rule becomes effective. For a records entity that becomes subject to the rule after it becomes effective, compliance would be required 270 days after such entity becomes subject to the rule. In addition, section 148.1(d) of the Proposed Rules cross-references section 148.3(a)(3) of the Proposed Rules and would require a financial company that is a records entity on the effective date of the final rule to provide to each of its PFRAs and the FDIC a point of contact responsible for recordkeeping under the rule on the effective date of the rule. A financial company that becomes a records entity after the effective date would be required to provide a point of contact to each of its PFRAs and the FDIC within 60 days of becoming a records entity. A financial company that no longer qualifies as a records entity would be permitted to cease maintaining records one year after it ceases to qualify as a records entity. This determination would be made on a rolling 12-month basis.[68] The Secretary considered periods ranging from six months to eighteen months, but after consultation with the FDIC, chose to maintain a parallel with the FDIC's Part 371 Recordkeeping rules.

If during the one-year period such financial company becomes subject to the rules again, even for a short period of time, the one-year period would be re-calculated from that later time. A financial company that becomes subject to the rules again after it had ceased recordkeeping would be required to comply with the requirements of the rule within 90 days. The Proposed Rules specify that the 90-day period commences on the date a financial company becomes subject to these rules as a records entity.

Questions:

1. Is the scope of the Proposed Rules adequate? Should additional entities be subject to the rule? Please provide specific details supporting these views.

2. Is the initial compliance date of 270 days adequate? If it is too long, please explain how records entities would be able to meet a shorter initial compliance date? If it is too short, please explain why a longer period would be necessary to comply with the rule.

3. Is the rolling 12-month baseline for a financial company to cease being a records entity adequate? Please provide specific details if it is inadequate. Is the subsequent compliance date of 90 days adequate? Please provide specific details if it is inadequate.

4. Should each affiliate of a corporate group that meets the records entity definition under section 148.2(l)(3)(iv) of the Proposed Rules be required to maintain records, or should the parent company aggregate records for all open QFCs that any such affiliate in the consolidated corporate group is a party to or guarantees, supports, or is linked? Should there be one recordkeeping requirement for an entire corporate group by the top tier holding company? Are there any barriers to the parent company obtaining the necessary information from such subsidiaries and affiliates? Should the parent company be required to maintain records for the QFCs at its foreign subsidiaries and

[66] Each individual series of a registered investment company offering multiple series would be deemed to be a separate financial company for purposes of these rules. See Investment Company Act Release No. 7276 (Aug. 8, 1972) published at 37 FR 17384 (Aug. 26, 1972) (''The individual series of such a [registered open-end investment] company are, for all practical purposes, separate investment companies. Each series of stock represents a different group of stockholders with an interest in a segregated portfolio of securities.'').

[67] Not all of these entities would qualify as records entities subject to the Proposed Rules because of conditions in the definition of records entity related to asset size, systemic importance and QFC activity. ''Financial company'' includes any company that is incorporated or organized under any provision of federal law or the laws of any state and is predominantly engaged in activities that the Board of Governors has determined are financial in nature for purposes of section 4(k) of the Bank Holding Company Act of 1956. 12 U.S.C. 5381(a)(11). Activities that are ''financial in nature'' include ''providing financial, investment, or economic advisory services, including advising an investment company'' and ''issuing or selling instruments representing interests in pools of assets . . .'' and ''underwriting, dealing in, or making a market in securities.'' 12 U.S.C. 1843(k)(4).

[68] For the rolling 12-month period, a financial company's total consolidated assets are calculated based on the most recent financial statements from the prior fiscal year-end.

affiliates? Would such a definition, in which only the parent company in a corporate group is a records entity, make compliance more or less burdensome? Are the recordkeeping requirements in the Proposed Rules an effective means of assisting the FDIC as receiver of a covered financial company to exercise its rights and fulfill its obligations under section 210(c)(8), (9), or (10) of the Dodd-Frank Act? If not, how could the Proposed Rules be more effective to assist the FDIC?

5. Should a records entity also be required to maintain records with respect to QFCs of affiliates that are linked to such entity? Should such records entity be responsible for obtaining from its affiliates or subsidiaries all information necessary to enable such records entity to maintain records with respect to QFCs of affiliates that are linked to it? Is there a different way the FDIC could obtain information about linked QFCs? Would the information provided in Table A–3 to the Appendix be sufficient to identify such linkages? How would such recordkeeping be handled if the affiliate is not a financial company or is an exempt entity?

6. Would the current definitions provide for adequate recordkeeping for QFCs at foreign affiliates of U.S. records entities (recognizing that such foreign affiliates would not be records entities)? If not, should the record maintenance requirements be altered?

7. Is the scope of the definition of ''exempt entity'' adequate? What changes, if any, should be made to the definition of ''exempt entity?'' Are there other entities that should be included in the definition of ''exempt entity''? Are there entities that should be excluded from the definition of ''exempt entity''? Should the rules exempt other entities based on the number of QFC counterparties, QFC notional amounts, QFC mark-to-market values as of a particular date, or some other criteria? If so, at what levels should such exemptions be set? Please provide any data or other analyses that support this view. Should there be any other form of de minimis exemption?

8. Should the rules provide additional categorization or tiering of financial companies based on other criteria? What should such other criteria be? Would financial company or QFC portfolio leverage be relevant? Should the dollar amount of the QFC portfolio or the frequency of trading be used to differentiate among financial companies? Please provide specific explanations of how such criteria would be applied together with an explanation of whether such criteria would help, be neutral to, or interfere with, the FDIC's ability to resolve a QFC portfolio. Please provide specific details on the relevance of such criteria toward the orderly liquidation authority goal of reducing systemic risk.

9. Should the Secretary further differentiate among financial companies or their corporate groups by their size, risk, complexity, leverage, frequency and dollar amount of QFCs, or interconnectedness to the financial system? Should any other factors be considered? Should the Secretary adopt different criteria? Please provide specific details on any factors to be considered or criteria proposed, including an explanation on why such factors would help, be neutral to, or interfere with, the FDIC's ability to resolve a QFC portfolio.

10. Should the Secretary have considered the factors referenced in section 210(c)(8)(H)(iv) in a different way than discussed above? Should the Secretary not rely on the Council's designations? If so, how should the Secretary consider those factors? Should any other factors be considered?

11. Is the scope of the Proposed Rules sufficiently clear with respect to subsidiaries of insured depository institutions? If not, how should the scope of the Proposed Rules be clarified? Should all subsidiaries of insured depository institutions be included in the scope of the Proposed Rules?

12. Is it appropriate to include affiliates and other entities that might not be designated as systemically important, or that might not have total assets equal to or greater than $50 billion, within the scope of the Proposed Rules? If not, how should the scope of the Proposed Rules be narrowed? For example, should affiliates be included only if they themselves are designated as systemically important or have total assets equal to or greater than $50 billion? How would this affect the FDIC's ability to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10), as receiver? Conversely, should the scope of the Proposed Rules regarding affiliates be broadened? Are there any affiliates that would not fall within the scope of the Proposed Rules that should? If so, why?

13. Does the definition of ''control'' adequately capture those entities that should be defined as affiliates for purposes of the rules? Should the definition of ''control'' be modified and, if so, how? For example, should the definition be the same as the definition of ''control'' under the BHC Act?

14. Should financial companies that guarantee or support QFC positions be required to maintain records on such QFCs if such QFCs qualify for treatment under section 210(c)(16)? If not, how would the recordkeeping of such QFCs be handled?

15. Should there be any additional data to avoid duplication of records of guaranteed, supported or linked QFCs if the related affiliate also is a records entity and maintains records with respect to such QFCs?

16. Is the criterion in the definition of records entity in section 148.2(l)(3)(iii) of the Proposed Rules appropriate? Should the calculation of $50 billion in total assets exclude non-proprietary assets that are included on a balance sheet under accounting rules, such as certain types of client assets under management required to be included on an investment adviser's balance sheet? Is it appropriate for some financial companies or corporate groups with less than $50 billion in total assets to not be required to maintain records?

17. On what basis should investment advisers that are to be included as records entities be identified? Should the advisers be required to file fiscal year-end balance sheets and should their status as records entities be based on information contained in these balance sheets?

18. Are there any other entities for which the rules need not apply? If so, which entities, and why?

19. Should swap dealers and major swap participants be required to maintain records under the rules irrespective of the size and other requirements of the definition of records entity?

20. Is the inclusion in the Proposed Rules of clearing organizations or other financial market utilities that are designated as systemically important appropriate? What issues should the Secretary consider when addressing recordkeeping requirements with respect to clearing organizations or other financial market utilities? What records do clearing organizations currently maintain for QFCs? Are they different from the records required in the Appendix to the Proposed Rules? Are they different from those maintained by counterparties in bilateral QFC transactions? If so, should a different framework for QFC records be considered for clearing organizations than for other records entities? Should a different set of data requirements be considered for clearing organizations? Should such different data set contain fields in addition to those included in Tables A–1 through A–4 of the Appendix, exclude some of the fields

listed in Tables A–1 through A–4 of the Appendix, or some combination of the two? Should any required data be provided in a form or fashion different from the format contained in the Proposed Rules?

21. Should the recordkeeping requirements for centrally-cleared transactions differ from those for non-centrally-cleared transactions? If so, should such requirements include data fields in addition to those included in Tables A–1 through A–4 of the Appendix, exclude some of the fields listed in Tables A–1 through A–4 of the Appendix, or some combination of the two?

22. Are there special considerations regarding a clearing organization resolution that should be reflected in the rule? In particular, what records of a clearing organization would be useful to the FDIC as receiver? Is this different from the records that are needed for the resolution of other types of financial companies under Title II? If so, how should recordkeeping requirements be modified to address appropriately a clearing organization or other financial market utility resolution?

23. Is it appropriate, if a registered investment company has multiple series, to deem each series of the company to be a separate financial company for purposes of the rules? If not, why not?

24. Should the rules apply to an investment adviser acting as agent for its client with respect to a QFC if the adviser otherwise is not a party to, does not support, does not guarantee, or is not linked to the client's QFC?

B. General Definitions

In addition to the definitions described in detail above in reference to the scope of the Proposed Rules, certain additional terms are defined in the Proposed Rules to describe a records entity's recordkeeping obligations. The term ''counterparty'' would be defined as any natural person or entity (or separate non-U.S. branch of any entity)[69] that is a party to a QFC with a records entity. An affiliate or a non-U.S. branch of such records entity that is not itself a records entity would be considered a counterparty of a records entity if it is a party to a QFC with such affiliated records entity. The term ''counterparty'' would also include any natural person or entity that is a party to a QFC that is guaranteed or supported by a records entity. To the extent a corporate group includes more than one records entity, for each inter-affiliate QFC to which two or more affiliated records entities are a party (or are otherwise linked), each affiliate would be required to treat the other as a counterparty for purposes of the rules. Recordkeeping with respect to inter-affiliate QFCs is necessary to enable the FDIC to decide as quickly as possible which affiliated financial companies in a corporate group should be subject to orderly liquidation under Title II, to understand all QFC linkages in a corporate group, and to evaluate the potential systemic effects of FDIC decisions.

The term ''primary financial regulatory agency'' would consist of the Federal banking agencies, the CFTC, FHFA and the SEC and would be defined by reference to the definition of ''primary financial regulatory agency'' in the Dodd–Frank Act.[70]

Questions:

25. Should the proposed definition of counterparty be modified to exclude some affiliated entities? If so, which affiliated entities should be excluded and why?

26. Would the proposed definitions result in duplication of data or positions? If so, how could such duplication be removed?

27. Is there an alternative means of introducing transparency for inter-affiliate transactions other than including affiliates in the definition of counterparty? How would the recordkeeping requirements need to be modified to accomplish this goal?

28. Should other terms used in the Proposed Rules be defined? If so which ones? Please include support for any suggested definition or clarification to definitions supplied.

29. Are the Proposed Rules' definitions appropriate? Would there be any additional definitions, modifications or considerations that would be helpful?

C. Form, Availability, and Maintenance of Records

1. Form and Availability

Section 148.3(a)(1) of the Proposed Rules would require that a records entity maintain all records in electronic form in the format set forth in the Appendix to the Proposed Rules. All records entities in a corporate group would be required to be able to generate data in the same data format and use the same counterparty identifiers to enable the aggregation of all records entities in the corporate group. In addition, the use of such counterparty identifiers would enable the data to be aggregated by counterparty, thus permitting the FDIC to understand the exposure of the entire corporate group to a given counterparty. The FDIC will use the aggregation of counterparty positions to determine the effects of termination or transfer of QFCs. Although the Proposed Rules specify a recordkeeping format, the Secretary recognizes the need to build-in flexibility for an alternate recordkeeping format. Therefore, Section 148.3(c) of the Proposed Rules provides that the Secretary may grant conditional or unconditional exemptions from compliance with one or more of the requirements of the rule. An exemption with regard to the recordkeeping format requirements could be conditioned upon the records entity keeping the records in an alternate format that enables the FDIC to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act.

Section 148.3(a)(1) of the Proposed Rules would require that all records be capable of being transmitted electronically to a records entity's PFRA and the FDIC. This requirement would impose a recordkeeping burden but not a reporting burden on records entities. In order to comply with the rule, a records entity would need to ensure that it is able to comply with the recordkeeping requirements of the rules for all cross-border transactions.

These proposed requirements are necessary and appropriate in order to assist the FDIC as receiver. Transparency with respect to all QFC positions is necessary to enable the FDIC as receiver to rapidly dispose of the QFC portfolio or perform on the QFCs and minimize the potential for disorderly liquidation of the covered financial company and increased systemic risk. Accordingly, the FDIC should have detailed and complete information available to it with respect to all QFCs of a records entity and its affiliated financial companies, without delay, on the date of appointment. As discussed above, given the short time frame for FDIC decisions, it may be difficult to obtain and analyze a large amount of information unless it is readily available to the FDIC in an updated and standardized format that enables the FDIC to carry out the required financial and legal analysis in an expeditious and efficient manner. Furthermore, absent electronic access to the complete records of a records entity and the ability to view such information in the context of the records entity's booking practices, governing law, and organizational structure, the FDIC may

[69] The term non-U.S. branch is used to designate a U.S. entity that operates in a non-U.S. jurisdiction under special license in such jurisdictions instead of operating through a subsidiary incorporated or organized in such non-U.S. jurisdiction.

[70] 12 U.S.C. 5301(12).

not be able to analyze QFC positions and make decisions with respect to such QFCs by the end of the first business day following the appointment of the receiver. In addition, the FDIC could use the data to help subsidiaries of a financial company in receivership perform their obligations under the QFCs, thereby preserving the value of the receivership estate. This should help to prevent the disorderly termination of trades, including cross-border and affiliate trades, which could have far-reaching negative effects on the records entity and its corporate group, as well as the broader financial markets.

Section 148.3(a)(2) of the Proposed Rules would require that each records entity maintain records for all QFCs to which it is a party, including inter-affiliate QFCs to which it is a party. Each records entity also would be required to maintain records for all QFCs that are guaranteed or supported by such records entity.[71] These records would help to enable the FDIC as receiver to determine the effect of termination or transfer of counterparty transactions on the QFC portfolio held by affiliates as well as any potential effects on broader financial markets, such as by inadvertently un-hedging one or more affiliated counterparties. However, a records entity that is only linked to an open QFC would not be required to maintain records under the Proposed Rules with respect to such linked QFCs.

Section 148.3(a)(3) of the Proposed Rules would require that each records entity provide a point of contact to enable its PFRA and the FDIC to contact the records entity with respect to the rule, and to update this information within 30 days of any change. Because the FDIC, after being appointed as receiver, will have very little time to update QFC information and make decisions with respect to QFCs, the FDIC must work cooperatively with personnel in charge of QFCs at each records entity who can provide greater context for the data, including the records entity's booking practices, governing law, and organizational structure.

Section 148.3(a)(4) of the Proposed Rules would require that each records entity that is regulated by a PFRA be capable of providing all QFC records specified in the rules to its PFRA within 24 hours of request. This requirement would impose a recordkeeping burden but not a reporting burden on records entities. A PFRA could exercise its own authority by imposing a 24 hour reporting requirement on a records entity for the QFC records maintained under the rule, and by sharing such records with the FDIC. The Secretary recognizes that many financial companies may not currently have the capability to provide all QFC records in the required format within a 24-hour time period. Nevertheless, because of timing constraints set forth in Title II, the FDIC must become familiar with the types and formats of QFC data maintained by records entities to be able to comply with the statutory deadlines upon receivership and to be able to exercise its rights under the Act. In addition, the records entity must be able to generate the records in the formats specified in the rules quickly, generally overnight, to refresh the information provided to regulators. These formats or records may also be used by the FDIC both to refine receivership processes with respect to the evaluation of QFCs of financial companies and their corporate groups, and to familiarize itself with the QFCs of the records entities in a given corporate group.

Questions:

30. Are the proposed requirements that records entities in a corporate group be able to maintain the records in the same data format and use the same counterparty identifiers to enable the aggregation of the data across all records entities in the corporate group or by counterparty reasonable?

31. Are there any other procedures that should be addressed by the rules which may help streamline data production? For example, some records entities may have a very large volume of QFC records. Could this raise practical considerations in the electronic transmission of such records?

32. Are there particular methods that would best address record maintenance and data requirements for inter-affiliate transactions and cross-border transactions? Should there be specific requirements for such transactions? Should records entities be exempted from any part of the recordkeeping requirements in the Proposed Rules for such transactions?

33. Should the Proposed Rules set forth a standard data specification that would require common data structures and content for data submitted for each corporate group?

34. What types of consents, if any, would a records entity need to obtain from counterparties outside of the United States in order to comply with the recordkeeping requirements in the Proposed Rules? Would records entities be able to comply with the rules if they are unable to get such consents? Are there any alternatives to the Proposed Rules that would allow the records entity to maintain the records and have the capability to provide the data to its PFRA?

35. Should the chief compliance officer for registered investment advisers and the officers of registered investment companies be deemed to be the point of contact under the rules? If not, who should the point of contact be for each of these entities?

36. The Proposed Rules currently contemplate requiring a records entity that is regulated by a PFRA to be capable of providing to such PFRA, within 24 hours of request, the required records. The records entity must also be capable of transmitting electronically the required records to such PFRA and the FDIC. Should the rule provide for the PFRAs to make actual requests? If so, should anyone other than the PFRA (*e.g.,* the FDIC) also have the ability to request records? Should the records entity be required to provide their records directly to the FDIC rather than only to the PFRA? Is 24 hours sufficient time to produce the records?

2. Maintenance and Updating

Section 148.3(b) of the Proposed Rules would require that each records entity maintain the capacity to produce QFC records on a daily basis based on previous end-of-day records and values. This provision would not require that the records entity update all values daily in the ordinary course of business. Rather, it would require that the records entity have the capacity to do so upon request. Some data elements set forth in Tables A–1 through A–4 of the Appendix may not generally be updated daily. However, since all data items must be updated to enable the FDIC as receiver to exercise its rights under the Act and fulfill its obligations under sections 210(c)(8), (9), or (10) within the limited time frame afforded by the Act, each records entity would need to maintain the capacity to update the data elements to current values within a 24-hour period. To the extent the electronic recordkeeping system produces data that is more current than previous end-of-day records and values (*e.g.,* real-time data), such data would also comply with the Proposed Rules. If a records entity is not able to update the records or values quickly, the FDIC may not be able to comply with the requirements of Title II with respect to QFCs. As mentioned above, this inability of a records entity could increase the potential for a disorderly liquidation of a financial company.

[71] An entity, such as an investment adviser, that acts as agent on behalf of a client would not be required to maintain records for any QFC to which the adviser is not a party or that the adviser does not support or guarantee.

When a records entity uses an affiliate or a third party to maintain the records required under the Proposed Rules, it would be the responsibility of the records entity to ensure that records maintained by the affiliate or third party can be provided to the PFRA within 24 hours of a request.

Each records entity also would be required to be able to generate historical end-of-day records of open QFC positions, and any other QFC positions needed to generate data based on end-of-day records and values, for a period of at least the preceding five business days. Historical data are important as a measure of the day-to-day volatility of the given positions, and such data may help the FDIC calculate portfolio values on the business day after the appointment of the receiver.

With respect to record retention, the proposed requirement for a records entity to maintain records would generally apply to records and values with respect to open QFC positions and any other QFC positions needed to generate information based on end-of-day records and values for at least the five business days prior to the date of a request.

Questions:

37. Are the record maintenance requirements of the Proposed Rules sufficiently clear? If not, what additional requirements should be adopted?

38. Is the five-day retention period for required historical data sufficient? If a different period would be more appropriate, please provide support for your recommendation.

39. In the case of records entities that use affiliates or third-party service providers to maintain their records, is it appropriate for the records entity to be responsible for providing the records within 24 hours of a request, rather than the affiliate or third-party service provider?

40. Should the records be retained for a period shorter or longer than that set forth in the Proposed Rules based on the status of an open QFC? What are the potential benefits or costs of a shorter or longer period for record retention?

3. Exemptions

Section 148.3(c) of the Proposed Rules would permit the Secretary to grant two types of exemptions from the rules. Any exemptions granted pursuant to the rules may be subject to conditions. The Proposed Rules provide that, upon written request by a records entity, the FDIC, in consultation with the PFRAs for the records entity, may recommend that the Secretary grant a specific exemption from compliance with one or more of the requirements of the rules. For example, if a records entity is a subsidiary of a national bank, but is also registered as a major swap participant and a major security-based swap participant, the FDIC, in consultation with the OCC, SEC and CFTC, could recommend that the Secretary issue an exemption because the OCC is the primary banking regulator while the SEC and the CFTC have oversight authority over the entity by virtue of it being a major swap participant and a major security-based swap participant. As another example, if a records entity is a financial company that does not collect certain types of QFC recordkeeping data in the ordinary course of its business, the FDIC, in consultation with the relevant PFRAs, could recommend that the Secretary issue a specific exemption from certain data requirements of the rules, if the FDIC believes such data omissions are warranted under the particular circumstances.

The Secretary would also be permitted to issue exemptions that have general applicability upon receipt of a recommendation from the FDIC, in consultation with the PFRAs for the applicable records entities. For example, the FDIC, in consultation with the PFRAs, could recommend that the Secretary issue an exemption informing all records entities that some data elements required by Tables A–1 through A–4 of the Appendix are not relevant for a particular type of QFC.

The Secretary considered authorizing the FDIC and the PFRAs to jointly grant specific and general exemptions, because the PFRAs are familiar with the operations of the records entities, and because the FDIC as the intended user of the QFC recordkeeping would be affected by the granting of any exemption. However, the Act does not appear to authorize the Secretary, as Chairperson of the Council, to sub-delegate decision making authority to other agencies. Instead, the Secretary is turning directly to the FDIC and indirectly to the PFRAs for recommendations on whether to grant specific or general exemptions. The Secretary will consider any FDIC recommendation that carefully considers the factors contained in section 210(c)(8)(H)(iv) of the Act.

Section 210(c)(8)(H) of the Dodd-Frank Act gives the Secretary broad flexibility in determining the scope of the records entities based on, as appropriate, the financial companies' size, risk, complexity, leverage, frequency, and dollar amount of QFCs and interconnectedness to the financial system. The Secretary also may consider other factors deemed appropriate, which the Secretary believes should include whether the application of one or more requirements of the Proposed Rules is not necessary to achieve the purpose of the rule. As noted previously, in determining whether to grant any exemptions permitted under the rule, the Secretary expects to take into consideration with respect to financial companies their size, risk, complexity, leverage, frequency and dollar amount of QFCs, interconnectedness to the financial system, and any other factors deemed necessary or appropriate, including whether the application of one or more requirements of the rule is not necessary to achieve the purpose of the rule.[72]

Moreover, some records entities are subject to separate recordkeeping rules promulgated by the CFTC and SEC and may in the future be subject to additional recordkeeping requirements promulgated by other U.S. and non-U.S. agencies. The exemption provisions set forth in the Proposed Rules are designed to enable the rules to work in conjunction with the CFTC's, SEC's and other regulatory recordkeeping requirements as well as any global or local standard adopted after the publication of the final rule, as they would provide the ability for the Secretary to be flexible in taking such requirements and standards into account. Although section 148.3(a)(1) of the Proposed Rules specify a standard format for recordkeeping, the Secretary, upon receipt of a recommendation from the FDIC made in consultation with the appropriate PFRAs, could exempt records entities from this requirement on the condition that they maintain electronic records maintained in a swap data repository or internally in a different format. The format of proposed Tables A–1 through A–4 of the Appendix therefore, should not complicate appropriate recordkeeping, so long as the information set forth in the Appendix can be provided to the FDIC in a manner that allows the FDIC to properly analyze and aggregate the data. Records entities could build upon the mandatory data templates of the swap data repositories and augment and/or hyperlink the data to create the totality of the information requested. A records entity could also help the FDIC, upon appointment as receiver, analyze internal databases by providing the personnel necessary to manipulate internal databases. Because the PFRA for a records entity and the FDIC must work with and understand the data, a records entity would need an exemption

[72] *See supra* note 59.

from the Secretary (which could be conditioned on the use of an alternative recordkeeping format) before using a recordkeeping format that is different from the format referenced in section 148.3(a)(1) of the Proposed Rules.

The Proposed Rules also would empower the Secretary, in consultation with the FDIC, to grant extensions of time with respect to compliance with the recordkeeping requirements. It is anticipated that such extensions of time would apply when records entities first become subject to the rules and likely would not be used to lengthen the time periods specified in the maintenance and updating requirements of the rules. Extensions of time may also be appropriate on a limited basis with respect to being capable of providing full records because of unforeseen technical issues.

Questions:

41. Is the scope of the exemptions appropriate as written?

42. The Proposed Rules would allow the Secretary, upon receipt of a written recommendation from the FDIC, to issue general or specific exemptions based on factors the Secretary determines to be necessary or appropriate. Is the prerequisite of an FDIC recommendation appropriate? For example, in the case of a records entity request for a specific exemption, should the Secretary proceed in determining whether to grant or deny the request if the FDIC does not submit its recommendation within a reasonable period of time? If yes, should the FDIC and/or the PFRAs be consulted in some other manner? Is the FDIC's consultation with the relevant PFRAs in preparing the written recommendation appropriate? If not, should the relevant PFRA be involved in some other manner? For example, should a recommendation be made jointly by the FDIC and the relevant PFRA, or should they each submit separate recommendations to the Secretary? Are the factors the FDIC would be required to consider in making its recommendation appropriate?

43. Should the Secretary delegate decision making authority to the FDIC, the PFRAs, or both with regard to granting general or specific exemptions and extensions of time? If so, please explain the authority by which the Secretary could make such a delegation.

44. How should the PFRAs' separate rulemaking and exemptive authority be used in conjunction with exemptions under this rulemaking?

45. What is the volume and nature of exemption requests that commenters believe are likely to be requested?

46. Should the final rule exempt categories of financial companies? If so, which categories should be exempted and why? Alternatively, should the final rule exempt certain categories of financial companies only from certain provisions of the rules but require them to comply with others? Please specify the conditions and factors to be considered for each such exemption.

47. Should clearing organizations or other financial market utilities be exempted from recordkeeping under the rule? Please explain in detail why current recordkeeping requirements for clearing organizations and other financial market utilities are sufficient to enable the FDIC to conduct the orderly liquidation of clearing organizations or financial market utilities.

48. What conditions, if any, should be included in a clearing organization exemption? Should it suffice that a clearing organization coordinates with its members that are records entities to ensure that appropriate records are kept?

49. Is it feasible for data to be maintained in a standardized format? Should specific format exemptions be included in the final rule, in particular for formats used by common QFC reporting repositories (*e.g.,* swap data repositories)? To the extent such other recordkeeping requirements do not meet the full requirements contemplated here (*e.g.,* they do not include certain categories or fields necessary), how would records entities meet the contemplated recordkeeping requirement? In such a case, would a format exemption reduce regulatory burden?

50. Should the provisions addressing form and availability of data be further detailed?

51. Should the rule specify a process for requesting exemptions and extensions of time? If so, what should this process be?

D. Content of Records

1. General Information

Section 148.4(a) of the Proposed Rules would require each records entity to maintain all data required by Tables A–1 through A–4 of the Appendix, as well as additional information that is needed to be able to understand affiliated relationships among records entities and counterparties. Records entities may currently maintain such data; however, they might not be maintaining it in the manner or format in the Proposed Rules. By presenting the data elements in the form of an Appendix, the Secretary has sought to maintain a parallel with the FDIC's Part 371 QFC Recordkeeping rules, and to provide an easy means of separating the data into their relevant categories. As stated below, the Appendix corresponds to position level data, counterparty exposure data, legal agreement data, and collateral data. Where appropriate, each table in the appendix also gives an example of each data element and describes the relevance of such data in the context of an FDIC receivership.

For the purpose of QFC recordkeeping, each records entity would be required to treat its affiliates, including affiliated clearing organizations or other financial market utilities, as third-party counterparties and maintain complete records of all inter-affiliate QFCs. The Proposed Rules would require a records entity to use a unique counterparty identifier to identify each of its counterparties. The records entity would be required to assign a separate unique counterparty identifier to each legal entity and each non-U.S. branch or office of a legal entity that transacts business as a separate branch or division to enable the FDIC to analyze cross-border QFC activity. The unique counterparty identifier also would facilitate the aggregation of positions by counterparty as well as the aggregation by corporate group. The ability of records entities to incorporate unique identifiers for each counterparty is likely to vary significantly depending on the number and types of counterparties, and if the counterparties are currently identified and tracked within the records entity's systems.

Authorities from around the world, including the FDIC, have established a global legal entity identifier (''LEI'') system, with oversight effected by a Regulatory Oversight Committee (''ROC''), comprised of those same authorities, in order to coordinate and oversee a global system of legal entity identification. In June 2014, a Swiss non-profit foundation (the ''Global LEI Foundation'') was established with the intention for it to provide operational governance and management over Local Operating Units (''LOUs'') that will issue LEIs.

Before the Global LEI Foundation was established, the ROC created an interim system by which those with pre-LEIs (LEIs compliant with various ROC principles) issued by ROC-endorsed LOUs would be sufficient to satisfy the regulatory requirements of ROC member authorities.

As a result, unique LEIs were already being issued prior to the operational governance and management of the system by the Global LEI Foundation and such LEIs are being accepted by certain individual ROC members, including for purposes of meeting certain other recordkeeping and reporting requirements mandated by the Dodd-Frank Act. The Proposed Rules would require records entities to use LEIs issued by LOUs endorsed by the ROC, and by those LOUs endorsed or otherwise governed by the Global LEI Foundation.

To the extent that the LEI or pre-LEI does not allow branches to be separately identified, the records entity would be required to include additional identifiers to enable the FDIC to segment the QFC activity both across the corporate group and by jurisdiction, as treatment of a QFC varies based on the law governing the QFC and/or the location of the collateral.

To that end, financial companies would need to maintain the capacity to generate QFC information in a common data format, at a minimum, within each corporate group, and, ideally, among financial companies. To facilitate the resolution of QFC portfolios, the FDIC needs to analyze such data upon appointment as receiver under Title II by working collaboratively with the PFRAs. The standardized data format would reduce the time and effort needed by the FDIC to perform the analysis and facilitate comparison of QFC data across financial companies with large complex QFC portfolios.

A records entity also would be required to maintain electronic copies of all agreements that govern the QFC transactions, as well as credit support documents related to such QFC transactions. As noted previously, electronic records are necessary or appropriate to assist the FDIC as receiver to quickly analyze QFC positions and make prompt decisions with respect to such QFCs, and to minimize the potential for disorderly liquidation of the covered financial company and increased systemic risk. These copies would need to be maintained in full-text searchable electronic form, and would be required to include master agreements and annexes, confirmations, master netting agreements, credit support annexes, guarantees, net worth maintenance agreements, security interest agreements, and other related agreements, if any. Similarly, the Proposed Rules would require records entities to keep full-text searchable copies of all assignment or novation documents to enable the FDIC to determine the appropriate counterparties for the various QFC positions.

The Proposed Rules would require that each records entity also maintain a list of vendors directly supporting the QFC-related activities and the contact information for such vendors. Section 148.4(a) of the Proposed Rules would also require that each records entity maintain certain additional information with respect to its current QFC portfolio, including information about the risk metrics used to monitor the QFC portfolios and contact information for each risk manager. The maintenance of such information would enable the FDIC to contact a risk manager or vendor quickly in the event that the FDIC requires additional information that is not currently included among the required data. Furthermore, maintaining risk manager contact information and a vendor list is unlikely to be overly burdensome because most financial companies are likely to already maintain similar information in the ordinary course of business.

Questions:

52. Are the proposed requirements related to unique counterparty identifiers sufficient to enable compliance with the rules?

53. Is it necessary or appropriate for a records entity to maintain full-text searchable electronic copies of all agreements governing QFC transactions? If not, are there any viable alternatives to this?

54. Is it necessary or appropriate for a records entity to maintain risk metrics used to monitor the QFC portfolio, risk manager contact information, and a list of vendors that directly support the QFC related activities of the records entity? If not, are there any viable alternatives to this?

55. Should the rule include additional guidance with respect to form, content and format of the records required? If so, how?

56. Should the rule specify a data standard (or language, or specification, *e.g.,* XML or XBRL) and a standard set (*e.g.,* a schema or taxonomy) of data item tags? Should the rule specify further the definitions which the records entity must use for its QFC records data? Please provide detailed specifications of the data standard or standard set as well as of the proposed definitions, if any.

57. Should data elements be interoperable among affiliated records entities and among financial company groups? If so, discuss which standard(s) should be considered, and why? If the rule should not include such a requirement to use a standard for the QFC data, will the complexity and quantity of data hinder the ability of the FDIC to use the QFC data for the purposes described in the rule?

2. Appendix Information

As described previously, the Proposed Rules would organize the detailed QFC recordkeeping requirements into an appendix of four tables: (1) Position-level data set forth in Table A–1; (2) counterparty collateral data set forth in Table A–2; (3) legal agreements related data set forth in Table A–3; and (4) collateral detail data set forth Table A–4. The information that would be required by Tables A–1 through A–4 is largely self-explanatory and contains examples as well as narrative explanations of the applications. Some of the data fields, such as the unique counterparty identifiers for the records entity and the counterparty, are used in each table to help link the data among the tables.

The Appendix specifies that a records entity may leave an entry blank, or may insert ''N/A'' for any data fields that do not apply to a given QFC transaction or agreement. For example, if a QFC is not guaranteed, data fields that relate to a guarantee agreement would not need to be filled in, so long as those guarantee-related fields that required a Y/N (''Yes/No'') answer are completed where appropriate. Similarly, if QFCs with a counterparty are not collateralized, there would be no need to maintain collateral information with respect to that counterparty.

a. Table A–1

Table A–1 would set forth position-level data that enable the FDIC to evaluate a records entity's exposure to its counterparties. The FDIC would also use these data to evaluate the effects of the receiver's determination to transfer, disaffirm or repudiate, or retain QFCs. In addition, position-level information would assist the receiver or any transferee to comply with the terms of the QFCs and reduce the likelihood of inadvertent defaults. For example, a unique position identifier would allow for the tracking and separation of positions maintained by the records entity, and the identifier also would be consistent with the CFTC- and SEC-mandated data that need to be reported to SDRs.[73] The information would also be required to include CUSIP identifier numbers, unique trade confirmation numbers, as well as other internal identifying information relevant to the position.

The unique booking unit or desk identifier is intended to serve to further segment the data provided by the

[73] See 17 CFR 45.5.

records entity. It identifies which division or trading desk of a records entity has entered into the QFC position. This information is necessary to enable the FDIC to evaluate the business purposes of each QFC and locate back office contacts. The information that would be maintained in this field would help to determine the purpose of the QFC and assist the FDIC to determine whether the QFC was backed by another entity or an affiliate, if the QFC had a full or partial hedge, or if the QFC was used to hedge an asset. In addition to a unique booking unit or desk identifier, a description of that booking unit or desk would facilitate QFC classification. This description would assist in determining the specific nature and purpose of the QFCs and enable the FDIC to carry out an orderly liquidation.

Counterparties to records entities often trade QFCs under the terms of a single master agreement or similar governing document. Each master agreement may contain non-standard legal provisions that govern the relationship of the parties. In certain cases, counterparties may maintain multiple master agreements with the same records entity. For the FDIC to accurately assess the effect of transfer or termination of QFC positions on the financial stability of the derivatives and other financial markets, such QFC positions would need to be aggregated under the relevant corresponding agreements or governing documents at each level permitted by the documents. To the extent the master agreements are subject to further cross-product or multi-party netting, such ''master-master agreements'' also would need to be identified. All master agreements are included in the QFC definition under the Act and would be required to be treated as QFCs for all purposes under the Proposed Rules. The data that would be maintained must enable the FDIC to not only aggregate and disaggregate positions at the level of each counterparty, affiliate, and agreement, but also to determine the overall effect of the FDIC's decisions for each of the counterparty's and the records entity's corporate groups.

Table A–1 would also require the records entity to maintain information with respect to any loan or other obligation that relates to a QFC. For example, the counterparty to a swap with a records entity may have entered into the swap to hedge the interest rate exposure on amounts borrowed from an affiliate of the records entity, where both the loan and the swap are secured by one mortgage on the property. This information is necessary to enable the FDIC to evaluate both the loan and the swap. The information that would be maintained with respect to related obligations includes a reference number of the obligation and information about the borrower, lender and any other material terms of the related obligation.

b. Table A–2

Table A–2 would require a records entity to maintain counterparty aggregate exposures and collateral data for all QFCs entered into by a records entity with a counterparty. For such data, the records entity would need to demonstrate the ability to maintain itemized records of collateral by counterparty, which also would allow for the aggregation of collateral based on the netting rights of the counterparty and its affiliates. The data would need to take into account enforceability of netting in an insolvency close-out situation in specific jurisdictions, in addition to contractual payment netting outside an insolvency or receivership.

The information in Table A–2 would need to be maintained at each level of netting under a master agreement. For example, if a master agreement includes Annexes that require intermediate netting under each Annex, the net exposures under each Annex would need to be maintained separately. The data would need to identify whether multi-party or cross-product netting is contemplated among affiliates in a corporate group and provide exposure data taking into account such multi-party or cross-product netting. To the extent netting is not enforceable in an insolvency of the records entity or the counterparty, the positions that cannot be netted in an insolvency would not need to be netted for the purpose of Table A–2. This information would allow counterparty-level data to be segregated by records entity and counterparty. The use of the term ''counterparty'' would also include each affiliate in a records entity's corporate group that is a counterparty to an inter-affiliate QFC.

The title and name of each master agreement, master netting agreement, and accompanying governing documentation relating to counterparty positions, would enable the FDIC as receiver to identify the related agreement and review the contractual provisions governing the counterparty relationship.

The primary objective of proposed Table A–2 is to identify exposure of the records entity to each counterparty and its affiliates, as well as the exposure that counterparties might have to the records entity. This information would enable the FDIC to determine the effects of transfer or termination of QFCs with a given counterparty and the potential risk of contagion in the financial markets. Therefore, the data would need to be aggregated only to the extent permitted under the governing agreements and applicable law. Such information also would provide relative concentrations of risk with counterparties under each applicable agreement. A records entity could also transact QFCs for hedging or other purposes with the various affiliates within a group, which may include cross-border positions that cannot be netted. In order to assess the true exposure of an entity, the FDIC as receiver must have a full understanding of the aggregate QFC position by including all inter-affiliate transactions in its evaluations. This information also would be needed to assess cross-border risk and collateral availability as well as the likely systemic or practical implication of transferring QFC positions.

Table A–2 would require comprehensive collateral information, including market value of collateral, location of collateral, and any custodial and segregation arrangements. Collateral excess or deficiency positions as well as collateral thresholds and valuation discounts also would need to be provided. The creditworthiness of counterparties that might not be able to return rehypothecated collateral represents an additional risk to a QFC transaction. Conversely, if the records entity is able to rehypothecate collateral, the records entity may create additional risks for its counterparties. Table A–2 would require identification of the collateral status and a notation whether collateral posted to a counterparty is subject to re-hypothecation. This information would enable the FDIC as receiver to comply with the law and transfer QFC obligations together with the related collateral.[74] In addition, it would enable the receiver to identify excess collateral of counterparties for possible return should the contracts be terminated after the one business day stay. For cross-border transactions, this information would help the FDIC evaluate the availability of collateral in different jurisdictions and the related close-out risks if the receiver cannot arrange for the transfer of QFC positions under local law.

c. Table A–3

Table A–3 would require the maintenance of legal agreement data for each QFC agreement or master agreement between each records entity

[74] 12 U.S.C. 5390(c)(9)(A)(i)(IV).

and counterparty. For each QFC, the records entity would be required to maintain in readily accessible searchable format all of the following documents: Legal agreements (including master agreements, annexes, supplements or other modifications with respect to the agreements) between the records entity and its counterparties that govern QFC transactions; documents related to and affirming the position; active or ''open'' confirmations, if the position has been confirmed; credit support documents; and assignment documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment(s) have been obtained or satisfied.

Counterparties to records entities often trade QFCs under the terms of a master agreement (for example, an ISDA master agreement) coupled with other governing documentation. Therefore, it is important that the legal agreement(s) between the records entity and counterparty be identified by name and any unique identifier information. Such agreement(s) outline the legal terms of the transaction, including relevant governing law, and will assist the receiver in determining a definitive course of action. The records entity would need to identify the relevant governing law. The records entity also would need to include a list and description of any events of default or termination events that are in addition to those specified in the form of agreement used, as well as a list and description of events of default or termination events that have been removed by mutual agreement. In addition, each records entity would need to specify all ''specified financial condition clauses'' that are part of a given agreement, as well as the entity to which such QFCs are linked.

To the extent a counterparty does not use a specific industry standard form, the records entity could either prepare this information by reference to the standard form or by providing a list and description of all relevant events of default or termination events. This information would assist the receiver in planning a course of action and in determining whether there are any events that trigger the counterparty's right to terminate the agreement.

Because the receiver has a limited period of time in which to evaluate QFC provisions, the availability of the legal agreements in fully searchable electronic form is of utmost importance. In particular, the identification of any support by or linkage to a parent entity or affiliate and the identification of any transfer restrictions and non-standard covenants would enable the FDIC as receiver to evaluate the treatment of QFCs under such contracts in an orderly liquidation of the records entity or its affiliate under Title II of the Act

d. Table A–4

Table A–4 would expand on the information set forth in Table A–2. Each records entity would be required to maintain collateral detail data both with respect to collateral received and with respect to collateral posted. Such information would need to be maintained on a counterparty-by-counterparty basis. In addition, the data would need to include collateral information for each records entity. The collateral information would need to be capable of aggregation for the records entity's corporate group, as well as the counterparty's corporate group to the extent required or permitted by any applicable netting agreements. The data in this Table, together with the data in Table A–2, would allow the FDIC to better understand the QFC portfolio risk, and to model various QFC transfer or termination scenarios.

Questions:

58. Is it reasonable for the Proposed Rules to require collateral detail data both with respect to collateral received and collateral posted, on a counterparty-by-counterparty basis? Is it reasonable for the Proposed Rules to require data that include collateral information for each records entity? If not, what are the viable alternatives?

59. Are there any additional records that should be maintained by a records entity? If so, what additional categories or fields should be included? Please be specific in identifying data to be maintained.

60. Do the recordkeeping requirements sufficiently capture information regarding QFCs that are linked to the records entity? Do the recordkeeping requirements sufficiently capture information regarding QFCs that are guaranteed or otherwise supported by the records entity?

61. In the event that only some portion of the QFC records need to be capable of being produced immediately, should fewer data elements be required?

62. Please comment on the general nature and scope of records proposed to be maintained Should some records be further explained? How does the nature and scope of records compare to other QFC recordkeeping requirements (*e.g.,* swap data repositories)? Are there ways to further align the recordkeeping requirements with those of other reporting repositories to reduce regulatory burden? If so, how? Do the proposed recordkeeping requirements generally reflect the size and complexity of entities that likely qualify as records entities? Are there any additional records or data that would assist the FDIC in its role as receiver with respect to a covered financial company?

63. Are there any impediments to maintaining the records proposed to be required? How should these impediments be resolved? Please specify why the unavailability of a record would or would not create impediments to the transfer or repudiation of the affected QFCs.

64. Should different records or data be required to be maintained by records entities based on entity types?

65. Are any of the proposed recordkeeping requirements not necessary or appropriate to assist the FDIC as receiver? If not, why not? Are some records not necessary or appropriate based on the entity type of the records entity? Would any of the contemplated records or data result in undue burden on records entities?

66. Do the proposed recordkeeping requirements overlap or conflict with any existing or proposed regulatory requirements applicable to various entities that would qualify as records entities? If so, how should any conflicting or overlapping requirements be addressed? Specifically, do the proposed recordkeeping requirements overlap with or conflict with the proposed recordkeeping rules applicable to broker-dealers and security-based swap dealers (SBSD)? [75] If so, be as specific as possible regarding how the Proposed Rules may conflict and provide specific recommendations for making this Proposed Rules and the proposed rules applicable to broker-dealers and SBSDs more consistent. Do any existing regulatory requirements require records to be maintained in a format that is similar to the format set forth in the Proposed Rules, or that would otherwise allow for the FDIC to easily evaluate the records in the event it is appointed as receiver? How could any existing reporting or recordkeeping requirements be used to assist the FDIC in its role as receiver? Could any existing regulatory requirements be modified to require maintenance of the records required under the Proposed Rules? If so, how? Would any such modifications promote efficiencies or reduce the burden or costs on records entities? Conversely, could they adversely affect the FDIC's ability to

[75] See *e.g.,* Exchange Act Release No. 71958, 79 FR 25194 (May 2, 2014).

exercise its rights and obligations as receiver?

67. If there are QFCs between a records entity and a counterparty that are of the type that typically would be covered by two or more different types of master agreements, should a different schedule be required for each such different type of QFC?

68. What would be the most efficient method of obtaining information as to changes affecting individual positions, as well as changes to Master Agreements pursuant to annexes, changes to annexes, other amendments and protocols?

69. What would be the most efficient way to account for inter-affiliate positions while avoiding duplication of position reporting? Should the position-level data require a unique counterparty identifier and counterparty name for the counterparty to related inter-affiliate position(s) with non-records entities in the corporate group or with non-affiliates?

70. In order to enable the FDIC as receiver to meet pending margin calls for all companies in a corporate group, should a records entity be required to provide information as to collateral deficiencies, after giving effect to pending margin calls, of each subsidiary that is not a records entity? Should a records entity also be required to provide information as to the location of collateral provided in connection with such subsidiaries' positions or other additional information with respect to the positions of such subsidiaries?

71. Table A–1 of the Appendix requires position-level data that identifies whether the purpose of such positions is for hedging or trading, and if the purpose of a position is for hedging, Table A–1 requires a general description of the hedge (*e.g.,* hedging mortgage servicing or hedging a mortgage pipeline). This information is necessary for the FDIC to determine the corporate group's business strategy for purposes of estimating the financial and operational impact of the FDIC's decision to transfer, disaffirm or repudiate, or retain the QFC in the receivership. For example, if the covered financial company entered into a QFC in the form of an interest rate swap to hedge the interest rate risk associated with its portfolio of mortgage-backed securities, knowing the purpose of the QFC position will help the FDIC decide whether to transfer both the mortgage-backed securities and the interest-rate swap to a bridge financial company. Without knowing the purpose of the position, the FDIC could potentially transfer the mortgage-backed securities to a bridge financial company but leave the interest-rate swap in the receivership where it could potentially be terminated by the counterparty, which would expose the bridge financial company's assets to previously hedged risks. Should the position-level data require the purpose of the position? With respect to hedging positions, what are the appropriate general categories for the item(s) that are hedged? Are the hedging categories listed in Table A–1 (hedging mortgage servicing, hedging a mortgage pipeline) appropriate examples? Should Table A–1 require different information for QFCs where the position consists of hedging strategies? Should the position-level data require specific identifiers for portfolio hedging transactions? If so, how should split hedging be treated?

72. The recordkeeping requirement for the reference number of any related loan data, if applicable, in Table A–1 to the Appendix serves a similar purpose as the requirement to identify the particular purpose of a position. To the extent a QFC is related to a specific loan or loans held by the covered financial company in receivership or an affiliate, it may be beneficial to transfer or retain in the receivership the QFC and the related loan or loans in conjunction with each other where, in the case of a transfer, the bridge financial company does not end up holding a QFC without also holding directly or indirectly the related loan or loans. For example, the covered financial company may have issued a loan along with a related interest rate swap, and in the case of resolution, it might be beneficial to transfer to the bridge financial company, or terminate, together the interest rate swap and the underlying loan. To the extent a QFC position has a related loan or loans, would it be appropriate for a records entity to include the reference number for any related loan? Would it be appropriate for a records entity to include the legal name of the records entity that is lender of related loan as required in the position-level data?

73. As specified in Tables A–1 and A–2, records entities are also required to maintain the industry code for each counterparty by using either the Global Industry Classification (GIC) code or the Standard Industrial Classification (SIC) code. Each of these two codes uses four digits to identify the primary business of an entity, and is designed to facilitate uniformity and comparability in the collection, presentation, and analysis of data. By having access to a GIC or SIC code for each counterparty, the FDIC will be better positioned to estimate the financial and operational impact of its decisions to transfer, disaffirm or repudiate, or retain QFCs in the receivership, and will be better able to assess the potential impact (''knock-on effects'') that such decisions may have on the financial markets as a whole and particularly on individual sectors of the economy. Is the use of a GIC or SIC code appropriate? Are there alternative codes that would better assist the FDIC?

74. Table A–4 to the Appendix requires recordkeeping in the form of a ''yes or no'' on whether the collateral for a particular position is segregated and a brief description of such segregation. This information is necessary for the FDIC to decide whether to transfer QFCs. If the FDIC as receiver decides to transfer all QFCs between the covered financial company in receivership and a specific counterparty, the Act requires the FDIC to transfer all property or collateral securing such QFCs.[76] If the collateral underlying such QFCs is not segregated, then the FDIC may need to ''disentangle'' such collateral if it decides to transfer the QFCs and the collateral in accordance with the requirements of the Act or, if it does not disentangle the collateral, it may need to transfer certain QFCs and other assets that it would not otherwise have decided to transfer. Does this recordkeeping requirement sufficiently capture the information the FDIC needs? Are there any alternative approaches?

75. Is there a different format for maintaining the records that would improve the receiver's ability to evaluate QFC portfolios? How do the proposed formatting requirements affect a records entity's ability to generate the records in the time frames provided for in the Proposed Rules? Are there any other requirements relating to formatting or transmission of records that the Secretary should consider?

IV. Administrative Law Matters

A. Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (the ''RFA'') (5 U.S.C. 601 *et seq.*) requires an agency to consider whether the rules it proposes will have a significant economic impact on a substantial number of small entities. Congress enacted the RFA to address concerns related to the effects of agency rules on small entities, and the Secretary is sensitive to the impact the Proposed Rules may impose on small entities. In this case, the Secretary believes that the Proposed Rules likely would not have a ''significant economic impact on a substantial number of small entities.'' 5 U.S.C. 605(b). The Act mandates that the Secretary prescribe regulations requiring financial companies to

[76] 12 U.S.C. 5390(c)(9)(A)(i)(IV).

maintain records with respect to QFCs to assist the FDIC as receiver of a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act. As a result, the economic impact on financial companies, including small entities, flows directly from the Act, and not the Proposed Rules. Comments are requested on whether the Proposed Rules would have a significant economic impact on a substantial number of small entities and whether the costs are the result of the Act itself, and not the Proposed Rules.

Instead of requiring all financial companies to maintain records with respect to QFCs, the Secretary is narrowing the scope of the Proposed Rules to a smaller subset of financial companies. As a threshold matter, the Secretary is proposing to exclude from the scope of the Proposed Rules financial companies that do not meet one of the following three criteria: (1) Are designated pursuant to section 113 of the Act (12 U.S.C. 5323) to be a nonbank financial company that could pose a threat to the financial stability of the United States; (2) are designated pursuant to Section 804 of the Act (12 U.S.C. 5463) as a financial market utility that is, or is likely to become, systemically important; or (3) have total assets equal to or greater than $50 billion. Since the Act's enactment in 2010, eleven financial companies have been designated by the Council under categories (1) and (2), and the Secretary's understanding is that each of those designated companies has revenues in excess of the Small Business Administration's (''SBA'') revised standards for small entities, which went into effect on July 22, 2013. Moreover, the Secretary, as Chairperson of the Council, does not expect that any small entities will be designated by the Council in the foreseeable future.[77] However, the Proposed Rules would also apply to these large financial companies' affiliated financial companies (regardless of their size) if an affiliated financial company otherwise qualifies as a ''records entity'' and is not an ''exempt entity'' under the Proposed Rules.

The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities. In accordance with section 3(a) of the RFA, the Secretary has reviewed the Proposed Rules. While the Secretary believes that the Proposed Rules likely would not have a significant economic impact on a substantial number of small entities (5 U.S.C. 605(b)), the Secretary does not have complete data at this time to make this determination, particularly with regard to affiliated financial companies. Therefore, an Initial Regulatory Flexibility Analysis has been prepared in accordance with 5 U.S.C. 603.

The Secretary also requests that commenters quantify the number of small entities, if any, that would be subject to the Proposed Rules, describe the nature of any impact on small entities, and provide empirical and other data to illustrate and support the number of small entities subject to the Proposed Rules and the extent of any impact. After reviewing the comments received during the public comment period, the Secretary will consider whether to conduct a final regulatory flexibility analysis.

1. Statement of the Need for, Objectives of, and Legal Basis for, the Proposed Rules

The Secretary is proposing a regulation to implement section 210(c)(8)(H) of the Act, as required by the Act. Section 210(c)(8)(H) provides that, if the federal primary financial regulatory agencies do not prescribe joint final or interim final regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver for a covered financial company to exercise its rights and fulfill its obligations under certain provisions of the Act within 24 months of the enactment of the Act, the Secretary, as Chairperson of the Council, shall prescribe, in consultation with the FDIC, such regulations.

The Proposed Rules would require records entities to maintain detailed information about their QFC positions and be capable of providing this information to their PFRAs within 24 hours of request. The Proposed Rules include, among other things, recordkeeping requirements with respect to position-level data, counterparty-level data, legal documentation data, and collateral-level data. These requirements would assist the FDIC in resolving financial companies that may be subject to orderly liquidation under Title II of the Act. Specifically, these data are necessary to enable the FDIC as receiver of a covered financial company in deciding whether to: (1) Transfer the covered financial company's QFCs under section 210(c)(9) and (10) of the Act within the narrow time window afforded by the Act; (2) retain such QFCs within the receivership and allow a counterparty to terminate the QFCs; (3) retain the QFCs within the receivership and disaffirm or repudiate the QFCs; (4) exercise its rights to enforce certain QFCs of subsidiaries and affiliates under section 210(c)(16) within the narrow time window afforded under section 210(c)(10) of the Act;[78] and (5) assess the consequences of decisions to transfer, disaffirm or repudiate, or retain QFCs, including the potential impact that such decisions may have on the financial markets as a whole. Because of the narrow time window by which the FDIC may decide to transfer QFCs of the covered financial company and enforce the QFCs of the covered financial company's subsidiaries and affiliates under section 210(c)(9), (10) and (16) of the Act, it is necessary that financial companies that qualify as records entities maintain the capacity to generate, on an ongoing basis, QFC information in a common data format. Upon being appointed as receiver under Title II of the Act, the FDIC needs to analyze such data to facilitate the resolution of QFC portfolios. As noted earlier, the information must be sufficient to allow the FDIC to estimate the financial and operational impact on the covered financial company or its affiliated financial companies of the FDIC's decision to transfer, disaffirm or repudiate, or retain the QFCs. Additionally, it must allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole.

2. Small Entities Affected by the Proposed Rules

As discussed above, the Proposed Rules would only affect large financial companies and certain of their affiliates that meet the definition of a records entity. The Secretary proposes that the recordkeeping requirements in the Proposed Rules be applicable to all affiliated financial companies in a large corporate group that meet the definition of records entity, regardless of their size, because an exemption for small entities would significantly impair the FDIC's right to enforce certain QFCs of affiliates of covered financial companies under section 210(c)(16) of the Act. Such enforcement may be necessary for the FDIC to preserve the critical operations of these affiliated financial companies.

Based on current information and discussions with several of the PFRAs who are familiar with financial

[77] See 77 FR 21637, 21650 (April 11, 2012) and 76 FR 44763, 44772 (July 27, 2011).

[78] See 12 U.S.C. 5390(c)(16)(A); 12 CFR 380.12(a)(2).

company operations and have experience supervising financial companies with QFCs portfolios, the Secretary believes that the large corporate groups that would be subject to the Proposed Rules are likely to have an existing centralized system for recording and reporting QFC activities that they will continue to rely upon to perform most of the recordkeeping requirements set forth herein. The entity within the corporate group responsible for this centralized system will likely operate and maintain a technology shared services model with the majority of the technology applications, systems, and data shared by the affiliated financial companies within the large corporate group. Therefore, the entity responsible for this centralized system, and not the affiliated financial companies, may be most significantly impacted by the Proposed Rules. The affiliated financial companies may be able to utilize the technology and network infrastructure operated and maintained by their respective entities responsible for the centralized recordkeeping system. Additionally, the entities responsible for maintaining these centralized systems for each large corporate group will likely exceed the SBA's revised size standards for small entities.[79] Accordingly, the Secretary believes the Proposed Rules will not have a significant economic effect on a substantial number of small entities. The Secretary seeks information and comment on the role of entities responsible for the centralized recordkeeping systems and whether such entities are small entities to which the Proposed Rules would apply.

3. Projected Recordkeeping, and Other Compliance Requirements

As discussed in more detail above, the Proposed Rules impose certain recordkeeping requirements on records entities. A records entity is required to maintain all records described in section 148.4 of the Proposed Rules in electronic form and be able to generate data in the format set forth in the Appendix to the Proposed Rules. The Proposed Rules include, among other things, recordkeeping requirements with respect to position-level data, counterparty-level data, legal documentation data, and collateral-level data. Additionally, such records shall be capable of being transmitted electronically to the records entity's PFRAs.

Based on discussions with several of the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFCs portfolios, the Secretary believes that records entities should already be maintaining most of these QFC records as part of their ordinary course of business. However, the Secretary recognizes that the Proposed Rules' form and availability requirements may impose additional costs and burdens on records entities. To help reduce these costs and burdens, section 148.3(c) of the Proposed Rules provides the Secretary with the ability to grant general and specific exemptions from compliance with one or more of the requirements of the Proposed Rules under certain circumstances. For example, the exemption provisions set forth in the Proposed Rules are designed to enable the rules to work in conjunction with the CFTC's, SEC's and other regulatory recordkeeping requirements, as they would provide the ability for the Secretary to be flexible in taking such requirements into account. Although section 148.3(a)(1) of the Proposed Rules specifies a standard format for recordkeeping, the Secretary, upon receipt of recommendation from the FDIC made in consultation with the appropriate PFRAs, could exempt records entities from this requirement on the condition that they maintain electronic records maintained in a swap data repository or internally in a different format. Therefore, the format of proposed Tables A–1 through A–4 of the Appendix should not complicate appropriate recordkeeping, so long as the information set forth in the Appendix can be provided to the FDIC in a manner that allows the FDIC to properly analyze and aggregate the data. The Proposed Rules further provide the Secretary with the authority to grant extensions of time for compliance purposes.

The Secretary seeks information and comment on any costs, compliance requirements, or changes in operating procedures arising from application of the Proposed Rules on small entities.

4. Identification of Duplicative, Overlapping, or Conflicting Federal Rules

The Secretary does not believe that any Federal rules duplicate or conflict with the Proposed Rules. The Proposed Rules may overlap with certain CFTC and SEC recordkeeping requirements. However, the Secretary believes the Proposed Rules are necessary to assist the FDIC as receiver for a covered financial company in deciding whether to: (1) Transfer the covered financial company's QFCs under section 210(c)(9) and (10) of the Act within the narrow time window afforded by the Act; (2) retain such QFCs within the receivership and allow a counterparty to terminate the QFCs; (3) retain the QFCs within the receivership and disaffirm or repudiate the QFCs; (4) exercise its rights to enforce certain QFCs of subsidiaries and affiliates under section 210(c)(16) within the narrow time window afforded under section 210(c)(10) of the Act; and (5) assess the consequences of decisions to transfer, disaffirm or repudiate, or retain QFCs, including the potential impact that such decisions may have on the financial markets as a whole. Additionally, the exemption provisions set forth in the Proposed Rules are designed to enable the rules to work in conjunction with the CFTC's and SEC's recordkeeping requirements, as they would provide the ability for the Secretary to be flexible in taking such requirements into account.

The Secretary seeks comment regarding any other statutes or regulations that would duplicate, overlap, or conflict with the Proposed Rules.

5. Significant Alternatives to the Proposed Rules

The Secretary is unaware of any appropriate alternatives to the Proposed Rules, other than those included and discussed in the Proposed Rules, that accomplish the stated objectives of the Proposed Rules and that minimize any significant economic impact of the Proposed Rules on small entities. The Secretary requests comment on whether there are ways to reduce the burdens associated with the recordkeeping requirements on small entities associated with the Proposed Rules.

B. Paperwork Reduction Act

The collection of information requirements in the Proposed Rules have been submitted by the Secretary to the Office of Management and Budget (''OMB'') for review in accordance with the Paperwork Reduction Act of 1995 (the ''PRA''), 44 U.S.C. 3507(d). Comments on the collection of information should be sent to the Office of Management and Budget, Attention: Desk Officer for the Department of Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Department of Treasury at the addresses previously specified herein. Comments on the information collection should be submitted no later than March 9, 2015. Comments are specifically requested concerning:

(1) Whether the proposed information collection is necessary for the proper performance of agency functions,

[79] See 13 CFR 121.201.

including whether the information will have practical utility;

(2) The accuracy of the estimated burden associated with the proposed collection of information, including the validity of the methodology and assumptions used (see below);

(3) How to enhance the quality, utility, and clarity of the information required to be maintained;

(4) How to minimize the burden of complying with the proposed information collection, including the application of automated collection techniques or other forms of information technology;

(5) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to maintain the information; and

(6) Estimates of (i) the number of financial companies subject to the Proposed Rules, (ii) the number of records entities that are parties to an open QFC or guarantee, support, or are linked to an open QFC, and (iii) the number of affiliated financial companies that are parties to an open QFC or guarantee, support, or are linked to an open QFC of an affiliate.

The collection of information in the Proposed Rules is in §§ 148.3 and 148.4 and in Tables A–1, A–2, A–3, and A–4 of the Appendix. The collection of information is required by section 210(c)(8)(H) of the Act, which mandates that the Secretary prescribe regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver for a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9) or (10) of the Act.

The Proposed Rules implement these requirements by requiring that a records entity maintain all records specified in the Proposed Rules in electronic form and be capable of generating and transmitting data electronically to such records entity's PFRAs and the FDIC. The Proposed Rules require that a records entity be capable of providing QFC records to its PFRA within 24 hours of the request of such PFRA. The Proposed Rules set forth various recordkeeping requirements with respect to, among other things, position-level data, counterparty-level data, legal documentation data (including copies of agreements governing QFC transactions and open confirmations), collateral level data, a list of affiliates of counterparties and of the records entity, a list of vendors supporting QFC-related activities, risk metrics used to monitor the QFC portfolio, and risk manager contact information for each portfolio that includes QFCs.

The Proposed Rules also provide that a records entity may request in writing a specific exemption from the Proposed Rules, and may also request an extension of time with respect to compliance with the recordkeeping requirements.

Respondents

The Secretary estimates that approximately 140 large corporate groups, and each of their respective affiliated financial companies that is a party to an open QFC or guarantees, supports or is linked to an open QFC of an affiliate and is not an ''exempt entity'', will meet the definition of records entity in section 148.2(l). This list of large corporate groups likely includes bank holding companies, nonbank financial companies determined pursuant to section 113 of the Act to be an entity that could pose a threat to the financial stability of the United States, financial market utilities designated pursuant to Section 804 of the Act as a financial market utility that is, or is likely to become, systemically important; broker-dealers registered with the SEC under section 15 of the Securities and Exchange Act of 1934; investment advisers registered with the SEC under section 203 of the Investment Advisers Act of 1940 and unregistered investment advisers; investment companies registered with the SEC under section 8 of the Investment Company Act of 1940; insurers; real estate investment trusts; and finance companies. The Proposed Rules would also apply to these large corporate groups' affiliated financial companies (regardless of their size) if an affiliated financial company otherwise qualifies as a ''records entity'' and is not an ''exempt entity'' under the Proposed Rules.

The Secretary estimates that these large corporate groups collectively have 23,325 affiliated financial companies that may qualify as records entities based on discussions and consultations with the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios. Because there is no information available to determine how many of these affiliated financial companies are a party to an open QFC or guarantee, support, or are linked to an open QFC of an affiliate, and thus would qualify as records entities, the Secretary has assumed that all 23,325 affiliated financial companies would qualify as record entities. The Secretary recognizes that, based on a number of factors, the actual total number of respondents may differ significantly from these estimates and requests comment on the total number of respondents.

The Secretary's initial recordkeeping, reporting, data retention, and records generation burden estimates are based on discussions with the PFRAs regarding their prior experience with initial burden estimates for other recordkeeping systems. The Secretary also considered the burden estimates in rulemakings with similar recordkeeping and reporting requirements.[80]

In order to comply with the Proposed Rules, each of the large corporate group respondents will need to set up its network infrastructure to collect data in the required format. This will likely impose a one-time initial burden on the large corporate group respondents in connection with the necessary updates to their recordkeeping systems, such as systems development or modifications. The initial burden for each large corporate group respondent to set up its network infrastructure will depend largely on whether the financial companies already hold and maintain QFC data in an organized electronic format, and if so, whether the data currently resides on entirely different systems rather than on one centralized system. Large corporate group respondents may need to amend internal procedures, reprogram systems, reconfigure data tables, and implement compliance processes. Moreover, they may need to standardize the data and create records tables to match the format required by the Proposed Rules. However, this initial burden is mitigated to some extent because QFC data is likely already retained in some form by each respondent in the ordinary course of business.

As discussed above, the Proposed Rule also applies to certain affiliated financial companies of the large corporate group respondents. The Proposed Rules will likely impose a one-time initial burden on the affiliated financial companies in connection with necessary updates to their recordkeeping systems, such as systems development or modifications. These burdens will vary widely among affiliated financial companies. Their initial burden will depend largely on whether the affiliated financial companies already hold and maintain QFC data in an organized electronic format, and if so, whether the data currently resides on entirely different systems rather than on one centralized system.

[80] *See* 76 FR 46960 (August 3, 2011); 76 FR 43851 (July 22, 2011); 77 FR 2136 (January 13, 2012); 75 FR 78162 (December 22, 2008).

The Secretary believes that the large corporate groups subject to the Proposed Rules are likely to rely on centralized systems for their QFC activities that will perform most of the recordkeeping requirements set forth herein. The entity responsible for this centralized system will likely operate and maintain a technology shared services model with the majority of the technology applications, systems, and data shared by the multiple affiliated financial companies within the corporate group. Therefore, the Proposed Rules will impose the most significant burden on the entities responsible for these centralized systems within the large corporate group respondents, and not the affiliated financial companies. The affiliated financial companies will likely have a much lower burden because they can utilize the technology and network infrastructure operated and maintained by the entity responsible for the centralized system at their respective large corporate group. Similarly, the Secretary believes that the affiliated financial companies will rely on the entities responsible for the centralized systems to perform the reporting requirements under section 148.3(c)(2) and (3).

Similarly, the Secretary believes that affiliated financial companies will rely on large corporate group respondents to submit requests for extensions of time, specific exemptions, or both.

Recordkeeping

Estimated Number of Respondents:

Estimated Number of large corporate groups: 140.

Estimated Number of affiliated financial companies: 23,325.

Total estimated initial recordkeeping burden:

Estimated average initial burden hours per respondent: 360 hours for large corporate groups, 0.5 hours for affiliated financial companies.

Estimated frequency: Annually.

Estimated total initial recordkeeping burden: 50,400 hours for large corporate groups and 11,663 hours for affiliated financial companies.

Total estimated annual recordkeeping burden:

Estimated average annual burden hours per respondent: 120 hours for large corporate group, 0.5 hours for affiliated financial companies.

Estimated frequency: Annually.

Estimated total annual recordkeeping burden: 16,800 hours per year for large corporate group respondents and 11,663 hours per year for affiliated financial companies.

The initial and annual recordkeeping burden is imposed by the Act, which requires that the Secretary prescribe regulations requiring financial companies to maintain records with respect to QFCs to assist the FDIC as receiver of a covered financial company in being able to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act.

Reporting

Estimated Number of Respondents: 140.

Total estimated annual reporting burden:

Estimated average annual burden hours per respondent: 25 hours.

Estimated frequency: Annually.

Estimated total annual reporting burden: 3,500 hours per year.

An agency may not conduct or sponsor, and a person is not required to respond to, a collection of information unless it displays a valid control number assigned by OMB.

C. Executive Orders 12866 and 13563

It has been determined that the Proposed Rules are a significant regulation as defined in section 3(f)(1) of Executive Order 12866, as amended. Accordingly, the Proposed Rules have been reviewed by OMB. The Regulatory Assessment prepared by the Secretary for the Proposed Rules is provided below.

1. Description of the Need for the Regulatory Action

The rulemaking is required by the Dodd-Frank Act to implement the QFC recordkeeping requirements of section 210(c)(8)(H) of the Act. Section 210(c)(8)(H) generally provides that if the PFRAs do not prescribe joint final or interim final regulations requiring financial companies to maintain records with respect to QFCs within 24 months from the date of enactment of the Act, the Chairperson of the Council shall prescribe such regulations in consultation with the FDIC. The Secretary, as Chairperson of the Council, is proposing the Proposed Rules in consultation with the FDIC because the PFRAs did not prescribe such joint final or interim final regulations. The recordkeeping required in the Proposed Rules is necessary to assist the FDIC as receiver to exercise its rights and fulfill its obligations under section 210(c)(8), (9), and (10) of the Dodd-Frank Act, by enabling it to assess the consequences (including any financial systemic risks) of decisions to transfer, disaffirm or repudiate, or allow the termination of, QFCs with one or more counterparties.

The recent financial crisis has demonstrated that management of QFC positions, including steps undertaken to close out such positions, can be an important element of a resolution strategy which, if not handled properly, may magnify market instability. Large, interconnected financial companies may hold very large positions in QFCs involving numerous counterparties. A disorderly unwinding of these QFCs, including the rapid liquidation of collateral, could cause severe negative consequences for not only the counterparties themselves but also U.S. financial stability.

In order for the FDIC to effectuate an orderly liquidation of a covered financial company under Title II and thereby minimize systemic risk, the FDIC would need to make appropriate decisions regarding whether to transfer QFCs to a bridge financial company or other solvent financial institution or leave QFCs in the covered financial company in receivership. It may not be possible for the FDIC to fully analyze a large amount of QFC information in the short time frame afforded by Title II, unless such information is readily available to the FDIC in a standardized format designed to enable the FDIC to conduct the analysis in an expeditious manner.

2. Literature Review

In assessing the need for these recordkeeping requirements, we have reviewed two categories of academic literature. As highlighted above, one of the potential channels through which the disorderly unwinding of these QFCs could cause severe negative consequences for both the counterparties themselves and U.S. financial stability is through the rapid liquidation of collateral. The disorderly failure of a financial company with a large QFC portfolio may lead QFC counterparties to exercise their contractual remedies and rights by closing out positions and liquidating collateral, while also potentially increasing uncertainty in both derivatives and asset markets. This could lead to lower asset prices, decrease the availability of funding, and increase the likelihood that other financial companies also are forced to liquidate assets. To assess the potential impact of rapid liquidations, or ''fire sales,'' we have reviewed economic studies of fire sales among financial companies. Second, while there is limited academic literature specifically focused on the cost of a disorderly unwinding of a large, complex financial company's QFC portfolio, there has been recent literature analyzing the cost of the Lehman Brothers bankruptcy in

2008, which may be illustrative of the potential costs.[81]

a. Fire Sales Among Financial Institutions

The economic literature on financial company fire sales offers insight on their potential internal and external impacts. While not directly addressing QFCs, the fire sale literature can be applied to the potential impact of the rapid liquidation of QFC collateral that might occur in a disorderly unwinding of a large QFC portfolio.

Principles of Fire Sales Among Financial Companies. According to the literature, a fire sale can occur when a company cannot pay its creditors without selling assets. During a fire sale, assets sold may be heavily discounted below their fundamental values, depending on the market of participating buyers. If buyers are other investors in the asset class or classes being sold (''specialists''), prices may decline little. However, if the fire sale occurs during a financial crisis when uncertainty is higher and many specialists, including financial companies, may be constrained by solvency or liquidity pressures, they may not participate in the other side of the market. As a result, prices may fall substantially, to a level at which buyers who would only buy the assets in question at a large discount enter the market. Low sale prices may cause other financial companies to reduce the value at which they hold similar assets on their books when marking to market, which may trigger a downward spiral marked by more firms in distress (Shleifer and Vishny, 2011).[82] In addition, because many financial companies rely upon short-term sources of financing, such as repurchase agreements, the falling asset prices and heightened uncertainty may contribute to liquidity pressures as these financing sources withdraw funding or demand more collateral. This may force even solvent financial companies to sell assets in order to deleverage, decrease the size of their balance sheets, and reduce risk. This self-reinforcing cycle can result in additional fire sales, and eventually, precipitate or magnify a financial crisis.

Shleifer and Vishny (2011) believe that before the September 2008 Lehman Brothers bankruptcy most specialist buyers, including most financial companies, were active in the market, but after the Lehman bankruptcy most of them were unwilling to buy assets, causing security prices to plunge, and prompting fund withdrawals, collateral calls, and self-reinforcing fire sales. This cycle of price collapses and deleveraging increased the fragility of the financial system, and disrupted financial intermediation. The next major section discusses the Lehman failure in more detail.

At the time of a fire sale both seller and non-seller financial companies may curtail their lending, thereby imposing additional social costs associated with reduced financial intermediation. Shleifer and Vishny (2010)[83] use a three-period model of bank lending to illustrate the dynamics. They show that, in normal times, securitization can lead to higher lending volumes and earnings, but market sentiment shocks can quickly reverse these outcomes. When banks are highly leveraged, they may be more vulnerable to unanticipated shocks. A severe shock can lead them to liquidate assets in fire sales, fostering industry-wide asset price declines and weakening the banking system. In that environment, banks may forego lending, both to meet capital requirements and to preserve the capacity to purchase deeply discounted assets in the future. This credit contraction may reduce economic welfare due to a large number of potentially profitable investments that do not receive financing. He *et al.* (2010)[84] and Ivashina and Scharfstein (2010)[85] offer evidence that financial companies used spare balance sheet capacity to purchase discounted securities after the financial crisis rather than to increase lending. Hence, foregone lending during a crisis is a potential social cost, although we do not include it in our summary of costs associated with the Lehman Brothers bankruptcy in the next section, since we find no specific description of it in this context in the literature.

Potential Effects on Lending. As predicted by the theoretical models discussed above, empirical research shows bank lending declined sharply during the crisis. Ivashina and Scharfstein (2010) show that in August through December 2008, banks that depended more heavily on short-term debt (other than insured deposits), reduced their business lending by significantly more than banks less dependent on short-term debt financing. At the time of the Lehman bankruptcy, the paper identifies two channels driving this result that collectively constituted a ''run'' on financial companies. First, short-term creditors refused to roll over their unsecured commercial paper loans and repo lenders increased collateral requirements, which particularly constrained financial companies dependent on short-term credit for a significant share of their financing. Second, borrowers substantially increased draws on their existing credit lines ''to enhance their liquidity and financial flexibility during the credit crisis.'' In particular, financial companies that co-syndicated credit lines with Lehman Brothers were more likely to experience larger credit line drawdowns after the Lehman failure, and reduced their new lending more than those without co-syndication relationships with Lehman. Ivashina and Scharfstein conclude the results are consistent with a decline in the supply of funding as a result of the run associated with the Lehman event.

On the borrower side, Campello et al. (2010)[86] surveyed the chief financial officers of 1,050 nonfinancial firms in the United States, Europe, and Asia and found that those that identified their firms as ''financially constrained''[87] during the financial crisis cut back more on capital and technology investments compared to those that identified their firms as ''financially unconstrained.'' They also cut marketing expenditures by significantly greater margins, and shed far more employees (financially constrained firms planned to cut 10.9 percent of their personnel in 2009, while financially unconstrained firms planned to shed 2.7 percent). The survey revealed that during the crisis, 86 percent of constrained firms reported foregoing attractive investments, compared to 44 percent of unconstrained firms. This suggests the crisis-related decline in bank credit supply directly contributed to the reduction in constrained firms' investments, and imposed associated economic effects.

[81] Lehman Brothers Holdings, Inc. (''Lehman Brothers''), Lehman Brothers Inc. (the U.S. registered broker-dealer), and Lehman Brothers International (Europe) (the UK registered broker-dealer) were subject to separate liquidation proceedings.

[82] Shleifer, A., and Vishny, R. (2011). Fire Sales in Finance and Macroeconomics. Journal of Economic Perspectives 25: 29–48.

[83] Shleifer, A. and Vishny, R. (2010). Asset Fire Sales and Credit Easing. National Bureau of Economic Research working paper 15652.

[84] He, Z., Khang, I.G., and Krishnamurthy, A. (2010). Balance Sheet Adjustments During the 2008 Crisis. IMF Economic Review 58: 118–156.

[85] Ivashina, V. and Scharfstein, D. (2010). Bank Lending During the Financial Crisis of 2008. Journal of Financial Economics 97: 319–338.

[86] Campello, M., Graham, J., and Harvey, C. (2010). The Real Effects of Financial Constraints: Evidence from a Financial Crisis. Journal of Financial Economics 97: 470–487.

[87] Derived from survey respondents' self-assessments of their financial condition.

b. Costs of Lehman Brothers Bankruptcy

Numerous researchers have provided broad estimates of the economic costs of the 2007–09 financial crisis (see GAO (2013) [88] for a useful review). This section focuses more narrowly on the terminations of derivative contracts associated with the Lehman bankruptcy to help illustrate the potential costs of unwinding the derivatives portfolio of a large, complex financial company under the U.S. Bankruptcy Code.

The net worth of Lehman Brothers derivative positions at the time of bankruptcy totaled $21 billion, with 96 percent representing over-the-counter (OTC) positions.[89] The portfolio consisted of more than 6,000 OTC derivative contracts involving over 900,000 transactions at the time of bankruptcy on September 15, 2008. Fleming and Sarkar's (2014) [90] detailed assessment of the Lehman Brothers bankruptcy finds the overall recovery rate of all allowed unsecured claims (not limited to QFCs) amounted to roughly 28 percent, a rate the authors describe as low relative to both an estimated 59 percent for other financial company failures and 40 percent for failures occurring in recessions.

We use a framework that divides costs associated with derivatives resolution into private costs and public (external) costs. Private costs consist of direct losses to derivatives counterparties from unrecovered claims, indirect costs to derivatives counterparties from loss of hedged positions, costs to other Lehman Brothers creditors in the bankruptcy proceeding due to reductions in recovery values resulting from the termination and settlement of OTC derivatives, and litigation and administrative expenses. While we find no literature that assesses the public costs directly attributable to the resolution of Lehman's derivatives portfolio, below we examine the literature assessing the public impact of Lehman's failure more broadly.

While rigorous estimates of the value of each cost element listed above would be ideal, in reality we are constrained by a lack of publicly available data. Therefore, this section combines qualitative descriptions of costs with limited quantitative information when available, in an effort to provide insight on the costs of resolving Lehman's QFC portfolio under the bankruptcy proceedings.

Private Derivatives Counterparty Costs: Unrecovered Claims. Estimates of bankruptcy claim recovery rates of OTC derivative counterparties (excluding Lehman affiliate claims) are reported in the literature at the Lehman subsidiary level, and vary widely, ranging from 31 percent for Lehman Brothers Special Financing (the largest Lehman derivatives entity) to 100 percent each for Lehman Brothers OTC Derivatives, Lehman Brothers Derivatives Products, and Lehman Brothers Financial Products, as of March 27, 2014 (Fleming and Sarkar (2014)). Still the authors emphasize that, ''most counterparties of Lehman's OTC derivatives suffered substantial losses.''

Private Derivatives Counterparty Costs: Loss of Hedged Positions. A key reason for many counterparties to acquire derivative positions is to hedge against potential future market developments. These hedges reduce uncertainties and serve as valuable risk management instruments. Fleming and Sarkar (2014) suggest Lehman's abrupt bankruptcy took counterparties by surprise, and allowed them little time to assess their derivative positions facing Lehman, decide whether to terminate contracts, and rehedge their positions as needed.[91] Therefore, many counterparties lost their hedged positions within a brief period and were unexpectedly exposed to risks until new positions could be established. We find no estimates of the costs of these lost hedges in the literature.

Private Costs to the Entire Lehman Bankruptcy Estate: Settlement of OTC Derivatives. Fleming and Sarkar (2014) note that the settlement of Lehman's OTC derivatives claims may have also resulted in significant losses to the Lehman bankruptcy estate. Derivatives valuation claims are generally based on replacement costs and they note that due to the large prevailing bid-ask spreads at the time of Lehman's bankruptcy filing, replacement costs may have diverged significantly from fair value. During the settlement process the Lehman estate received $11.85 billion in OTC derivatives receivables by January 10, 2011. It is unclear how much in additional receivables may have been ''lost'' by Lehman due to the termination and settlement of contracts following its bankruptcy filing. The literature notes that the relatively abrupt timing of the bankruptcy filing may have also influenced the magnitude of losses. Valukas (2010) suggested that Lehman insufficiently planned for the possibility of bankruptcy, such that management only began to plan seriously for bankruptcy a few days before the bankruptcy filing. A bankruptcy court document [92] cites a ''turnaround specialist'' advising Lehman, Bryan Marsal, as telling the court-appointed examiner that the sudden bankruptcy resulted in the loss of 70 percent of $48 billion of receivables from derivatives that could have been unwound. Yet, the same document notes that Lehman counsel Harvey Miller did not think the rushed filing had an adverse impact on the estate (Valukas 2010). These accounts appear anecdotal and no information is provided on the derivation of the figures cited by Marsal.

Private Costs: Litigation and Administrative. The extended duration of the OTC derivatives settlement process included multiple court petitions, procedure approvals, settlement mechanisms, and legal challenges. While 81 percent of derivative contracts in claims against Lehman were terminated by November 13, 2008, the final settlement process moved more deliberately due to the multiple steps involved in properly addressing the unprecedented scale and complexity of claims within the bankruptcy process. Only 84 percent of derivatives claims had been settled by the end of 2012. Estimates of litigation and administrative expenses for OTC derivatives alone are not available, but these expense categories for the full Lehman settlement process were estimated to total $3.2 billion as of May 13, 2011 (Fleming and Sarkar (2014)).

Public Costs: Externalities. The event study is a common method of estimating the market impact of a particular event. Measured market reactions to the Lehman bankruptcy are based on the institution's failure event as a whole; they are not reactions to the QFC resolution process alone and therefore

[88] Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act, GAO–13–180 (January 16, 2013).

[89] Most derivatives were held in several subsidiaries specializing in derivatives and related instruments. Since Lehman had numerous subsidiaries with intermingled interests, we simplify the discussion by describing them as if they were a single entity, except when specificity is necessary for descriptive accuracy.

[90] Fleming, M. and Sarkar, A. (2014). The Failure Resolution of Lehman Brothers. Economic Policy Review 20(2). Federal Reserve Bank of New York.

[91] Fleming and Sarkar believe the selection of the termination date for safe harbor purposes influenced this. They write (p. 25), ''Although Lehman filed for bankruptcy protection at about 1:00 a.m. on Monday, September 15, 2008, the termination date was set as Friday, September 12 for derivatives subject to automatic termination. Normally, nondefaulting derivatives counterparties of Lehman would have attempted to hedge their positions on Monday to mitigate expected losses on their position. However, they could not do so since their positions were deemed to have terminated two days earlier.''

[92] Valukas, A. (2010). ''Report of the Examiner in the Chapter 11 Proceedings of Lehman Brothers Holdings Inc.'' March 11. Accessed at: *http://jenner.com/lehman/.*

overstate the impacts of these terminations. We may plausibly assume, however, that the market reactions to the overall Lehman collapse announcement included a component associated with potential costs of settling their derivative contracts.[93]

Johnson and Mamun (2012)[94] apply an event study approach to assess stock market reactions of a sample of 742 U.S. financial institutions—divided into banks, savings and loans, brokers, and primary dealers—on the date of the Lehman bankruptcy filing. While each group of institutions showed negative abnormal returns, only the bank (-3 percent) and primary dealer (-6 percent) coefficients were statistically significant. The data strongly support the notion that the event had differential impacts by type of financial institution and abnormal returns across institution groups were jointly significantly different from zero.

Dumontaux and Pop (2012)[95] apply a similar approach to assess stock market reactions of a sample of 382 U.S. financial companies, using brief event windows. They report heterogeneous outcomes according to institution size and business lines. Among the twenty large companies[96] (excluding Lehman Brothers), cumulative abnormal stock price returns were highly significantly negative, ranging from -10 percent to -18 percent over five distinct event windows of up to five days in duration. However, the effects on the full sample were not statistically significant, indicating the immediate contagion effect was limited to large companies. The results of both event studies suggest the Lehman bankruptcy likely imparted immediate negative external effects on a subset of financial companies, causing substantial drops in their market valuations. We did not find event studies specifically assessing market impacts on non-financial firms.

Domestic Public Support: Federal Reserve Facility. The Federal Reserve provided substantial liquidity to the markets during the 2007–2009 period. Fleming and Sarkar (2014) consider the support to Lehman in the first week after the bankruptcy as a critical factor in the recovery of claims against at least part of Lehman Brothers, which allowed it to keep operating until it was acquired by Barclays. Between September 15 and 18, 2008, Lehman Brothers Inc. borrowed $68 billion from the Primary Dealer Credit Facility (PDCF). Because the borrowed funds were fully collateralized and repaid in full with interest, the Congressional Budget Office (2010)[97] estimated that total lending through the PDCF involved a negligible subsidy value.

Global Public Costs: Externalities. The economic literature is rich with event studies of market reactions to policy announcements designed to alleviate the financial crisis, however, we find no studies focusing directly on the global market impacts of the Lehman Brothers bankruptcy as an event. We also acknowledge global spillovers as a potential public cost, however, we find no studies focusing directly on the global impacts of the Lehman Brothers bankruptcy as an event.

c. Conclusion

The economic literature on financial asset fire sales maintains that such events are more systemically harmful when occurring during industry-wide periods of distress, making mitigating these costs a public policy concern. The Lehman Brothers bankruptcy and the resulting QFC terminations occurred during a crisis period, and might have imposed widespread private and public costs. We do not compare the Lehman bankruptcy costs to the alternative of potential resolution costs under a counterfactual case had Title II of the Dodd-Frank Act been in effect at the time of the Lehman bankruptcy filing.

3. Baseline

The FDIC promulgated 12 CFR part 371, Recordkeeping Requirements for Qualified Financial Contracts (''Part 371''), pursuant to section 11(e)(8)(H) of the FDIA.[98] The FDIC's QFC recordkeeping rule applies to insured depository institutions which are in a troubled condition, and was promulgated to enable the FDIC as receiver to make an informed decision as to whether to transfer or retain QFCs and also thereby minimize the potential for market disruptions that could occur with respect to the liquidation of QFC portfolios of insured depository institutions. However, Part 371 does not apply to non-depository financial companies that are eligible for resolution under Title II of the Dodd Frank Act. The proposed recordkeeping requirements of the Proposed Rules are based, in part, on Part 371, and have been informed by the FDIC's experience with both large and small portfolios of QFCs of failed insured depository institutions. However, the information requirements of the Proposed Rules are more extensive. While Part 371 requires certain position-level data and counterparty-level data, the Proposed Rules require certain position-level data and counterparty-level data that are not required by Part 371. Part 371 also does not require recordkeeping with regard to Legal Agreements or Collateral Detail Data to the same extent as is contemplated in Tables A–3 and A–4 to the Appendix in the Proposed Rules. Similar to the Proposed Rules, under Part 371, any insured depository institution that is subject to the requirements must produce and maintain the required records in an electronic format, unless the institution has fewer than twenty open QFC positions. However, under Part 371 the records do not necessarily need to be maintained in a standardized format, but must be maintained in a format that is acceptable to the FDIC.

Based on staff-level discussions with the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios, the Secretary believes that the large corporate groups that would be subject to the Proposed Rules should already be maintaining most or all of the QFC records required under the Proposed Rules as part of their ordinary course of business. In order for these large corporate groups to effectively manage their QFC portfolios, they need to have robust recordkeeping systems in place. For example, large corporate groups that trade derivatives out of several distinct legal entities need to have detailed records, including counterparty identification, position-level data, collateral received and posted, and contractual requirements, in order to effectively manage their portfolio, perform on contracts, and monitor risks. However, it is unlikely that these large corporate groups are maintaining the QFC records in the standardized format prescribed by the Proposed Rules and as set forth in the Appendix to the Proposed Rules.

4. Evaluation of Alternatives

The Secretary considered alternative forms of the proposed rules, but believes that the current form is the best

[93] Still, we caution that event study results may produce ''noisy'' signals. For example, attribution is problematic as the period surrounding the Lehman collapse was a particularly active one with nearly two dozen significant economic events in September 2008.

[94] Johnson, M.A. and Mamun, A. (2012). The Failure of Lehman Brothers and its Impact on Other Financial Institutions. Applied Financial Economics 22: 375–385.

[95] Dumontaux, N. and Pop, A. (2012). ''Contagion Effects in the Aftermath of Lehman's Collapse: Measuring the Collateral Damage.'' University of Nantes working paper 2012/27.

[96] Large financial companies are defined as those with total assets over $1 billion in their last audited report before the event date.

[97] Congressional Budget Office. (2010). The Budgetary Impact and Subsidy Costs of the Federal Reserve's Actions During the Financial Crisis.

[98] 12 U.S.C. 1821(e)(8)(H).

available method of achieving the regulatory objectives. The assessment of alternatives below is organized into three subcategories: (a) Scope of the proposed rules; (b) content of records; and (c) standardized recordkeeping.

a. Scope of the Proposed Rules

In developing the definition of a records entity, the Secretary took into consideration factors such as financial company size, risk, complexity, leverage, frequency and dollar amount of QFCs, and interconnectedness to the financial system, as well as other factors described herein. The Secretary included the following entities within the scope of the definition of a records entity: Financial companies that have at least $50 billion in assets, financial companies that the Council determines could pose a threat to U.S. financial stability, and financial companies that the Council designates as systemically important financial market utilities.

The Secretary believes that the $50 billion asset threshold is a useful means for identifying entities that are of a sufficient size that they could potentially be considered for orderly liquidation under Title II, and therefore should be incorporated in the definition of a records entity. A $50 billion asset threshold has been separately established for similar purposes under the Dodd-Frank Act.[99] In particular, the Council applies a $50 billion threshold as an initial evaluation tool for determining whether a nonbank financial company could pose a threat to the financial stability of the U.S. and should potentially be subject to enhanced prudential standards under Title I of the Dodd-Frank Act.

The Secretary considered alternative criteria in developing the definition of a records entity, such as including financial companies that have more than $10 billion in assets. This threshold, which would have captured more financial companies that potentially might be considered for orderly liquidation under Title II, has been used in other regulatory requirements. For example, the Dodd-Frank Act requires certain financial companies with more than $10 billion in total consolidated assets to conduct annual stress tests.[100] Additionally, the CFTC's final rule on the end-user exemption to the clearing requirement for swaps exempts banks, savings associations, farm credit system institutions, and credit unions with total assets of $10 billion or less from the definition of ''financial entity,'' making such ''smaller'' financial institutions eligible for the end-user exception.[101]

However, the Secretary determined that while it is possible that financial companies with more than $10 billion and less than $50 billion in total assets potentially would be considered for orderly liquidation under Title II, $50 billion was a more appropriate threshold. Including all financial companies with over $10 billion in total assets would substantially increase the number of financial companies subject to recordkeeping requirements, many of which would likely not be considered for orderly liquidation under Title II. A financial company (including a bank holding company) with total assets of $50 billion or more, is the type of financial company that potentially would be the most likely to be considered for orderly liquidation under Title II. The definition of records entity is thus designed to reduce recordkeeping burdens on smaller financial companies by only capturing those financial companies with QFC positions for which the FDIC is most likely to be appointed as receiver.

The Secretary seeks comment on the following questions: Is the scope of the Proposed Rules adequate? Should additional or different criteria be used to define a records entity? If so, what criteria would be appropriate? For example, should the rules exempt certain entities based on the number of QFC counterparties, QFC notional amounts, or QFC mark-to-market values as of a particular date? If so, at what levels should such exemptions be set? Should there be any other form of de minimis exemption from these criteria? Please provide specific explanations of how such criteria would be applied together with an explanation of whether such criteria would affect the FDIC's ability to resolve a QFC portfolio.

b. Content of Records

The Secretary determined, after consulting with the FDIC, that requiring each records entity to maintain the data included in Tables A–1 through A–4 of the Appendix to the Proposed Rules is necessary to assist the FDIC in being able to effectively exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act. To facilitate the resolution of QFC portfolios, the FDIC needs to analyze such data and, upon being appointed as receiver under Title II, effectuate decisions with respect to the exercise of such rights. The information must be sufficient to allow the FDIC to estimate the financial and operational impact on the covered financial company and its counterparties, or affiliated financial companies, of the FDIC's decision to transfer, disaffirm or repudiate, or retain the QFCs. It must also allow the FDIC to assess the potential impact that such decisions may have on the financial markets as a whole.

The position-level data included in Table A–1 to the Appendix is intended to enable the FDIC to evaluate a records entity's exposure to its counterparties. The FDIC would also use these data to evaluate the effects of the receiver's determination to transfer, disaffirm or repudiate, or retain QFCs. In addition, position-level information would assist the receiver or any transferee to comply with the terms of the QFCs and reduce the likelihood of inadvertent defaults. For example, a unique position identifier would allow for the tracking and separation of positions maintained by the records entity.

The primary objective of proposed Table A–2 to the Appendix is to identify exposure of the records entity to each counterparty and its affiliates, as well as the exposure that counterparties might have to the records entity. This information would enable the FDIC to determine the effects of transfer or termination of QFCs with a given counterparty and the potential risk of contagion in the financial markets. Table A–2 would also require comprehensive collateral information, including market value of collateral, location of collateral, and any custodial and segregation arrangements. Collateral excess or deficiency positions as well as collateral thresholds and valuation discounts also would need to be maintained. This information would enable the FDIC as receiver to evaluate counterparty relationships and determine if the receivership would benefit from retaining and repudiating QFCs with certain counterparties. It would also enable the FDIC as receiver to comply with the requirements of the Act by transferring QFC obligations together with the related collateral.[102] In addition, it would enable the receiver to identify excess collateral of counterparties for possible return should the contracts be terminated after the one business day stay.

Table A–3 to the Appendix would require the maintenance of legal agreement data for each QFC agreement or master agreement between each records entity and counterparty. Because the receiver has a limited period of time in which to evaluate QFC provisions, the availability of the legal

[99] See *e.g.,* 12 U.S.C. 5365(a).

[100] 12 U.S.C. 5365(i)(2).

[101] 17 CFR 39.6(d).

[102] 12 U.S.C. 5390(c)(9)(A)(i)(IV).

agreements in fully searchable electronic form is of utmost importance. In particular, the identification of any support by or linkage to a parent entity or affiliate and the identification of any transfer restrictions and non-standard covenants would enable the FDIC as receiver to evaluate the treatment of QFCs under such contracts in an orderly liquidation of the records entity or its affiliated financial company under Title II of the Act.

Table A–4 to the Appendix would require each records entity to maintain collateral detail data both with respect to collateral received and with respect to collateral posted on a counterparty-by-counterparty basis. The data in this Table, together with the data in Table A–2, would allow the FDIC to better understand the QFC portfolio risk, and to model various QFC transfer or termination scenarios.

As indicated above, the proposed recordkeeping requirements of the Proposed Rules are similar to the FDIC's Part 371 but the information requirements of the Proposed Rules are more extensive. The Secretary considered reducing recordkeeping burden by aligning the requirements more closely with those of the FDIC's Part 371. However, the Secretary determined, in consultation with the FDIC, that additional recordkeeping beyond that required by Part 371 would be needed for the FDIC to resolve a financial company with significant QFC positions under Title II. In particular, the FDIC will need this additional information to analyze the QFC portfolio and determine whether to transfer, disaffirm or repudiate, or retain the QFCs during the one business day stay and to perform the obligations under the QFCs, including meeting collateral requirements. For example, the proposed position-level and counterparty-level data included in Tables A–1 and A–2 to the Appendix would require recordkeeping for inter-affiliate transactions, which was not included in Part 371. Recordkeeping with respect to inter-affiliate QFCs is necessary to enable the FDIC to quickly understand all QFC linkages in a corporate group and to evaluate the potential systemic effects of FDIC decisions. Table A–2, the counterparty collateral data, is also more extensive than the FDIC's Part 371 due to the inclusion of pending margin calls in the calculation of the excess or deficiency of the counterparty's collateral. This will assist the FDIC in meeting the obligations under the QFCs, including certain clearing organization margin calls. The Table A–3 legal agreements, which were not included in Part 371, are necessary to enable the FDIC as receiver to evaluate the treatment of QFCs under such contracts, including any support by or linkage to a parent entity or affiliate and the identification of any transfer restrictions and non-standard covenants. Table A–4 includes additional collateral detail data, such as the collateral jurisdiction, the collateral segregation status, and whether the collateral may be subject to re-hypothecation by the counterparty. These additional data are necessary to enable the FDIC to assess risks associated with the collateral and improve the FDIC's ability to analyze various QFC transfer or termination scenarios. For example, for cross-border transactions, this information would help the FDIC evaluate the availability of collateral in different jurisdictions and the related close-out risks if the receiver cannot arrange for the transfer of QFC positions under local law.

Because the information requirements of the Proposed Rules are more extensive than Part 371, the Secretary, in consultation with the FDIC, has also proposed to allow for a longer compliance period than the compliance period set forth under Part 371. An insured depository institution subject to the FDIC's Part 371 recordkeeping requirements must comply within 60 days of notification.[103] Under the Proposed Rules, a financial company would be required to comply with the recordkeeping requirements within 270 days of becoming a records entity.

The Secretary seeks comment on the following questions: Are any of the proposed recordkeeping requirements not necessary or appropriate to assist the FDIC as receiver? Please include the rationale for why these requirements are not necessary or appropriate. Should the determination on whether some records are not necessary or appropriate be based on the type of records entity? Would any of the contemplated records (including any of the data fields in the appendix) or data result in unnecessary burden on records entities? Are there ways to further align the recordkeeping requirements set forth herein with the requirements of other recordkeeping and reporting rules to reduce regulatory burden (*e.g.,* the respective CFTC and SEC regulations on swap and security-based swap data recordkeeping and reporting?) If so, how should this burden be reduced? Do the proposed recordkeeping requirements appropriately measure and identify the size and complexity of entities that likely qualify as records entities? Are there any additional records or data that would assist the FDIC in its role as receiver with respect to a covered financial company? If so, please explain the rationale for why such additional records or data is necessary.

c. Standardized Recordkeeping

The Secretary determined that requiring records entities to have the capacity to maintain and generate QFC records in the uniform, standardized format set forth in the Appendix to the Proposed Rules is necessary to assist the FDIC in being able to effectively exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Act. Specifically, when the FDIC is appointed as receiver of a covered financial company, the covered financial company's QFC counterparties are prohibited from exercising their contractual right of termination until 5 p.m. (eastern time) on the first business day following the date of appointment. After its appointment as receiver and prior to the close of the aforementioned 5 p.m. deadline, the FDIC has three options in managing a covered financial company's QFC portfolio. Specifically, with respect to all of the covered financial company's QFCs with a particular counterparty and all its affiliates, the FDIC may: (1) Transfer the QFCs to a financial institution, including a bridge financial company established by the FDIC; (2) retain the QFCs within the receivership and allow the counterparty to exercise contractual remedies to terminate the QFCs; or (3) retain the QFCs within the receivership, disaffirm or repudiate the QFCs, and pay compensatory damages. If the FDIC transfers the QFCs to a financial institution, the counterparty may not terminate the QFCs solely by reason of the covered financial company's financial condition or insolvency or the appointment of the FDIC as receiver. If the FDIC does not transfer the QFCs and does not repudiate such QFCs, the counterparty may exercise contractual remedies to terminate the QFCs and assert claims for payment from the covered financial company and may have rights to liquidate the collateral pledged by the covered financial company.

The Secretary considered reducing recordkeeping burdens by requiring the maintenance of non-standardized records. After consulting with the FDIC, the Secretary determined that this alternative may reduce the FDIC's flexibility in managing the QFC portfolio, increase systemic risk, and impair the FDIC's ability as receiver to manage the assets of the covered financial company in terms of

[103] 12 CFR 371.1(c).

maximizing the value of the assets in the context of orderly liquidation.[104] For example, in the absence of updated and standardized information, it is possible that QFCs could be transferred to a bridge financial company, when leaving them in the receivership would be a better course of action. If such QFCs were transferred to the bridge financial company, the bridge financial company would be required to perform the obligations under the QFCs, including meeting collateral requirements, and, to the extent set forth in the QFCs, would be liable for losses under the contracts.[105] Alternatively, QFCs could be left in the receivership, when transfer to a solvent financial institution or a bridge financial company would be a better course of action. In such a case, the lack of uniform data may, among other things, prevent the FDIC from determining the value of any collateral pledged to secure the QFCs and from considering the impact QFC terminations may have on broader financial stability.

However, while the Proposed Rules specify a standardized recordkeeping format, the Secretary also recognizes the need to provide flexibility for possible alternate recordkeeping formats if they are sufficient to meet the needs of the FDIC. The Proposed Rules provide the Secretary with the discretion to grant conditional or unconditional exemptions from compliance with one or more of the requirements of the Proposed Rules, which could include exemptions to the standardized recordkeeping format. For example, a conditional exemption could be granted if an alternate format, such as one used for a separate recordkeeping requirement, would still allow the FDIC to manipulate and analyze the data to determine the effect of FDIC decisions under Title II with respect to a covered financial company's QFC portfolio and enable the FDIC to fulfill its obligations under section 210(c)(8), (9), or (10) of the Act within the narrow time window afforded by section 210(c)(10) of the Act.

5. Affected Population

Instead of requiring all financial companies to maintain records with respect to QFCs, the Secretary is limiting the scope of the Proposed Rules to a smaller subset of financial companies. Discretion to do so is afforded under section 210(c)(8)(H)(iv) of the Act, which authorizes differentiation among financial companies by taking into consideration, among other things, their size and risk. The Secretary is exercising this discretion to exclude from the scope of the Proposed Rules financial companies that do not meet one of the following three criteria: (1) Are designated pursuant to section 113 of the Act (12 U.S.C. 5323) to be a nonbank financial company that could pose a threat to U.S. financial stability; (2) are designated pursuant to section 804 of the Act (12 U.S.C. 5463) as a financial market utility that is, or is likely to become, systemically important; or (3) have total assets equal to or greater than $50 billion. Since the Act's enactment in 2010 through 2013, eleven financial companies have been designated by the Council under categories (1) and (2), and the Secretary's understanding is that each of those designated companies has revenues in excess of the Small Business Administration's revised size standards for small entities. As a result, the Proposed Rules would only apply to large corporate groups (including a large corporate group's affiliated financial companies, regardless of their size, if the affiliated financial company is a party to an open QFC or guarantees, supports or is linked to an open QFC of an affiliate and is not an ''exempt entity'' under the Proposed Rules).

The types of financial companies that would qualify as records entities under the Proposed Rules include: Bank holding companies, savings and loan holding companies, broker-dealers, derivatives clearing organizations, payment and settlement systems, and registered clearing agencies. The Secretary proposes that the recordkeeping requirements in the Proposed Rules apply to all affiliated financial companies in a large corporate group that meet the definition of records entity, regardless of their size, because a broad exemption for small entities could significantly impair the FDIC's ability to enforce certain QFCs of affiliates of covered financial companies under section 210(c)(16) of the Act within the narrow time window afforded by section 210(c)(10) of the Act.

6. Assessment of Potential Costs and Benefits

a. Potential Costs

Based on discussions with the PFRAs who are familiar with financial company operations and have experience supervising financial companies with QFC portfolios, the Secretary believes that the costs of implementing the Proposed Rules may be mitigated by the fact that records entities should be maintaining most of the QFC records required by the Proposed Rules as part of their ordinary course of business. However, the Secretary recognizes that the Proposed Rules' standardized form and availability requirements may impose costs and burdens on records entities. In order to comply with the Proposed Rules, each of the approximately 140 large corporate groups that the Secretary estimates would be subject to the recordkeeping requirements will need to have network infrastructure to maintain data in the required format. The Secretary expects that this will likely impose one-time initial costs on each large corporate group in connection with necessary updates to their recordkeeping systems, such as systems development or modifications. The initial costs to set up network infrastructure will depend on whether a large corporate group already holds and maintains QFC data in an organized electronic format, and if so, whether the data currently reside on different systems rather than on one centralized system. Large corporate groups may need to amend internal procedures, reprogram systems, reconfigure data tables, and implement compliance processes. Moreover, they may need to standardize the data and create tables to match the format required by the Proposed Rules. However, the Secretary believes that the large corporate groups that would be subject to the Proposed Rules are likely to rely on existing centralized systems for recording and reporting QFC activities to perform most of the recordkeeping and reporting requirements set forth herein. The entity within the corporate group responsible for this centralized system will likely operate and maintain a technology shared services model with the majority of technology applications, systems, and data shared by the affiliated financial companies within the large corporate group. Therefore, the Proposed Rules will likely impose the most significant costs on the entities responsible for the centralized systems within the large corporate group, and not on the affiliated financial companies. The affiliated financial companies will likely have much lower costs because they can utilize and rely upon the technology and network infrastructure operated and maintained by the entity responsible for the centralized system within the large corporate group.

It is estimated that the initial recordkeeping burden for all records entities will be approximately 62,063 hours with a total one-time initial cost

[104] 12 U.S.C. 5390(a)(1)(B)(iv).

[105] See FDIC article, ''The Orderly Liquidation of Lehman Brothers Holdings Inc. under the Dodd-Frank Act'' (2011), p.8, available at *http://www.fdic.gov/regulations/reform/lehman.html.*

of approximately $8,030,599.[106] The total estimated annual recordkeeping burden for all records entities will be approximately 28,463 hours with a total annual cost of approximately $2,077,799. The estimated average hourly wage rate for recordkeepers to comply with the initial and annual recordkeeping burden is approximately $73 per hour based in part on the U.S. Department of Labor, Bureau of Labor Statistics' national occupational employment statistics and wage statistics, dated May 2012.[107]

With regard to reporting burdens under the Proposed Rules, a records entity may request in writing an extension of time with respect to compliance with the recordkeeping requirements or a specific exemption from the recordkeeping requirements. The total estimated annual reporting burden under the Proposed Rules will be approximately 3,500 hours with a total annual cost of approximately $542,500. The estimated average hourly rate for recordkeepers to comply with the annual reporting burden is approximately $155 per hour based on the U.S. Department of Labor, Bureau of Labor Statistics' national occupational employment statistics and wage statistics, dated May 2012.[108]

The Secretary seeks comment on whether the cost estimates are reasonable.

b. Potential Benefits

As noted earlier, QFCs tend to increase the interconnectedness of the financial system and systemic risk, and the recent financial crisis demonstrated that the management of QFC positions can be an important element of a resolution strategy which, if not handled properly, may magnify market instability. The recordkeeping requirements of the Proposed Rules are designed to ensure that the FDIC, as receiver of a covered financial company, will have comprehensive information about the QFC portfolio of such financial company subject to orderly resolution, and enable the FDIC to carry out the rapid and orderly resolution of a financial company's QFC portfolio in the event of insolvency, for example, by transferring QFCs to a bridge financial company within the narrow time window afforded by the Act. Given the short time frame for FDIC decisions regarding a QFC portfolio of significant size or complexity, the Proposed Rules would require the use of an updated and standardized format to allow the FDIC to process the large amount of QFC information quickly. In the absence of updated and standardized information, it is conceivable that, for example, the FDIC could leave QFCs in the receivership when transferring to a bridge financial company or other solvent financial institution would have been the preferred course of action had better information been available. Specifically, if the FDIC does not transfer the QFCs and does not repudiate such QFCs, counterparties may terminate the QFCs and assert claims for payment from the covered financial company and may have rights to liquidate the collateral pledged by the covered financial company. Because a large, interconnected financial company can often hold very large positions in QFCs involving numerous counterparties, the disorderly unwinding of QFCs, including the rapid liquidation of collateral, could cause severe negative consequences for U.S. financial stability. The FDIC as receiver may also wish to make sure that affiliates of the covered financial company continue to perform their QFC obligations in order to preserve the critical operations of the covered financial company and its affiliates. In such cases, the FDIC may need to arrange for additional liquidity, support or collateral to the affiliates to enable them to meet collateral obligations and generally perform their QFC obligations.

While there could be significant benefits from the Proposed Rules, such benefits are difficult to quantify, as the Proposed Rules are only one component of the orderly liquidation authority and the benefits of the Proposed Rules would only be realized upon such authority being exercised. In addition, implementation of the Dodd-Frank Act will: (1) Subject large, interconnected financial companies to stronger supervision, and as a result, reduce the likelihood of their failure; and (2) blunt the impact of any such failure on U.S. financial stability and the economy. For example, bank holding companies with total consolidated assets of $50 billion or more and nonbank financial companies supervised by the Board are subject to supervisory and company-run stress tests to help the Board and the company measure the sufficiency of capital available to support the company's operations throughout periods of stress.[109] These financial companies also are or will be subject to more stringent prudential standards, including risk-based capital and liquidity requirements, which will make their failure less likely. However, if such a financial company does fail, the implementation of the Dodd-Frank Act is also intended to ensure that its failure and resolution under the Bankruptcy Code may occur without adverse effects on U.S. financial stability. For example, each of these large bank holding companies and nonbank financial companies supervised by the Board will have in place resolution plans/''living wills'' to facilitate their rapid and orderly resolution under the Bankruptcy Code in the event of material financial distress or failure.[110] The Title II orderly liquidation authority will only be used to resolve a failing financial company if its resolution under the Bankruptcy Code would have serious adverse effects on U.S. financial stability. In addition, there are substantial procedural safeguards to prevent the unwarranted use of the Title II orderly liquidation authority.

Nevertheless, one way to gauge the potential benefits of the Proposed Rules is to examine the effect of the recent financial crisis on the real economy and how the Title II orderly liquidation authority as a whole will help reduce the probability or severity of a future financial crisis. For example, in a 2013 Government Accountability Office (GAO) report, GAO stated that there is some research that suggests that U.S. output losses associated with the 2007–2009 financial crisis could range from several trillion dollars to over $10 trillion.[111] GAO also surveyed financial

[106] This amount includes $3,500,000 in systems development/modification costs. Specifically, based in part on staff-level discussions with several of the PFRAs, it is expected that each of the approximately 140 large corporate groups will incur approximately $25,000 in systems development/modification costs, including the purchase of computer software, with a total cost of approximately $3,500,000. These costs will likely be borne by the entity responsible for maintaining the centralized system within each large corporate group. Additionally, the total estimated initial cost for large corporate group respondents to comply with the initial recordkeeping burden is $3,679,200, based on the following formula: Initial burden hours multiplied by the average hourly wage rate for recordkeepers (50,400 hours multiplied by $73/hour). The total estimated initial cost for affiliated financial company respondents to comply with the initial recordkeeping burden is $851,399, based on the following formula: Initial burden hours multiplied by the average hourly wage rate for recordkeepers (11,663 hours multiplied by $73/hour).

[107] The $73 hourly wage rate is based on the average hourly wage rates for senior programmers, programmer analysts, senior system analysts, compliance managers, compliance clerks, directors of compliance, and compliance attorneys that will conduct the recordkeeping.

[108] The $155 hourly wage rate is based on the average hourly wage rates for compliance managers, directors of compliance, and compliance attorneys that will conduct the reporting.

[109] 12 U.S.C. 5365(i); 12 CFR part 252.

[110] 12 U.S.C. 5365(d).

[111] Government Accountability Office, Financial Regulatory Reform: Financial Crisis Losses and Potential Impacts of the Dodd-Frank Act, GAO–13–180 at 15–16 (January 16, 2013).

market regulators, academics, and industry and public interest groups who identified, *inter alia,* the more stringent prudential standards discussed above and the orderly liquidation authority as not only enhancing financial stability, at least in principle, but also helping to reduce the probability or severity of a future crisis.[112]

However, as discussed above, even if the benefits of preventing future financial crises are significant, it is difficult to quantify what portion of such benefits would be attributable to any single provision of the Dodd-Frank Act, let alone those benefits directly attributable to the Proposed Rules. For example, GAO also noted that such benefits are not assured and will depend on, among other things, how regulators implement the provisions.[113] In addition, the benefits would not be attributable solely to the Proposed Rules, as a number of other reforms are also intended to reduce the probability and severity of future financial crises. Finally, as discussed above, the benefits associated with the Proposed Rules would only be realized if the Title II orderly liquidation authority is exercised and, even if utilized, the Proposed Rules are only one component of the orderly liquidation authority and the resulting benefits.

7. Retrospective Analysis

Executive Order 13563 also directs the Secretary to develop a plan, consistent with law and resources and regulatory priorities, to conduct a periodic retrospective analysis of significant regulations to determine whether such regulations should be modified, streamlined, expanded, or repealed so as to make the regulations more effective and less burdensome. The Secretary expects to conduct a retrospective analysis not later than seven years after the effective date of the rule. This review will consider whether the recordkeeping requirements are necessary or appropriate to assist the FDIC as receiver in being able to exercise its rights under the Act and fulfill its obligations under section 210(c)(8), (9), or (10) of the Dodd-Frank Act, and may result in proposed amendments to the rule. For example, the Secretary will review whether the data set forth in Tables A–1 through A–4 to the Appendix are necessary or appropriate to assist the FDIC as receiver, and/or whether maintaining additional, less, or different data is necessary or appropriate. The Secretary seeks comment on the following question: Is it appropriate for the Secretary to conduct the ‘‘lookback review’’ not later than seven years after the effective date of the rule, or would a different period be preferable?

[112] *Id.* at 33–34. GAO added that the experts it surveyed had differing views on these provisions but that many expect some or all of the provisions to improve the financial system's resilience to shocks.

[113] *Id.* at 33.

Text of the Proposed Rules

List of Subjects in 31 CFR Part 148

Reporting and recordkeeping requirements.

Authority and Issuance

For the reasons set forth in the preamble, the Department of the Treasury proposes to add part 148 to 31 CFR chapter I to read as follows:

Part 148—Qualified Financial Contracts Recordkeeping Related to the FDIC Orderly Liquidation Authority

Sec.

Authority: 31 U.S.C. 321(b) and 12 U.S.C 5390(c)(8)(H).

PART 148—QUALIFIED FINANCIAL CONTRACTS RECORDKEEPING RELATED TO THE FDIC ORDERLY LIQUIDATION AUTHORITY

§ 148.1 Scope, purpose, effective date, and compliance dates.

(a) *Scope.* This part applies to each financial company that qualifies under the definition of ‘‘records entity’’ set forth in § 148.2 of this part.

(b) *Purpose.* This part establishes recordkeeping requirements with respect to qualified financial contracts for a records entity in order to assist the Federal Deposit Insurance Corporation (‘‘FDIC’’) as receiver for a covered financial company (as defined in 12 U.S.C. 5381(a)(8)) in being able to exercise its rights and fulfill its obligations under 12 U.S.C. 5390(c)(8), (9), or (10).

(c) *Effective date.* This part shall become effective 60 days after publication of the final rule in the **Federal Register**.

(d) *Compliance dates*—(1) *Initial compliance dates.* A records entity must comply with § 148.3(a)(3) on the effective date and with all other requirements of this part within 270 days from first becoming subject to this part. In the case of a financial company that becomes a records entity subject to this part after the effective date, such records entity must comply with § 148.3(a)(3) within 60 days of becoming a records entity and with all other requirements of this part within 270 days from first becoming subject to this part.

(2) *Subsequent compliance date.* If a financial company ceases to be a records entity subject to this part after the initial compliance dates, and remains so for at least one year (calculated on a rolling 12-month basis), it is no longer required to comply with this part. However, if at any time after the one-year period, such financial company again becomes a records entity subject to this part, it must comply with all of the requirements of this part no later than 90 days after becoming subject to this part.

§ 148.2 Definitions.

For purposes of this part:

Affiliate means any entity that controls, is controlled by, or is under common control with a financial company or counterparty.

Control. An ‘‘entity controls another entity’’ if it:

(1) Directly or indirectly or acting through one or more other persons owns, controls, or has the power to vote 25 percent or more of any class of voting securities of another entity;

(2) Controls in any manner the election of a majority of the directors or trustees of another entity; or

(3) Must consolidate another entity for financial or regulatory reporting purposes.

Corporate group means an entity and all affiliates of that entity.

Counterparty means any natural person or entity (or separate non-U.S. branch of any entity) that is a party to a QFC with a records entity, including any affiliate or any non-U.S. branch of such records entity if such affiliate or branch is a party to a QFC with such records entity, or is a party to a QFC that is guaranteed or supported by a records entity.

Exempt entity means:

(1) An insured depository institution as defined in 12 U.S.C. 1813(c)(2);

(2) A subsidiary of an insured depository institution that is not a functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5), a security-based swap dealer as defined in 15 U.S.C. 78c(a)(71) or a major security-based swap participant as defined in 15 U.S.C. 78c(a)(67); or

(3) A financial company that is not a party to a QFC and controls only exempt entities as defined in paragraphs (1) and (2) of this definition.

Financial company has the meaning set forth in 12 U.S.C. 5381(a)(11).

Guarantees, supports and *guaranteed or supported* mean to:

(1) Guarantee, indemnify, or undertake to make any loan or advance;

(2) Undertake to make capital contributions; or

(3) Be contractually obligated to provide any other financial assistance.

Linked. A QFC is ''linked'' to a financial company if it contains a specified financial condition clause that specifies such financial company. A ''specified financial condition clause'' means any provision of any QFC (whether expressly stated in the QFC or incorporated by reference in any other contract, agreement or document) that permits a contract counterparty to terminate, accelerate, liquidate or exercise any other remedy under any QFC or other contract to which an affiliate of the financial company is a party or to obtain possession or exercise control over any property of such affiliate or affect any contractual rights of such affiliate directly or indirectly based upon or by reason of:

(1) A change in the financial condition or the insolvency of a financial company;

(2) The appointment of the FDIC as receiver for the financial company or any actions incidental thereto, including, without limitation, the filing of a petition seeking judicial action with respect to the appointment of the FDIC as receiver for the financial company or the issuance of recommendations or determination of systemic risk;

(3) The exercise of rights or powers by the FDIC as receiver for the financial company, including, without limitation, the appointment of the Securities Investor Protection Corporation (SIPC) as trustee in the case of a financial company that is a covered broker or dealer and the exercise by SIPC of its rights and powers as trustee;

(4) The transfer of assets or liabilities to a bridge financial company or other qualified transferee;

(5) Any actions taken by the FDIC as receiver for the financial company to effectuate the liquidation of the financial company; or

(6) Any actions taken by or on behalf of the bridge financial company to operate and terminate the bridge financial company, including the dissolution, conversion, merger or termination of the bridge financial company or actions incidental or related thereto. Without limiting the foregoing, a specified financial condition clause includes a ''walkaway clause'' as defined in 12 U.S.C. 5390(c)(8)(F)(iii) or any regulations promulgated thereunder.

Position means the rights and obligations of a party to an individual transaction under a QFC.

Primary financial regulatory agency means, with respect to each financial company, each primary financial regulatory agency as specified for such financial company in subparagraphs (A), (B), (C), and (E) of 12 U.S.C. 5301(12).

Qualified financial contract or ''QFC'' means any qualified financial contract defined in 12 U.S.C. 5390(c)(8)(D), including without limitation, any ''swap'' defined in section 1a(47) of the Commodities Exchange Act (7 U.S.C. 1a(47)) and in any rules or regulations issued by the Commodity Futures Trading Commission (CFTC) pursuant to such section; any ''security-based swap'' defined in section 3(a) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)) and in any rules or regulations issued by the Securities and Exchange Commission (SEC) pursuant to such section; and any securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, and any similar agreement that the FDIC determines by regulation, resolution, or order to be a qualified financial contract as provided in 12 U.S.C. 5390(c)(8)(D).

Records entity—(1) *Records entity* means a financial company that:

(i) Is not an exempt entity;

(ii) Is a party to an open QFC or guarantees, supports or is linked to an open QFC; and

(iii) (A) Has been determined pursuant to 12 U.S.C. 5323 to be an entity that could pose a threat to the financial stability of the United States;

(B) Has been designated pursuant to 12 U.S.C. 5463 as a financial market utility that is, or is likely to become, systemically important;

(C) Has total assets equal to or greater than $50 billion; or

(D) Is:

(*1*) A party to an open QFC or guarantees, supports or is linked to an open QFC of an affiliate; and

(*2*) A member of a corporate group in which at least one financial company meets the criteria under paragraphs (1)(iii)(A), (B), or (C) of this definition.

(2) For the purpose of this definition, ''total assets'' means the total assets reported in the most recent year-end audited consolidated statement of financial condition of the applicable financial company filed with its primary financial regulatory agency, or, for financial companies not required to file such statements, the total assets shown on the consolidated balance sheet of the financial company for the most recent fiscal year end.

SDR means any swap data repository or security-based swap data repository registered with the CFTC or the SEC and any other similar data repository established to enable reporting of QFC data.

Secretary means the Secretary of the Treasury or the Secretary's designee.

Subsidiary means any company that is controlled by another company.

§ 148.3 Form, availability and maintenance of records.

(a) *Form and availability*—(1) *Electronic records.* A records entity is required to maintain all records described in section 148.4 in electronic form and be able to generate data in the format set forth in Tables A–1 through A–4 of the appendix to this part. Such records shall be capable of being transmitted electronically to the records entity's primary financial regulatory agencies and the FDIC. All affiliated records entities in a corporate group must be able to generate data in the format set forth in Tables A–1 through A–4 of the appendix to this part in the same data format and use the same unique counterparty identifiers to enable the aggregation of data both:

(i) For all affiliated records entities in the corporate group; and

(ii) By counterparty, for all records entities in a corporate group.

(2) *Position records.* A records entity must maintain records for all QFCs to which it is a party, including inter-affiliate QFCs to which it is a party. A records entity must also maintain records for all QFCs that are guaranteed or supported by such records entity.

(3) *Point of contact.* A records entity must provide to each of its primary financial regulatory agencies and the FDIC a point of contact at the records entity who is responsible for recordkeeping under this part, by written notice to its primary financial regulatory agencies and the FDIC on the effective date of this part and, thereafter, within 30 days of any change in the point-of-contact information.

(4) *Access to records.* A records entity that is regulated by a primary financial regulatory agency shall be capable of providing to such primary financial regulatory agency, within 24 hours of request, the records specified in § 148.4.

(b) *Maintenance and updating*—(1) *Daily updating.* A records entity shall maintain the capacity to generate the data in the format set forth in Tables A–1 through A–4 of the appendix to this part, based on the previous end-of-day records and values. Data that are more current than previous end-of-day records and values are deemed to satisfy this requirement.

(2) *Records maintenance.* The records required under this part may be maintained on behalf of the records entity by any affiliate of such records entity, or any third-party service provider that maintains the records in the ordinary course of business.

(3) *Record retention.* Unless otherwise indicated in this part, the requirement on a records entity to maintain records applies to records and values with respect to open QFC positions and any other QFC positions needed to generate reports based on end-of-day records and values for at least the five business days prior to the date of a request.

(c) *Exemptions*—(1) *General exemptions.* Upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agencies for the applicable records entities that takes into consideration each of the factors referenced in 12 U.S.C. 5390(c)(8)(H)(iv), the Secretary may grant conditional or unconditional exemptions from compliance with one or more of the requirements of this part by issuing an exemption to one or more types of records entities. In determining whether to grant a general exemption, the Secretary will consider any factors deemed necessary or appropriate by the Secretary, including whether application of one or more requirements of this part is not necessary to achieve the purpose of this part.

(2) *Specific exemptions.* Upon written request by a records entity, the FDIC may recommend, after taking into consideration each of the factors referenced in 12 U.S.C. 5390(c)(8)(H)(iv), that the Secretary grant a conditional or unconditional specific exemption from compliance with one or more of the requirements of this part. Upon receipt of a written recommendation from the FDIC, prepared in consultation with the primary financial regulatory agencies for the records entity, the Secretary may grant a conditional or unconditional specific exemption from compliance with one or more requirements of this part by issuing an exemption to such records entity. In determining whether to grant a specific exemption, the Secretary will consider any factors deemed necessary or appropriate, including whether application of one or more requirements of this part is not necessary to achieve the purpose of this part.

(3) *Extensions of time.* The Secretary, in consultation with the FDIC, may grant one or more extensions of time for compliance with this part. A records entity may request an extension of time by submitting a written request to the Department of the Treasury, at least 30 days prior to the deadline for its compliance with the requirements of this part. The written request for an extension must contain:

(i) A statement of the reasons why the records entity cannot comply by the deadline for compliance; and

(ii) A plan for achieving compliance during the requested extension period.

§ 148.4 Content of records.

(a) *All records entities.* Subject to § 148.3(c), a records entity must maintain all records required under this part, including:

(1) The position-level data listed in Table A–1 in the appendix of this part.

(2) The counterparty collateral data listed in Table A–2 in the appendix of this part.

(3) The legal agreements information listed in Table A–3 in the appendix of this part.

(4) The collateral detail data listed in Table A–4 in the appendix of this part.

(5) Any written data or information that is not listed in Tables A–1 through A–4 in the appendix to this part that the records entity is required to provide to an SDR, the CFTC, the SEC or any non-U.S. regulator with respect to any QFC, for any period that such data or information is required to be maintained by its primary financial regulatory agency.

(6)(i) For each counterparty that is not an affiliate of the records entity, a list specifying all other counterparties that are members of the same corporate group as the counterparty and that are parties to open QFCs with the records entity or guarantee, support or are linked to such QFCs, as well as an organizational chart that explains the affiliate relationships of such counterparties. Such list shall include the unique counterparty identifier for each counterparty in the counterparty's corporate group. The unique counterparty identifier shall be based on the global legal entity identifier issued by:

(A) Utilities endorsed by the Regulatory Oversight Committee, whose charter was set forth by the Finance Ministers and Central Bank Governors of the Group of Twenty and the Financial Stability Board; or

(B) Utilities endorsed or otherwise governed by the Global LEI Foundation, but must include additional identifiers in the event one counterparty transacts with the records entity as separate non-U.S. branches or divisions, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for the counterparty's corporate group as necessary to determine the effects of potential QFC transfers or terminations, including the effects of any ring-fencing with regard to any such non-U.S. branch or division.

(ii) All records entities in a corporate group must use the same unique counterparty identifier for each counterparty.

(7) A list of all affiliates of the records entity that are parties to open QFCs or guarantee, support or are linked to open QFCs, as well as an organizational chart that explains the affiliate relationships for such records entities. Such list shall specify which affiliates are counterparties to inter-affiliate QFCs with such records entity for which the records entity is required to maintain records pursuant to this part. Such list shall include the unique counterparty identifier for each affiliated counterparty in the records entity's corporate group as set forth in paragraph (a)(6) of this section.

(8) Full-text searchable copies of all agreements that govern QFC transactions between the records entity and each counterparty, including without limitation, master agreements and annexes, supplements, or other modifications with respect to the agreements.

(9) Copies of the active or ''open'' confirmations, if the position has been confirmed or the trade acknowledgment if the position has not been confirmed.

(10) Full-text searchable copies of all credit support documents including, but not limited to, any credit support annexes, any guarantees, keep-well agreements, or net worth maintenance agreements that are relevant to one or more QFCs.

(11) Full-text searchable copies of all assignment or novation documents, if applicable, including documents which confirm that all required consents, approvals, or other conditions precedent for such assignment or novation have been obtained or satisfied.

(12) A list of vendors directly supporting the QFC-related activities of the records entity and the vendors' contact information.

(13) Risk metrics used to monitor the QFC portfolio, including without limitation, credit risk, market risk and liquidity risk measures.

(14) Risk manager contact information for each portfolio that includes QFCs.

Appendix to Part 148—File Structure for Qualified Financial Contract Records

In maintaining the records required under this part, a records entity may leave an entry blank or insert N/A for the data fields that do not apply to a given QFC transaction or agreement.

TABLE A–1—POSITION-LEVEL DATA

[For a records entity]

Field	Example	Data application
Unique position identifier	20058953	Information needed to readily track and distinguish positions.
Unique counterparty identifier [1] of records entity	999999999	Information needed to review position-level data by records entity.
Unique counterparty identifier of counterparty to records entity (non-reporting party).	888888888	Information needed to identify and, if necessary, communicate with counterparty.
Legal name of counterparty (non-reporting party).	John Doe & Co.	Information needed to identify and, if necessary, communicate with counterparty.
Industry code (GIC or SIC code) of counterparty to records entity (non-reporting party).	2096	Information needed to analyze knock-on effects by industry.
Internal booking location identifier (for headquarters or branch where the position is booked).	XY12Z	Information needed to determine the headquarters or branch where the position is booked, including the system on which the trade is booked, as well as the system on which the trade is settled.
Unique booking unit or desk identifier	xxxxxx	Additional information to help determine purpose of position.
Unique booking unit or desk description	North American Trading Desk	Additional information to help determine purpose of position.
Contact information of person responsible for position, including name, phone number and e-mail address.	John Smith x-xxx-xxx-xxxx *jsmith@domain.com*.	Information needed to maintain a point of contact with the records entity.
Unique master agreement or governing documentation identifier.	xxxxxx	Information needed to identify master agreement or governing documentation.
Form of master agreement or governing documentation.	ISDA 1992	Information needed to determine whether a standard form agreement governs the transaction.
Unique master netting agreement identifier	xxxxxxxxx	Information needed to identify, and determine effects of, any cross-product and other master netting agreements (sometimes called "master master agreements").
Name of master netting agreement	[Agreement name]	Information needed to identify, and determine effects of, any cross-product and other master netting agreements.
Position standardized asset class (or QFC asset class of the reference asset or interest rate).	Credit; equity; foreign exchange; interest rate (including cross-currency); other commodity; securities repurchase agreement; securities lending; loan repurchase agreement.	Information needed to determine the extent to which the entity is involved in any particular QFC market.
Position standardized contract type (or QFC contract type of the reference asset or interest rate) [2].	Mortgage loan repurchase agreement	Information needed to determine the extent to which the entity is involved in any particular QFC market.
Purpose of the position (if the purpose consists of hedging strategies, include the general category of the item(s) hedged).	Trading or hedging (e.g., hedging mortgage servicing or hedging a mortgage pipeline).	Information needed to determine the role of the QFC in the records entity and the corporate group's business strategy. For example, if the purpose of a QFC is to hedge a non-QFC arrangement, the FDIC has the potential for a broken-hedge because the non-QFC arrangement is not subject to the "all or none" QFC transfer and repudiation rule.
Issue date	6/31/2010	Information needed to determine the date the entity entered into the agreement.
Termination date (date the position terminates or is expected to terminate, expire, mature, or when final performance is required).	3/31/2014 Overnight Open	Information needed to determine when the entity's rights and obligations regarding the position are expected to end.
Next call, put, or cancellation date	9/30/2014	Information needed to determine when a call, put, or cancellation may occur with respect to a position.
Next payment date	9/30/2014	Information needed to anticipate potential upcoming obligations.
Local currency of position (e.g. USD, GBP, EUR, JPY).	USD	Information needed to determine currency.
Current market value of the position in local currency (as of the date of the file).	995,000	Information needed to determine the current size of the obligation/benefit in association with the QFC.

TABLE A–1—POSITION-LEVEL DATA—Continued

[For a records entity]

Field	Example	Data application
Current market value of the position in USD equivalent (as of the date of the file).	995,000	Information needed to determine the current size of the obligation/benefit in association with the QFC.
Notional or principal amount of the position in local currency (as applicable).	1,000,000	Information needed to help evaluate the position.
Notional or principal amount of the position in USD equivalent (as applicable).	1,000,000	Information needed to help evaluate the position.
Documentation status of the position	Affirmed, confirmed, or neither affirmed nor confirmed.	Information needed to determine reliability of the position and its legal status.
Credit support documents (including any security agreement or guarantee) (If more than one, delimit each with a comma.).	Credit Support Annex	Information needed to identify and review credit support related to the position, including any applicable covenants.
Name of position or agreement guarantor, if applicable.	Holdco	Information needed to identify entity with potential credit exposure.
Unique counterparty identifier of guarantor	888888888	Information needed to identify the guarantor's exposure to swaps of affiliates.
Reference number of guarantee agreement	xxxxxx	Information needed to be able to connect data on Table A–1 with Table A–2.
Unique counterparty identifier of counterparty to related inter-affiliate position(s) with other records entity in the corporate group (If more than one, delimit each with a comma.).	777777777	Information needed to identify counterparty to inter-affiliate position that is back-to-back with, or otherwise related to, this position.
Name of counterparty to related inter-affiliate position(s) (If more than one, delimit each with a comma.).	Jane Doe & Co.	Information needed to identify counterparty to inter-affiliate position that is back-to-back with, or otherwise related to, this position.
Related inter-affiliate position ID(s)	Unique position ID(s) for related inter-affiliate position (If more than one, delimit each with a comma.).	Information needed to identify all related positions, i.e., each position with an affiliated records entity that is back-to-back with, or otherwise relates to, this position.
Reference number for any related loan (If more than one, delimit each with a comma.).	Unique reference number(s) for loans related to this position.	Information necessary to identify any loan(s) within the corporate group that are related to this position.
Legal name of records entity or any affiliate of the records entity that is lender of related loan (If more than one, delimit each with a comma.).	[Insert legal name of each records entity that is lender of related loan].	Information needed to identify lender.
Classification under GAAP or IFRS	Level 1, Level 2, Level 3	Information with respect to carrying value for the position.

[1] The unique counterparty identifier shall be based on the global legal entity identifier, but must include additional identifiers in the event one counterparty transacts with the records entity as separate non-U.S. branches or divisions, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for the counterparty's corporate group as necessary to determine the effects of potential QFC transfers or terminations, including the effects of any ring-fencing with regard to any such non-U.S. branch or division. All records entities in an affiliated group must use the same unique counterparty identifier for a specific counterparty.

[2] Position "types" shall be used consistently for all records entities within the corporate group. If the OFR adopts or authorizes a unique product identifier for a given type of position/transaction, then within 180 days after such action, the records entity shall substitute such identifier for "Type of Position," and shall utilize such identifier for purposes of this part for all records entities within its corporate group.

TABLE A–2—COUNTERPARTY COLLATERAL DATA [1]

[For positions between a records entity and each counterparty [2]]

Field	Example	Data application
Unique counterparty identifier [3] of records entity	999999999	Information needed to review counterpart-level data by records entity.
Unique counterparty identifier of counterparty to records entity (non-reporting party).	888888888	Information needed to aggregate positions by counterparty.
Legal name of counterparty	John Doe & Co.	Information needed to aggregate positions by counterparty.
Industry code (GIC or SIC code) of counterparty.	2096	Information needed to analyze knock-on effects by industry
Contact information for counterparty, including name, phone number, and email address.	xxxxxxxx	Information needed to maintain a point of contact with the counterparty for the portfolio.
Master Netting Agreement for counterparty's corporate group (Y/N).	Yes	Information needed to determine how positions of a records entity can be transferred.
Name of each master agreement, master netting agreement or governing documentation related to netting among affiliates in a counterparty's corporate group [4] (if more than one, list each).	ISDA Master Agreement	Information needed to identify the agreement.

TABLE A–2—COUNTERPARTY COLLATERAL DATA [1]—Continued

[For positions between a records entity and each counterparty [2]]

Field	Example	Data application
Unique master agreement, master netting agreement or governing documentation identifier for agreements related to netting among affiliates in a counterparty's corporate group (if more than one, list each).	xxxxxx	Internal reference number of the master agreement or governing documentation.
Current market value in USD equivalent of all positions, as aggregated and, to the extent permitted under each applicable agreement, netted.	(1,000,000)	Information needed to help evaluate the positions.
Current market value in USD equivalent of all collateral, if any, posted against all positions of the records entity with the counterparty by collateral provider.	950,000	Information needed to determine the extent to which collateral has been provided.
Current market value in USD equivalent of all collateral posted against all positions of the records entity with the counterparty that is subject to re-hypothecation by the counterparty, if any, by collateral provider.	950,000	Information needed to determine exposure of a records entity or other collateral provider(s) to the creditworthiness of a counterparty
Current market value in USD equivalent of all collateral, if any, posted against all counterparty positions with the records entity by collateral provider.	50,000	Information needed to determine the extent to which collateral has been provided on behalf of a counterparty.
Current market value in USD equivalent of all collateral posted against all positions of the counterparty with the records entity that is subject to re-hypothecation by the records entity, if any, by collateral provider.	50,000	Information needed to determine uncollateralized liability of records entity to a counterparty or other collateral provider(s) for re-hypothecated collateral
With respect to all collateral posted against the record entity's positions, collateral excess or deficiency (including pending margin calls in this calculation) in USD equivalent with respect to all of the records entity's positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.[5]	(25,000)	Information needed to determine the extent to which the records entity has satisfied collateral requirements under each applicable agreement.
With respect to all collateral posted against each counterparty's positions collateral excess or deficiency (including pending margin calls in this calculation) in USD equivalent with respect to all of such counterparty's positions with the records entity, as determined under each applicable agreement, including thresholds and haircuts where applicable.	150,000	Information needed to determine the extent to which the counterparty has satisfied collateral requirements under each applicable agreement.
With respect to all collateral posted against the records entity's positions, collateral excess or deficiency (including pending margin calls in this calculation) in USD equivalent with respect to all the positions, based on the aggregate market value of the positions of a counterparty (after netting to the extent permitted under each applicable agreement) and the aggregate market value of all collateral posted against the records entity's positions, in whole or in part.	(50,000)	Information needed to determine the extent to which the record entity's obligations regarding the positions may be unsecured.
Collateral safekeeping agent contact information, including name, email address, phone number.	xxxxxxxx	Information needed to maintain a point of contact with the collateral safekeeping agent.
For each records entity, current market value of all inter-affiliate positions with this records entity (multiple entries depending on number of entities and complexity of inter-company transactions).	Records entity 1, Records entity 2, Counterparty xxx, aggregate current market value.	Information needed to assess both cross border positions as well as transfer links.
Risk or relationship manager contact information, including name, phone number and email address.	xxxxxxxx	Information needed to maintain a point of contact for the counterparty relationship.
Master Netting Agreement for records entity's corporate group (Y/N).	Yes	Information needed to determine how positions are netted among records entities.

TABLE A–2—COUNTERPARTY COLLATERAL DATA [1]—Continued

[For positions between a records entity and each counterparty [2]]

Field	Example	Data application
Name of each master agreement, master netting agreement or governing documentation related to netting among records entities (if more than one, list each).	ISDA Master Agreement	Information needed to identify the agreement.
Unique master agreement, master netting agreement or governing documentation identifier for agreements related to netting among records entities (if more than one, list each).	xxxxxx	Internal reference number of the master agreement or governing documentation.
Legal name of master agreement guarantor, if any.	xxxxxx	Information needed to determine credit exposure of the guarantor.
Unique counterparty identifier of guarantor	xxxxxx	Information needed to determine credit exposure of the guarantor.

[1] All amounts shall be provided in U.S. Dollar equivalent. For collateral denominated in non-U.S. currency, the value in such non-U.S. currency shall also be provided.

[2] Table A–2 shall be provided at the first level of netting under a master agreement. If a master agreement includes Annexes or other provisions that are subject to intermediate netting, each netting set shall be reported separately. The table shall have a separate entry for each netting agreement that is applicable to one or more counterparties in the counterparty corporate group. The FDIC intends to use the data both to determine net positions between each counterparty and a records entity and to determine the records entity's aggregated position with respect to all affiliates in a counterparty's corporate group based on the enforceability of the netting agreements.

[3] The unique counterparty identifier shall be based on the global legal entity identifier, but must include additional identifiers in the event one counterparty transacts with the records entity as separate non-U.S. branches or divisions, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for the counterparty's corporate group as necessary to determine the effects of potential QFC transfers or terminations, including the effects of any ring-fencing with regard to any such non-U.S. branch or division. All records entities in an affiliated group must use the same unique counterparty identifier for a specific counterparty.

[4] If one or more positions cannot be netted against others, they shall be maintained as separate entries and each such entry shall identify the applicable netting agreement, if any, to which it relates (if none, specify "none").

[5] If all positions are not secured by the same collateral, then separate entries shall be maintained for each position or set of positions secured by the same collateral and each such entry shall identify the applicable credit support document, if any, to which it relates (if none, specify "none").

TABLE A–3—LEGAL AGREEMENTS

[For each QFC agreement or master agreement between a records entity and each counterparty]

Field	Example	Data application
Name of agreement	ISDA Master Agreement	Information needed to identify the agreement.
Reference Number	xxxxxx	Internal reference number of the master agreement or governing documentation.
Basic form of agreement	[1992/2002] version	Information needed to identify the basic form of agreement.
Agreement governing law	[State/Country]	Information needed to determine the law governing contract disputes.
Cross defaults (Y/N and description of type of cross default and identity of cross-default entity).	Y Insolvency. [parent].	Information needed to determine exposure to affiliates or other entities.
Transfer restrictions (Y/N and description of transfer restriction).	Y Counterparty consent required.	Information needed to determine QFC transfer limitations per agreement terms.
Events of Default/Termination Events added to the basic form of agreement (Y/N and brief description or excerpts of each).	Y Counterparty stock price declines by more than $xx.	Information needed to determine whether there are events of default or termination events that have been added to those provided in the basic form of agreement and the likelihood of occurrence of event of default.
Events of Default/Termination Events deleted from the basic form of agreement (Y/N and excerpts of each).	Y Credit event upon merger.	Information needed to determine if there are any events of default or termination events of the basic form of agreement that have been removed.
Guarantee agreement with respect to records entity obligations (Y/N).	Y	Information needed to determine if there is credit exposure because of a guaranty.
Reference number of guarantee agreement	xxxxxxx	Internal reference number to enable aggregation of exposures to a guarantor.
Legal name of guarantor of records entity obligations, if any.	xxxxxxx	Information needed to identify the guarantor.
Unique counterparty identifier of guarantor of records entity obligations.	xxxxxxx	Information needed to identify the guarantor.
Unique counterparty identifier of counterparty to records entity (non-reporting party).	888888888	Information needed to aggregate information by counterparty.
Legal name of Counterparty	John Doe & Co.	Information needed to aggregate information by counterparty.
Industry code (GIC or SIC code) of counterparty.	2096	Information needed to analyze knock-on effects by industry.

TABLE A–3—LEGAL AGREEMENTS—Continued

[For each QFC agreement or master agreement between a records entity and each counterparty]

Field	Example	Data application
Contact information for counterparty, including name, phone number, and email address.		Information needed to maintain a point of contact with the counterparty for the portfolio.
Guarantee agreement with respect to counterparty obligation (Y/N).	Y	Information needed to determine if there is guarantor exposure with respect to the counterparty.
Reference number of counterparty guarantee agreement.	xxxxxxx	Internal reference number to enable aggregation of guarantor exposure.
Legal name of guarantor of counterparty obligations, if any.	xxxxxxx	Information needed to determine credit exposure of guarantor for counterparty obligations.
Unique counterparty identifier of counterparty guarantor.	xxxxxxx	Information needed to determine credit exposure of guarantor for counterparty obligations.

TABLE A–4—COLLATERAL DETAIL DATA

[For a records entity with respect to each counterparty, and for each counterparty with respect to a records entity and aggregated for such record entity's corporate group as well as such counterparty corporate group to the extent required or permitted by any applicable netting agreements]

Field	Example	Data application
Unique collateral identifier for a collateral item	CUSIPs	Reference required to identify individual collateral posted.
Local currency of collateral item (e.g. USD, GBP, EUR, JPY).	USD	Information needed to determine the type of collateral
Original face amount of collateral item in local currency.	1,500,000	Information needed to evaluate collateral sufficiency and marketability.
Original face amount of collateral item in USD equivalent.	1,500,000	Information needed to evaluate collateral sufficiency and marketability and to assist in aggregation across currencies.
Current end of day market value amount of collateral item in local currency.	850,000	Information needed to evaluate collateral sufficiency and marketability.
Current end of day market value amount of collateral item in USD equivalent.	850,000	Information needed to evaluate collateral sufficiency and marketability and to assist in aggregation across currencies.
Description of collateral item or items	U.S. Treasury Strip, maturity 6/30/2020	Information needed to evaluate collateral sufficiency and marketability.
Collateral currency	USD	Information needed to determine the type of collateral
Collateral Code,[1] if any, of the collateral that the records entity has posted against all positions with the counterparty.	xxxxx	Information needed to identify and aggregate collateral.
Unique entity identifier of collateral posting entity.	999999999	Information needed to determine the headquarters or branch where the position is booked.
Name of master agreement or governing documentation.	ISDA Master Agreement	Information needed to identify the agreement.
Unique master agreement or governing documentation identifier.	xxxxxx	Internal reference number of the master agreement or governing documentation.
Collateral or portfolio segregation status (Y/N/ and the scope of such segregation).	Y, segregated with third party custodian specified below.	Information needed to evaluate the extent of segregation of the specific item of collateral or the related collateral portfolio.
Credit support documents (including any security agreement) (If applicable, unique credit support document identifier.).	Credit Support Annex NA.	Information needed to identify and review credit support, including any applicable covenants.
Unique counterparty identifier	888888888	Information needed to aggregate positions by counterparty.
Legal name of counterparty	John Doe & Co.	Information needed to identify counterparty.
Collateral location	ABC Broker-Dealer (in safekeeping account of counterparty).	Information needed to identify location of collateral posted.
Collateral jurisdiction	New York, NY	Information needed to identify jurisdiction of location of collateral posted.
Is collateral re-hypothecation by the counterparty allowed (Y/N).	Yes	Information needed to evaluate exposure of the records entity to the counterparty for rehypothecated collateral.
Master (cross-product) netting agreement name	NA	Information needed to determine effects of any cross-product and other master netting agreements (sometimes referred to as "master master agreements").

TABLE A–4—COLLATERAL DETAIL DATA—Continued

[For a records entity with respect to each counterparty, and for each counterparty with respect to a records entity and aggregated for such record entity's corporate group as well as such counterparty corporate group to the extent required or permitted by any applicable netting agreements]

Field	Example	Data application
Master (cross-product) netting agreement unique identifier (If applicable, unique master netting agreement identifier. If not applicable, enter ''N/A'').	NA	Information needed to determine effects of any cross-product and other master netting agreements.
Classification under GAAP (FAS 157)	Level 1, Level 2, Level 3	Information with respect to carrying value for the position.

[1] CFTC collateral codes and collateral ''types'' shall be used consistently for collateral posted by a records entity or counterparty, as applicable. If the OFR adopts or authorizes a unique identifier for a given type of collateral, then within 180 days after such action, the records entity shall instead use such identifier as the code for such collateral for purposes of this part and shall utilize such identifier for purposes of this part for all records entities within its corporate group. For repurchase or securities lending agreements, separate collateral tables should be provided that list the type, CUSIP or ISEN number of such securities.

Matthew Rutherford,

Acting Under Secretary for Domestic Finance.

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