



6714-01-P

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 371

RIN 3064-AE54

Recordkeeping Requirements for Qualified Financial Contracts

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule.

SUMMARY: The FDIC is amending its regulations regarding Recordkeeping Requirements for Qualified Financial Contracts (“Part 371”), which require insured depository institutions (“IDIs”) in a troubled condition to keep records relating to qualified financial contracts (“QFCs”) to which they are party. The final rule augments the scope of QFC records required to be maintained by an IDI that is subject to the FDIC’s recordkeeping requirements and that has total consolidated assets equal to or greater than \$50 billion or is a consolidated affiliate of a member of a corporate group one or more members of which are subject to the QFC recordkeeping requirements set forth in the regulations adopted by the Department of the Treasury (a “full scope entity”); for all other IDIs subject to the FDIC’s QFC recordkeeping requirements, adds and deletes a limited number of data requirements and makes certain formatting changes with respect to the QFC recordkeeping requirements; requires full scope entities to keep QFC records of certain of their subsidiaries; provides an exemption process; and includes

certain other changes, including changes that provide additional time for certain IDIs in a troubled condition to comply with the regulations.

DATES: Effective October 1, 2017.

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I. Policy Objectives

This final rule (the “final rule”) enhances and updates recordkeeping requirements as to QFCs of IDIs in troubled condition in order to facilitate the orderly resolution of IDIs with QFC portfolios. The final rule revises the format of records required to be maintained in order to provide more ready access to expanded QFC portfolio data. Additionally, the final rule requires that more comprehensive information be maintained to facilitate the FDIC’s understanding of complex QFC portfolios of IDIs in receivership. The changes to both the formatting and the quantity of information will enable the FDIC, as receiver, to make better informed and efficient decisions as to whether to transfer some or all of a failed IDI’s QFCs during the one-business-day stay period for the transfer of QFCs. This will help the FDIC achieve a least costly resolution.

Part 371 was adopted in 2008 pursuant to 12 U.S.C. 1821(e)(8)(H) (the “FDIA Recordkeeping Provision”) to enable the FDIC to have prompt access to detailed information about the QFC portfolios of IDIs for which the FDIC is appointed receiver.¹ In the eight and one-half years since Part 371 was adopted, the FDIC has obtained QFC information pursuant to Part 371 from many IDIs in troubled condition, ranging in size from large, complex institutions to small community banks. While the information obtained has proved useful to the FDIC as receiver, the necessity for more comprehensive information from institutions with complex QFC portfolios in formats that reflect recent developments in digital technology is evident.

¹ 12 CFR part 371.

In July 2010, Congress enacted the Dodd-Frank Wall Street Reform and Consumer Protection Act² (“Dodd-Frank Act”), section 210(c)(8)(H) (“Section 210(c)(8)(H)”) of which requires the adoption of regulations that require financial companies to maintain QFC records that are determined to be necessary or appropriate to assist the FDIC as 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. These sections of the Dodd-Frank Act are in most respects identical to 12 U.S.C. 1821(e)(8)-(10) of the Federal Deposit Insurance Act (“FDIA”)³ and cover, among other subjects, the stay applicable to QFCs and the FDIC’s rights to transfer QFCs during the one-business-day stay period.

On October 31, 2016, in implementation of Section 210(c)(8)(H), the Department of the Treasury published regulations (“Part 148”) that require large U.S. financial companies and their U.S. subsidiaries (other than IDIs, certain IDI subsidiaries and insurance companies) to maintain QFC recordkeeping systems.⁴ The scope of records required to be maintained by companies subject to Part 148 is more comprehensive than that required under Part 371 for IDIs in troubled condition. Part 148 was prepared in consultation with the FDIC. Its recordkeeping requirements reflect the insights obtained by the FDIC in administering Part 371. Part 148, as adopted, reflects comments received on the Part 148 notice of proposed rulemaking, and the input from those comments are, where appropriate, reflected in this final rule. Part 148 requires companies that are

² 12 U.S.C. 5301 et seq.

³ 12 U.S.C. 1811 et seq.

⁴ 31 CFR part 148.

subject to that rule to maintain comprehensive QFC records in formats that will enable the FDIC to expeditiously analyze the information in the event it is appointed as receiver for a covered financial company pursuant to Title II of the Dodd-Frank Act. The comprehensive data fields reflect the data that the FDIC has identified as important for it to make its determinations as to whether to transfer QFCs of a failed institution.

The final rule harmonizes the recordkeeping requirements under Part 371 for large IDIs and IDIs that are consolidated affiliates of financial companies subject to Part 148 with the recordkeeping requirements of Part 148. The harmonization with Part 148 for all of these IDIs supports the policy objective of enabling the FDIC to make judicious QFC transfer decisions. In the case of an IDI that is a member of a corporate group subject to Part 148, it will enable the FDIC, as receiver of the IDI, to rapidly obtain a complete picture of the QFC positions of the entire group by combining the records maintained under the two regulations. Such harmonization will also reduce costs to IDIs that become subject to Part 371 and that are members of a corporate group subject to Part 148 by enabling such IDIs to utilize the information technology infrastructure established by their corporate group for purposes of complying with Part 148.

II. Background

A. Overview

The Bankruptcy Abuse Prevention and Consumer Protection Act of 2005⁵ includes the FDIA Recordkeeping Provision that authorizes the FDIC, in consultation with the appropriate Federal banking agencies, to prescribe regulations requiring more detailed recordkeeping by an IDI with respect to QFCs if such IDI is in a troubled

⁵ Pub. L. 109-8, 119 Stat. 23.

condition. Pursuant to this provision, in 2008 the FDIC adopted Part 371, which requires that IDIs in a troubled condition maintain specified information relating to QFCs to which they are party in a format acceptable to the FDIC. As the FDIC noted in the adopting release for Part 371, the FDIC as receiver has very little time – the period between the day on which the FDIC is appointed receiver and 5:00 pm Eastern time on the following business day – to determine whether to transfer QFCs to which a failed IDI is party.⁶ The release stated that “[g]iven the FDIA Act’s short time frame for such decision by the FDIC, in the case of a QFC portfolio of any significant size or complexity, it may be difficult to obtain and process the large amount of information necessary for an informed decision by the FDIC as receiver unless the information is readily available to the FDIC in a format that permits the FDIC to quickly and efficiently carry out an appropriate financial and legal analysis.”⁷ It was the FDIC’s expectation, when it adopted Part 371, that the regulations would provide the FDIC with QFC information in a format that would assist the FDIC in making these determinations.

In the eight and one-half years since it was adopted, Part 371 has proved very useful to the FDIC in connection with QFCs of IDIs for which it was appointed receiver. While these institutions, in general, had limited QFC portfolios, several large IDIs with significant QFC portfolios also became in a troubled condition and were required to comply with the recordkeeping requirements of Part 371. The process of working with these IDIs to achieve compliance with Part 371, in addition to being very useful in resolution planning for these institutions, was instructive for the FDIC and caused the

⁶ 73 FR 78162, 78163 (December 22, 2008).

⁷ *Id.*

FDIC to identify areas where additional data in a more accessible format would provide the FDIC, as receiver, with important benefits in making determinations as to whether to transfer the institution's QFCs in a manner that would help preserve the value of the receivership and minimize losses to the Deposit Insurance Fund. The FDIC also gained experience with respect to the length of time that sometimes is necessary to complete QFC recordkeeping requirements, and identified areas where the requirements could be made clearer.

As previously noted, Part 148 requires more extensive recordkeeping than that required by Part 371 as currently in effect ("Current Part 371"). The additional data include, among other data points, information on underlying QFCs where the QFC in question is a guarantee, additional information as to whether a QFC is guaranteed, information as to positions for which a QFC serves as a hedge, certain information as to the netting sets to which the QFCs pertain, information as to cross-default provisions in QFCs, information as to location of collateral, whether the collateral is segregated by the entity holding the collateral, whether the collateral is subject to re-hypothecation, and information as to the value of QFC positions in the currency applicable to the QFCs. This additional information is expected to greatly assist the FDIC as receiver in making decisions as to the treatment of the receivership's QFCs under the Dodd-Frank Act within the same, short one-business-day stay period that applies where the FDIC is appointed as receiver⁸ for an IDI under the FDIA.

⁸ Most of the restrictions applicable to the treatment of QFCs by an FDIC receiver also apply to the FDIC in its conservatorship capacity. See 12 U.S.C. 1821(e)(8), (9), (10), and (11). While the treatment of QFCs by an FDIC conservator is not identical to the treatment of QFCs in a receivership, see 12 U.S.C. 1821(e)(8)(E) and (10)(B)(i)-(ii), for purposes of this preamble reference to the FDIC in its receivership capacity includes reference to its role as conservator under this statutory authority.

B. Notice of Proposed Rulemaking

On December 28, 2016, the FDIC published a notice of proposed rulemaking (the “NPR”), which proposed to amend and restate Part 371 in its entirety. As proposed in the NPR, the rule (as so proposed, the “proposed rule”) required full scope entities to maintain substantially all of the data mandated by part 148. Additions to the recordkeeping requirements for other IDIs were more limited. The proposed rule would have required all IDIs to maintain records in the revised format set forth in the appendices to the proposed rule. The proposed rule also would have eliminated two data points from the recordkeeping requirements.

C. Comment Received.

The FDIC received one comment letter, submitted by two industry trade associations, in response to the NPR. The letter (the “TCH/SIFMA Letter”) was strongly supportive of the proposal to harmonize the recordkeeping requirements applicable to full scope entity IDIs under Part 371 with the recordkeeping requirements under Part 148 applicable to other entities in the same corporate group and stated that “[s]uch harmonization is important as a matter of sound policy and as a practical matter for our members.”⁹

The TCH/SIFMA Letter also suggested that several changes be made to the proposed rule. The final rule reflects acceptance of many of these proposed changes, as discussed in more detail below. The changes reflected in the final rule include the

⁹ Letter dated February 27, 2017 from The Clearing House Association LLC (“TCH”) and the Securities Industry and Financial Markets Association (“SIFMA”), pp. 1-2.

addition of an exemption process to Part 371; an increase in the ceiling, from 19 QFC positions to 50 QFC positions, for applicability of the *de minimis* exception to the requirement that records be kept electronically; an exclusion, from the scope of reportable subsidiaries, for subsidiaries that are organized under foreign law and for unconsolidated subsidiaries; for certain IDIs that are maintaining records in accordance with Part 371 on the effective date of the final rule and have one or more affiliates that are members of a corporate group required to comply with Part 148, an extension of the date on which the IDI is required to comply with Part 371, as revised by the final rule, until the first date on which any such affiliate is scheduled to comply with Part 148; and the addition of a consolidation criterion for determining which entities are treated as full scope entities solely because they have an affiliate that is a member of a corporate group with at least one member subject to Part 148.

1. Exemptions.

In furtherance of the harmonization of Part 371 with Part 148, the TCH/SIFMA Letter proposed that any full or partial exemption that is granted to an affiliate of an IDI under Part 148 or that is made generally applicable under Part 148 automatically apply to the IDI if it becomes subject to Part 371, unless such applicability is expressly prohibited by the FDIC. The FDIC agrees that harmonizing Part 371 and Part 148, where prudent, is of major importance so that, in complying with Part 371, an IDI can utilize the same systems built by its affiliates in order to comply with Part 148.

However, the FDIC does not believe that it is appropriate for an exemption granted by a different governmental entity under a different set of regulations to be automatically applicable to the FDIC's requirements under Part 371 absent action by the FDIC. In

this connection, the FDIC notes that unlike Part 148, which applies to financial companies within its scope regardless of their financial condition, Part 371 only applies to an IDI when it is in troubled condition. Therefore, Part 371 often becomes applicable at a time when failure of the IDI is more than merely a distant theoretical possibility and when certain data that may be exempted under Part 148 due to its perceived burdensomeness for a healthy company may be quite relevant to the FDIC as receiver of an IDI.

The TCH/SIFMA Letter also suggested that the final rule include an exemption process for IDIs. This would enable the FDIC to provide exemptions that are the same or similar to those provided under Part 148 if requested by an IDI, if the FDIC deems it prudent to grant the exemption. As the letter notes, the FDIC will have reviewed exemption requests under Part 148 and thus should be able to quickly respond to exemption requests under Part 371. An exemption provision would also enable the FDIC to grant other exemptions that it deems appropriate. The FDIC has determined that an exemption process would be a useful addition and the final rule provides an exemption process.

2. *IDIs with Minimal QFC Portfolios*

The TCH/SIFMA Letter proposed that the final rule adopt a *de minimis* exception parallel to that contained in Part 148. Under Part 148, an entity with 50 or fewer QFC positions is relieved of all recordkeeping requirements other than the requirement to maintain the documents governing the QFCs. Under the proposed rule (as under Current Part 371), the requirement to maintain QFC records in electronic form is inapplicable to

entities with less than 20 QFC positions, provided that the required QFC data is maintained in a manner that is capable of being updated on a daily basis.

As noted above, because Part 371 applies only to institutions in troubled condition, the Part 371 recordkeeping requirements are applicable when an IDI failure may be imminent and, thus, the FDIC as receiver may need to quickly make decisions as to whether to retain or transfer the IDI's QFCs. As a result, unlike Part 148, the *de minimis* exception under Current Part 371 has always required the maintenance of all data that is required to be maintained by Current Part 371, and was not designed to provide, and does not provide, a general exemption from the scope of recordkeeping. Accordingly, the final rule does not reduce the scope of records required of institutions with small QFC portfolios. However, upon consideration of the letter's suggestions, the FDIC agrees that the *de minimis* exception from electronic recordkeeping can be safely increased to 50 QFC positions and the final rule reflects this change.

3. *Definition of Full Scope Entity*

The TCH/SIFMA Letter noted that unlike Part 148, the proposed rule included as full scope entities IDIs with \$50 billion or more in total assets, without regard to the scope of their QFC activities, and proposed that a QFC activity filter be added to the final rule. The FDIC believes that this comment does not take into account the different statutory bases for Part 148 and Part 371. The statute authorizing Part 148 expressly requires that the regulations differentiate, as appropriate, among financial companies by taking into consideration, among other factors, the "frequency and dollar amount of qualified

financial contracts.”¹⁰ The statute authorizing Part 371, on the other hand, authorizes recordkeeping requirements for IDIs in troubled condition, without regard to other factors.¹¹ This difference reflects the fact that the burden of recordkeeping under Part 148 is imposed regardless of the condition of the Part 148 subject entities and is intended to protect the financial stability of the United States which, necessarily, requires considerations that relate to interconnectedness to the U.S. financial system.

4. Recordkeeping for QFCs of Certain IDI Subsidiaries

The TCH/SIFMA Letter asserted that the proposed rule’s requirement that full scope entities maintain records relating to QFCs of certain of their subsidiaries (the “reportable subsidiaries”) exceeds the FDIC’s authority. However, the letter acknowledges that Current Part 371 requires some information as to affiliates of an IDI where such affiliates are party to QFCs which are governed by a master agreement that also governs QFCs of the IDI, and argues that information collected as to reportable subsidiaries of an IDI under the final rule should be limited to this information. Alternatively, the TCH/SIFMA Letter argues that even if obtaining information as to subsidiaries is within the FDIC’s authority, the scope of reportable subsidiaries should be limited to consolidated subsidiaries organized within the United States.

Contrary to the assertion in the TCH/SIFMA Letter, the FDIA Recordkeeping Provisions contains sufficient authorization for the FDIC to require an IDI to maintain records as to QFCs of its subsidiaries. The statute provides that the FDIC may prescribe regulations requiring recordkeeping by any IDI with respect to QFCs, and does not limit

¹⁰ 12 U.S.C. 5390(c)(8)(H).

¹¹ 12 U.S.C. 1821(e)(8)(H).

this authorization to QFCs of the IDI. Moreover, as noted in the letter, since its adoption Current Part 371 has required certain information as to affiliates (including subsidiaries) of IDIs.

The TCH/SIFMA Letter also asserted that (i) the benefits to the FDIC of having subsidiary information available to it as receiver of an IDI is not a proper basis for the burden imposed by requiring that an IDI in troubled condition provide QFC information as to its subsidiaries and (ii) such information would be of importance to the FDIC only if it could be appointed receiver for an IDI subsidiary. The FDIC disagrees with these assertions. As discussed in the NPR, requiring data as to QFCs of reportable subsidiaries can be of major importance to the FDIC in providing the FDIC with a more comprehensive understanding of the QFC exposure of the group. Since many QFCs include cross-default clauses that may be triggered by the appointment of the FDIC as receiver for an IDI, QFCs of subsidiaries may be terminated by counterparties unless the FDIC has the opportunity to negotiate with the subsidiary's counterparties to attempt to keep the QFCs in place. If the QFCs are important to the subsidiary, such action may be important to preserving the value of the IDI's ownership interest in the subsidiary. Further, if the FDIC establishes a bridge bank for the IDI, information as to subsidiary QFC positions will enable the receiver to evaluate overall exposure to particular counterparty groups, which may be a necessary factor in determining whether to transfer QFCs of the IDI to the bridge bank, particularly if the receiver plans to transfer to the bridge bank the IDI's ownership interest in the subsidiary.

The TCH/SIFMA Letter also argued that if the final rule retains the requirement for IDIs to maintain records of reportable subsidiary QFCs, subsidiaries that are organized

outside of the U.S. and subsidiaries that are not consolidated with the IDI under generally accepted accounting principles should be excluded.

The letter argued that it would be inappropriate for Part 371 to require information as to foreign subsidiaries when Part 148 excludes such companies. This argument fails to take account of the difference between the authorizing statutes for Part 148 and Part 371. The authority for recordkeeping granted under Part 148 is limited to records of companies organized under federal or state law. There is no such limit on recordkeeping under the Part 371 authorizing statute. However, because corporate groups that are subject to Part 148 will not have developed systems for Part 148 reporting of QFCs of foreign subsidiaries it is possible that imposing this requirement in Part 371 on IDI subsidiaries could result in significant costs to the IDI or the corporate group and, accordingly, the FDIC has determined to exclude such companies from the final rule. In excluding such subsidiaries from the definition of records entity, however, the FDIC is not relaxing the requirement that an IDI report QFCs between the IDI (or any reportable subsidiary of the IDI) and any of the IDI's foreign subsidiaries or branches (or between any reportable subsidiary and any foreign subsidiary or foreign branch of the reportable subsidiary).

In addition, because it is less likely that QFC positions of subsidiaries that are not consolidated with an IDI would be relevant to the determination of whether to transfer ownership interests in such subsidiaries to a bridge bank or determinations as to overall exposure to particular counterparties, the FDIC has determined to limit reportable subsidiaries to subsidiaries which are consolidated with an IDI under generally accepted accounting principles or other applicable accounting standards.

5. *Time Period for Compliance with Final Rule*

The TCH/SIFMA Letter states that certain IDIs may need more than the 270 day period set forth in the proposed rule in order to effect compliance with the final rule. While past experience of the FDIC indicates that large institutions should be able to comply with the rule in this period, even after taking into account the increased recordkeeping requirements included in the rule, the final rule authorizes the FDIC to grant one or more extensions of time for compliance for IDIs that request the extension in accordance with the final rule. This extension process has been successfully used by IDIs heretofore subject to Current Part 371.

The fact that, as noted in the TCH/SIFMA Letter, Part 148 provides more time for compliance is not persuasive to the FDIC, especially since IDIs that are subject to Part 371 are only those in troubled condition and, thus, are institutions from which information may be needed quickly.

6. *Other Comments*

The TCH/SIFMA Letter includes several other comments. The first is that the FDIC should develop a comprehensive analysis of the costs of the proposed rule as compared to the benefits to the FDIC of the information. The NPR, as well as the final rule, reflects just such an analysis. Costs determined from such analysis are reflected in the Sections titled “*IV. Expected Effects*” and “*VI. Regulatory Process, B. Regulatory Flexibility Act*” below. The benefits to the FDIC – which include the ability to quickly obtain information as to QFCs in order that the FDIC can make informed decisions as to whether to transfer QFCs and thus protect the Deposit Insurance Fund - are discussed throughout this Supplementary Information.

The letter also suggested that the FDIC consider, for IDIs that have been required to comply with Current Part 371, the costs of modifying existing systems to comply with the data requirements of the final rule and determine whether the systems that the IDIs have already developed are sufficient to meet the FDIC's needs. The FDIC has carefully considered this issue. In formulating the data tables for full scope entities, the FDIC replicated the Part 148 data tables and, with very limited exceptions, the final tables for full scope entities under Part 371 are identical to the Part 148 data tables. Thus, if the information technology systems necessary for affiliates of an IDI subject to Part 371 to comply with Part 148 have been constructed at the time the IDI is required to comply with the final rule, the IDI should be able to use those information technology systems in creating the recordkeeping systems necessary to comply with Part 371 and thus significantly reduce its costs of compliance with Part 371. Accordingly, the final rule has been revised to delay the compliance date for any full scope entity that has a consolidated affiliate that is a member of a corporate group with at least one member subject to Part 148 (any such full scope entity, a "Part 148 affiliate") until the scheduled Part 148 compliance date.¹² The rule has not been revised for full scope entities already subject to Part 371 that are not Part 148 affiliates because, if any such full scope entity exists on the effective date, the FDIC does not believe that there will be significant modification costs for it. In addition, no modification has been made for IDIs that are Part 148 affiliates but not subject to Part 371 immediately prior to the effective date of the final rule, because, unlike IDIs subject to Current Part 371, which will be required to continue to provide

¹² No change has been made to the compliance date for IDIs whose affiliates are required to comply under § 148.1(d)(1)(i)(A), since that compliance date is at or about the same compliance date that applies under Part 371 under the general 270 day compliance period requirement.

data under Current Part 371 until they comply with the final rule, there will be no Part 371 data (whether under Current Part 371 or otherwise) available from these IDIs until compliance with the final rule. Finally, no modification has been made for limited scope entities currently subject to Part 371 because no such entities have significant QFC portfolios.

In addition, in order to further limit costs of compliance with the final rule, the FDIC has added a consolidation criterion to the definition of Part 148 affiliate. As a result, an IDI with less than \$50 billion in total consolidated assets that is an affiliate of an entity that is a member of a corporate group with one or more members subject to Part 148 will not constitute a full scope entity unless, in accordance with generally accepted accounting principles or other applicable accounting standards, the IDI consolidates, or is consolidated with or by, one of the members of the group.

The TCH/SIFMA Letter also argued that the proposed scope of QFCs to be subject to the final rule was too broad, and mentioned, as an example, short-dated cash transactions, exchange traded products, spot foreign exchange transactions and transactions with retail customers. This comment has little relation to this rulemaking, which effects limited changes to the amount and format of data required by Part 371, but does not re-define the term QFC or in any other way modify the scope of products covered by Part 371. In any event, as the FDIA defines “qualified financial contract” and requires that the FDIC as receiver treat all QFCs between a failed IDI and its counterparty and its counterparty’s affiliates in the same manner,¹³ it would be inappropriate to exclude any categories of QFCs from the regulation. In this regard, however, as discussed above, the final rule

¹³ See 12 U.S.C. 1821(e)(8), (9), and (10).

includes a process for IDIs to obtain exemptions from aspects of the final rule and the FDIC encourages entities that believe that the maintenance of data as to certain types of QFCs is overly burdensome in comparison to the benefits to be obtained from such data to seek targeted exemptions from the rule.

The letter also suggested that affiliates of counterparties be defined using a consolidation standard rather than the Bank Holding Company Act definition because it may be difficult for an IDI to obtain data as to non-consolidated counterparty affiliates. Because the statutory provisions governing the FDIC's duties as to QFCs of a counterparty's affiliates use the Bank Holding Company definition of affiliate,¹⁴ the FDIC will need to be able to identify all affiliates, as so defined.¹⁵ Accordingly, this proposal was rejected. As an alternative, the TCH/SIFMA Letter urges that the amount of information required to be maintained for counterparties be limited. The FDIC cannot agree to this proposal as it worked with the Treasury Department to limit to the maximum reasonably feasible extent the information required under Part 148 as to counterparties and their affiliates and the final rule requires the same information.

The TCH/SIFMA Letter also asked that the FDIC consider proposals included in an attachment to the letter that is a copy of the comment letter submitted by TCH and SIFMA with respect to Part 148 as initially proposed. Many of these proposals are inapplicable to Part 371 and others were reflected in the proposed rule. It is not entirely clear which of the other proposals the FDIC is requested to review.

¹⁴ See 12 U.S.C. 1813(w).

¹⁵ Moreover, this definition of affiliate is used under Current Part 371.

One of these proposals is that a records entity's guarantees of QFCs of non-affiliates be excluded from the scope of the required recordkeeping. Because the FDIA includes, as QFCs, guarantees of QFCs, whether or not an affiliate is a party to the underlying QFC, the FDIC has not accepted this suggestion.

The TCH/SIFMA Letter also suggested that operational and business level details, such as trading desk identifiers, points of contact and certain other information be omitted from the required data. While certain of the information mentioned in the letter was not required by the proposed rule (and is not required by the final rule), desk identifiers and points of contact were included in the proposed rule and continue to be required by the final rule, because this data is expected to help enable the FDIC to find personnel at an IDI who are familiar with particular QFCs and obtain any needed additional information from such personnel. A point of contact is necessary during the phase when an IDI is required to establish its recordkeeping systems so that the FDIC will know whom to contact in order to ensure an IDI is proceeding promptly to establish a conforming recordkeeping system.

The TCH/SIFMA Letter also expressed concern that certain data fields may not be applicable to certain types of QFCs and recommend that the rule specifically allow a records entity to use discretion when reporting such data fields. It has been the FDIC's experience in implementing Part 371 that questions of this nature are resolved by the IDI and the FDIC during the compliance process and, accordingly, such a change to the rule is not necessary.

III. The Final Rule

A. Summary

The final rule amends and restates Part 371 in its entirety. The final rule requires full scope entities to maintain the full complement of data required by Part 148.¹⁶ The data tables required for full scope entities are substantially identical to those required by Part 148. Full scope entities include IDIs with total consolidated assets of \$50 billion or more as well as Part 148 affiliates. The additional data with respect to credit support and collateral, among other items, will provide the FDIC as receiver with important information as to the risks associated with the QFC portfolio and thus assist the FDIC in addressing more complex QFC portfolios. This is appropriate for larger institutions that are more likely to have significant and more complex QFC portfolios. It also is appropriate for Part 148 affiliates, regardless of size. Consistency of recordkeeping throughout the entire corporate group will provide additional functionality and useful information to the FDIC as receiver of an IDI in that group. Moreover, the additional burden of this scope of recordkeeping on smaller IDIs that are Part 148 affiliates should be mitigated, as the information technology infrastructure required to comply with Part 371 under the final rule is the same information technology infrastructure that the corporate group would need to construct in order to comply with Part 148.

The FDIC has decided that the \$50 billion total consolidated asset threshold for full scope entities is appropriate for several reasons. Institutions of this size are more likely to have larger and more complex QFC portfolios. Also, this is the threshold used in 12 CFR Part 360 to identify institutions that are required to file resolution plans¹⁷ and,

¹⁶ One data row, relating to the status of non-reporting subsidiaries under the provisions of Part 148, has been omitted from the tables for full scope entities.

¹⁷ 12 CFR 360.10.

accordingly, was the subject of comments that were considered in the formulation of Part 360 as adopted. The considerations that merit additional resolution planning for these institutions also apply to the QFC recordkeeping requirements of this Part. This threshold also corresponds to the threshold that was established for determining which bank holding companies would be subject to enhanced supervision and prudential standards under Title I of the Dodd-Frank Act¹⁸ and was also adopted by the Financial Stability Oversight Council as an initial threshold for identifying nonbank financial companies that merit further evaluation as to whether they should be designated under section 113 of the Dodd-Frank Act.¹⁹ Part 148 also uses a \$50 billion threshold.²⁰ All of the previously described uses of the \$50 billion threshold reflect a consensus that it is a reasonable cut-off to identify institutions for heightened attention and, in the case of QFC records, for requirements that would provide quick access to more comprehensive data in the event of failure.

The final rule makes only limited additions to the data required under Current Part 371 for IDIs other than full scope entities (“limited scope entities”) because the data from the tables with the limited additions set forth in the final rule will provide sufficient information for the FDIC as receiver to take necessary actions with respect to QFC

¹⁸ 12 U.S.C. 5365(a).

¹⁹ See Financial Stability Oversight Council Guidance for Nonbank Financial Company Determinations, 12 CFR Part 1310, app. A., III.a.

²⁰ \$50 billion is also one of the thresholds used in the OCC guidelines establishing heightened standards for certain large IDIs and standards for recovery planning by certain large IDIs. See 12 CFR Part 30, App. D-E. In its preamble to its 2014 guidelines establishing heightened standards for certain large IDIs, the OCC stated that “the \$50 billion asset criteria is a well understood threshold that the OCC and other Federal banking regulatory agencies have used to demarcate larger, more complex banking organizations from smaller, less complex banking organizations.” 79 FR 54518, 54521-22 (Sept. 11, 2014) (citing 12 CFR 46.1 (stress testing); 12 CFR 252.30 (enhanced prudential standards for bank holding companies with total consolidated assets of \$50 billion or more)).

portfolios of all but the largest IDIs and IDIs that are part of a large group, with an extensive QFC portfolio, that is subject to Part 148. It is unlikely that most limited scope entities will have QFC positions of a magnitude and complexity that would justify the added burden of being subject to the full scope of data requirements imposed by Part 148. In assessing what additions to information should be required for limited scope entities, FDIC staff was informed by its experience in administering Part 371.

Only certain portions of Current Part 371 are substantively changed by the final rule. The changes include the following: (i) the recordkeeping requirements for full scope entities are expanded; (ii) full scope entities are required to keep records on the QFC activity of certain of their subsidiaries; (iii) the required format for QFC records for limited scope entities is revised and a limited number of additional data fields are added for these IDIs; (iv) the length of time that certain IDIs have to comply with the rule is increased; (v) an exemption process has been added; (vi) changes are made to the process for obtaining extensions and to the permitted duration of extensions for certain types of IDIs; (vii) the ceiling for applicability of the *de minimis* exception to the electronic recordkeeping requirement has been increased; (viii) clarifications were made relating to records access requirements; and (ix) certain other changes relating to transition and other matters are made.

B. Section-by-Section Analysis

1. Scope, purpose, and compliance dates

Section 371.1 sets forth the scope and purpose of the final rule, as well as required compliance dates. The expressed purpose of Part 371 – to establish recordkeeping

requirements with respect to QFCs for IDIs in a troubled condition – is the same as under Current Part 371.

Under Current Part 371, an IDI is required to comply with Part 371 after receiving written notice from the IDI's appropriate Federal banking agency or the FDIC that it is in troubled condition under Part 371. Section 371.1(a) of the final rule provides that Part 371 applies to an IDI that is a "records entity." A records entity is an IDI that has received notice from its appropriate Federal banking agency or the FDIC that it is in a troubled condition *and* has also received written notification from the FDIC that it is subject to the recordkeeping requirements of Part 371. The final rule includes a requirement that an IDI receive notification from the FDIC that it is subject to Part 371 in order ensure an orderly administration of Part 371 by the FDIC.

Section 371.1(c)(1) of the final rule requires that, within three business days of receiving notice that it is a records entity, an IDI must provide the FDIC with the contact information of the person who is responsible for the QFC recordkeeping under Part 371 and a directory of the electronic files that will be used by the IDI to maintain the information required to be kept under Part 371. These requirements are substantially similar to those set forth in Current Part 371, although the final rule clarifies that the contact person must be the person responsible for the recordkeeping system, rather than simply a knowledgeable person. The electronic file directory consists of the file path or paths of the electronic files located on the IDI's systems.

The final rule sets forth a different compliance date schedule than that set forth in Current Part 371. Under Current Part 371, an IDI is required to comply with Part 371 within 60 days of being notified that it is in troubled condition under Part 371, unless it

obtains an extension of this deadline. It has been the FDIC's experience that some IDIs with significant QFC portfolios that were subject to Part 371 needed up to 270 days to establish systems that enabled them to maintain QFC records in accordance with Part 371. Because extensions under Current Part 371 are limited to 30 days, several extensions were necessary.

Under § 371.1(c)(2)(i) of the final rule all IDIs, except for an IDI that is an accelerated records entity (as defined in the next paragraph) and IDIs that are subject to Part 371 before the effective date of the final rule, are required to comply with Part 371 within 270 days of becoming a records entity. In addition, § 371.1(d)(1) of the final rule authorizes the FDIC to provide extensions of up to 120 days to records entities other than accelerated records entities. These changes will reduce or eliminate the need for repeated extensions for IDIs that are not accelerated records entities and thus reduce the burden on such IDIs.

Accelerated records entities are IDIs with a composite rating of 4 or 5 or that are determined to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress. In view of the increased risk of near-term failure of IDIs that are accelerated records entities, accelerated records entities remain subject to a 60-day compliance period and extensions for such entities are limited to 30 days. The 270-day compliance period with extensions of up to 120 days is applicable to other records entities because those entities do not pose the same near-term failure risk as accelerated records entities. The final rule, under § 371.1(c)(2)(iii), specifies that if a records entity that was not initially an accelerated records entity becomes an accelerated records entity, the entity will be required to comply with this rule within the shorter of 60 days from the

date it became an accelerated records entity or 270 days from the date it became a records entity.

Section 371.1(d)(3) of the final rule retains the requirement of Current Part 371 that written extension requests be submitted not less than 15 days prior to the deadline for compliance, accompanied by a statement of the reasons why the deadline cannot be met. In order to reflect the FDIC's past practice in considering extension requests under Part 371, the final rule expressly requires that all extension requests include a project plan for achieving compliance (including timeline) and a progress report.

2. Definitions

Section 371.2 contains definitions used in Part 371. The final rule adds new definitions that reflect changes to the substantive text and tables of Part 371.

Newly defined terms include "records entity," which is added for clarity and conciseness to denote an IDI that is subject to Part 371. As previously discussed, the definition provides that in order to be a records entity, and thus subject to Part 371, an IDI must receive notice from its appropriate Federal banking agency or the FDIC that it is in a troubled condition and must also receive notice from the FDIC that it is subject to the recordkeeping requirements of Part 371. The definition of records entity includes an IDI already subject to the recordkeeping requirements of Part 371 as of the effective date of the final rule.

Current Part 371 defines "troubled condition" to mean any IDI that (1) has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for IDIs with total consolidated assets of \$10 billion dollars or greater), 4, or 5 under the Uniform Financial Institution Rating System,

or in the case of an insured branch of a foreign bank, an equivalent rating; (2) is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance; (3) is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the IDI or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the IDI, unless otherwise informed in writing by the appropriate Federal banking agency; (4) is informed in writing by the IDI's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the IDI's most recent report of condition or report of examination, or other information available to the IDI's appropriate Federal banking agency; or (5) is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the IDI by its appropriate Federal banking agency in its most recent report of examination. This definition applies only for purposes of Part 371.

The final rule makes no change to the definition of troubled condition under Current Part 371. The FDIC notes that for purposes of Part 371 the third prong of the definition, which addresses IDIs subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency that requires action to improve the financial condition of the IDI,²¹ is intended to be broadly interpreted to include consent orders, or stipulations entered into by, or imposed upon, the IDI pursuant to 12 U.S.C.

²¹ 12 CFR 371.2(f)(3) (2016).

1818(b) of the FDIA. Whether any such consent order or stipulation, or any cease-and-desist order or written agreement, requires “action to improve the financial condition” of the IDI for purposes of Part 371 will depend on the facts and circumstances surrounding the particular order or agreement, but it is not limited to an order or agreement that specifically mentions adequacy of capital. It may also include, where appropriate, factors relating to asset quality, management, earnings, liquidity, and sensitivity to market risk, as each factor is defined in the FDIC’s notice of adoption of policy statement regarding the Uniform Financial Institution Rating System.²² For instance, under the final rule definition, in the case of management, an order or agreement that requires improvements in risk management practices and internal policies and controls addressing the operations and risks of significant activities might fall within the scope of orders or agreements that require action to improve the financial condition of the IDI within the meaning of the final rule. On the other hand, a cease-and-desist order or consent order relating to improvements with respect to Bank Secrecy Act reporting requirements may not fall within the meaning of an order to improve the financial condition of the IDI.

As discussed previously, the final rule defines an “accelerated records entity” as a records entity with a composite rating of 4 or 5 under the Uniform Financial Institution Rating System (or in the case of an insured branch of a foreign bank, an equivalent rating system), or that is determined to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

²² See 62 FR 752 (Jan. 6, 1997).

The final rule requires different recordkeeping requirements for “full scope entities” and “limited scope entities,” and adds definitions of those terms for clarity and conciseness. The rule defines a full scope entity as a records entity that has total consolidated assets equal to or greater than \$50 billion or that is a Part 148 affiliate. “Part 148 affiliate” is defined as a records entity that, under generally accepted accounting principles or other applicable accounting standards, consolidates, or is consolidated by or with (or is required to consolidate or be consolidated by or with), a member of a corporate group one or more other members of which are required to maintain QFC records pursuant to Part 148.

The final rule defines a limited scope entity as a records entity that is not a full scope entity. As discussed previously, the final rule requires full scope entities to keep more detailed QFC records than limited scope entities.

The final rule requires that full scope entities include, among other items, records for their reportable subsidiaries. A subsidiary is defined to include an entity that is consolidated (or required to be consolidated) by another entity on such entity’s financial statements prepared in accordance with generally accepted accounting principles or other applicable accounting standards. A reportable subsidiary is defined to include a subsidiary of an IDI 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). The definition of reportable subsidiary excludes subsidiaries that are not incorporated or organized under U.S. federal law or the laws of a state (as defined in the final rule). Since QFC data for reportable subsidiaries is not required to be maintained under Part 148, requiring this

information in Part 371 will provide the FDIC as receiver with more complete recordkeeping for the largest entities, which are likely to have more subsidiaries and, as discussed previously, are likely to have larger and more complex QFC portfolios.

The final rule also adds a definition for “business day” that is consistent with the definition of this term used in 12 U.S.C. 1821(e)(10)(D) and a definition for “control” (used in the definition of the term “affiliate”), which is defined consistently with the definition of this term in the FDIA.²³ In addition, the final rule defines “total consolidated assets,” used in the definition of troubled condition and in the definition of full scope entity, as total consolidated assets as reported on a records entity’s most recent audited consolidated statement of financial condition filed with its appropriate Federal banking agency.

Minor drafting changes to the definition of “qualified financial contract” are included in the final rule. These changes are for clarity only and are not intended to make substantive changes in the meaning of this term.

The final rule also adds certain terms in order to clarify portions of Part 371, including terms used in the new data tables. These terms include “parent entity,” “corporate group,” “counterparty,” “effective date,” “legal entity identifier” (LEI) and “state.”

3. Maintenance of records

Section 371.3 of the final rule sets forth the requirements for maintaining QFC records. As under Current Part 371, paragraph (a) of the final rule requires that QFC records be maintained in electronic form in the format set forth in the Appendices to Part

²³ 12 U.S.C. 1813(w)(5), which uses the definition set forth in 12 U.S.C. 1841(a)(2).

371, unless the records entity qualifies for the exemption from electronic recordkeeping for institutions with less than the minimum number of QFC positions, and that all such records in electronic form be updated on a daily basis. The final rule has changed the ceiling for qualification for this *de minimis* exception from 19 QFC positions to 50.

In recognition of the value to the FDIC of consistency of recordkeeping through an entire corporate group, the final rule adds a new requirement, in § 371.3(a)(4), that records maintained by a Part 148 affiliate are compiled consistently with records compiled by its affiliates pursuant to Part 148. This requires that an IDI subject to Part 371 use the same data inputs (for example, counterparty identifier) as the inputs used for reporting pursuant to Part 148. The final rule clarifies that these updates must be based on the previous end-of-day values.

The final rule requires that a records entity be capable of providing the preceding day's end-of-day values to the FDIC no later than 7 a.m. (Eastern Time) each day. The 7 a.m. deadline is included in light of the limited stay period for transfer of QFCs by the FDIC as receiver, which ends at 5 p.m. (Eastern Time) on the business day following the date of the appointment of the receiver.²⁴ This deadline represents a clarification of the requirement contained in Current Part 371 that IDIs subject to Part 371 maintain the capacity to produce records at the close of processing on a daily basis.²⁵ The next-day 7 a.m. deadline is applicable, whether or not the day on which access is required (the next day) is a business day, to allow the FDIC to have the maximum time to make necessary decisions and take necessary actions with respect to the QFC portfolio, even where the

²⁴ See 12 U.S.C. 1821(e)(10)(A).

²⁵ See 12 CFR 371.3.

IDI is closed on a Friday. Even though, in the case of a Friday closing, the next day is not a business day, the next day deadline should impose no additional burden on an IDI since the final rule requires that the IDI be capable of providing records on the next day in all circumstances. Finally, the final rule extends the 7 a.m. deadline if the FDIC does not request access to the records at least eight hours before the 7 a.m. deadline.

The final rule also adds a new requirement that electronic records are compiled in a manner that permits aggregation and disaggregation of such records by counterparty, and if a records entity is maintaining records in accordance with Appendix B, by records entity and reportable subsidiary. The final rule adds a requirement that a records entity maintain daily records for a period of not less than five business days in order to ensure that there are records available to the FDIC that indicate the trends in an institution's QFC holdings even before the actual previous end-of-day's records are available to the FDIC.

The final rule also changes the requirement in Current Part 371 with respect to the point of contact at the records entity to answer questions with respect to the electronic files being maintained at the records entity. Section 371.1(c) of the final rule requires that records entities provide the FDIC the name and contact information for the person responsible for recordkeeping, and § 371.3(b) requires that the FDIC is notified within three business days of any change to such information.

The final rule makes no change to the requirement in Current Part 371 that a records entity may cease maintaining records one year after it is notified that it is no longer in troubled condition. During this one-year period, the entity shall continue to be capable of providing the records to the FDIC on the same basis that is applicable prior to

the time it ceased to be in a troubled condition. In addition, as under Current Part 371, if a records entity is acquired by or merges with an IDI entity that is not in troubled condition, it may cease maintaining records following the time it ceases to be a separately insured IDI.

4. Content of records

Section 371.4 of the final rule sets forth the requirements for the content of the QFC records that are required to be maintained by records entities. As discussed previously, Section 371.4(b) requires a full scope entity to maintain QFC records in accordance with Appendix B to Part 371, which requires significantly more comprehensive records than are required under Current Part 371. In general, full scope entities are likely to have significant QFC portfolios and the expanded recordkeeping will facilitate the decisions that must be made by the FDIC with respect to these QFC portfolios. Appendix B is substantially similar to the tables included in the Part 148 regulations and, accordingly, if a records entity is an affiliate of an entity that is required to keep records under Part 148, it is likely that it will be able to use the recordkeeping infrastructure developed to comply with Part 148. Consistency of the information as to the IDI and its reportable subsidiaries as well as the other entities in the corporate group will provide the FDIC with a more comprehensive understanding of the QFC exposure of the group.

Section 371.4(a) of the final rule requires a limited scope entity to maintain less comprehensive QFC records under Appendix A, which is similar in scope to the Appendix to Current Part 371, with the changes discussed under “*8. Appendix A*” below. Section 371.4(a) gives a limited scope entity the option to maintain the more

comprehensive QFC records required under paragraph (b). The FDIC anticipates that if a limited scope entity expects to meet the criteria of a full scope entity at some point in the future, it might wish to maintain records under Appendix B in order to avoid changing its records system.

The QFC records required to be maintained by Appendices A and B are necessary to assist the FDIC in determining, during the short one-business-day stay period applicable to QFCs, whether to transfer QFCs.

The final rule also requires records entities that are subject to § 371.4(b) to include information on QFCs to which their reportable subsidiaries are a party. This information is required to be provided by the records entity, not the reportable subsidiary. As discussed previously, a reportable subsidiary is defined to include a consolidated subsidiary of an IDI organized under federal or state law 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). Like IDIs, reportable subsidiaries are excluded from the recordkeeping requirements of Part 148, while information as to subsidiaries that are not reportable subsidiaries would be available to the FDIC from information provided under Part 148. Without information as to QFCs of reportable subsidiaries, the FDIC, as receiver, might not have information that would allow it to assess the effect of its transfer and retention decisions for QFCs of an IDI on the entire group comprised of the IDI and its subsidiaries. While this information might also be useful from limited scope entities maintaining information in accordance with Appendix A, the FDIC does not believe that the advantage of having this information on reportable subsidiaries would outweigh the

burden for these smaller IDIs which, individually or with their subsidiaries, are not expected to normally have significant QFC positions.

Section 371.4(c) of the final rule provides requirements for a records entity that changes its recordkeeping status. It requires that a limited scope entity that is maintaining QFC records in accordance with the tables in Appendix A that subsequently becomes a full scope entity maintain QFC records in accordance with the tables in Appendix B within 270 days of becoming a full scope entity or, if it is an accelerated records entity, within 60 days. The final rule requires such an entity to continue to maintain the records under the tables in Appendix A until it maintains the QFC records specified in the tables to Appendix B. A full scope entity that subsequently becomes a limited scope entity is permitted to opt to maintain records under the tables in Appendix A. This entity would be required to continue to maintain the records specified in the tables to Appendix B until it maintains the records in accordance with Appendix A. The FDIC is not requiring a time period for compliance in such instance because the records under Appendix B are more comprehensive than the records under Appendix A.

If a limited scope entity that is not yet maintaining QFC records in accordance with Appendix A or B becomes a full scope entity, the final rule requires the records entity to maintain QFC records in accordance with Appendix B within 270 days of the date on which it became a records entity or, if it is an accelerated records entity, within 60 days. The same compliance timeframes apply to a records entity that is a full scope entity that becomes a limited scope entity before it maintains QFC records in accordance with Appendix B. These compliance periods for records entities that change their

recordkeeping status reflect the importance to the FDIC of promptly obtaining QFC records from IDIs in troubled condition.

Records entities that experience a change in status, like IDIs newly subject to Part 371, are permitted to apply for extensions of time to comply under § 371.1(d).

The final rule retains the *de minimis* exception included in Current Part 371, but increases the QFC position limit. This provision allows a records entity with fewer than 51 QFC positions at the time it becomes a records entity to maintain these records in any format it chooses, including paper records, so long as the required records are capable of being updated daily, provided that the records entity does not subsequently have 51 or more QFC positions.

5. Exemptions

Section 371.5 of the final rule sets forth a process under which an IDI subject to Part 371 may request an exemption from one or more of the recordkeeping requirements of Part 371. In order to request an exemption, the IDI must submit a written request to the Executive Secretary of the FDIC referring to Part 371. The request must specify the requirements of Part 371 from which the IDI is requesting to be exempt and whether the exemption is proposed to relate solely to QFC records of the IDI or to records of one or more identified reportable subsidiaries, either alone or together with the IDI. The final rule requires that the request specify why it would be appropriate for the FDIC to grant the exemption and why granting the exemption will not impair or impede the FDIC's ability to fulfill statutory obligations under 12 U.S.C. 1821(e)(8), (9), or (10), which relate to the treatment of QFCs by the FDIC as receiver, or the FDIC's ability to obtain a comprehensive understanding of the QFC exposures of the ID and its reportable

subsidiaries. The final rule also requires a requesting IDI to provide any additional information required by the FDIC.

6. Transition for Existing Records Entities

Section 371.6 of the final rule provides rules for full scope entities that are subject to Current Part 371 immediately prior to the effective date of the final rule to transition to the new recordkeeping requirements included in the final rule. Limited scope entities that are subject to Current Part 371 immediately prior to the effective date are not required to transition to the new recordkeeping requirements. If, however, any such limited scope entity ceases to be subject to the recordkeeping requirements because it ceases to be in troubled condition for one year pursuant to § 371.3(d) but subsequently again becomes subject to the recordkeeping requirements, at such subsequent time the limited scope entity will be subject to the new recordkeeping requirements.

Under the final rule, a full scope entity that, immediately prior to the effective date of the final rule, is maintaining QFC records in accordance with Current Part 371 and is not a Part 148 affiliate eligible for delayed compliance (as described in the next sentence), will be required to comply with all recordkeeping requirements of Part 371 within 270 days after the effective date or, in the case of an accelerated records entity, 60 days. A Part 148 affiliate, other than a Part 148 affiliate that has a corporate group member that is required to comply with Part 148 on the first recordkeeping compliance date under Part 148 pursuant to 31 CFR 148.1(d)(1)(i)(A), that is maintaining QFC records in accordance with Current Part 371 immediately prior to the effective date of the final rule is permitted to delay compliance until the first date on which any of its affiliates is required to comply with Part 148. However, if such Part 148 affiliate is an accelerated

records entity it must comply within 60 days of the effective date. Any full scope records entity benefitting from a 270 day or longer compliance period discussed above is required to continue to maintain the records required by Current Part 371 until it maintains the records required by § 371.4(b).

Additionally, the final rule contains a provision that addresses the transition of a full scope entity that is required to keep records under the Current Part 371 but is not in compliance with Current Part 371's recordkeeping requirements immediately prior to the effective date of the amendments to Part 371. The final rule requires such a records entity to comply with the recordkeeping requirements of Part 371, as amended, within 270 days after the date that it first became a records entity or, in the case of an accelerated records entity, 60 days.

The effect of these provisions is to provide more time for the transition to the recordkeeping requirements of Part 371, as amended, for full scope entities that are keeping the records required under Current Part 371 and less time for those that are not. The FDIC believes that it is reasonable to give IDIs that are actually maintaining the information required by Current Part 371 more time to transition to the recordkeeping requirements of the amendments to Part 371 because even in the worst case scenario where the IDI is placed into receivership prior to completion of the transition, the FDIC will have some information on the QFCs of the IDI to use in making its transfer determinations. If the transition provisions of the final rule gave a full new 270 day period to an IDI already subject to Part 371 that was not in compliance with Current Part 371, there would be an increased risk that the IDI could be placed into receivership prior to providing any of the records required by Current Part 371 or the final rule.

7. Enforcement actions

Section 371.7 of the final rule is unchanged from § 371.5 of Current Part 371. It provides that violation of Part 371 will subject a records entity to enforcement action under Section 8 of the FDIA (12 U.S.C. 1818).

8. Appendix A

Appendix A of the final rule applies to a records entity that is a limited scope entity.²⁶ The file structure for Appendix A requires two data tables: (1) Table A-1—Position-level data and (2) Table A-2—Counterparty Netting Set Data. It also requires two master data lookup tables: (1) Corporate Organization Master Table and (2) Counterparty Master Table. Although the scope of Appendix A is generally similar to the scope of information required under Current Part 371, the approach to the format of the data required is changed. All of the tables are expected to be data sets that allow for sorting and review using readily available tools which the FDIC expects will make them more useful to the institution as well as to the FDIC in the event it is appointed as receiver. To accommodate this change in format and to make it easier to input and to sort data, the lookup tables have been added.

Table A-1. Like Table A-1 of Current Part 371, Table A-1 requires position level information as to each QFC of a records entity. Certain changes have been made with respect to the information required on current Table A-1, however, with two data fields eliminated and a few others added in Table A-1 to the final rule.

²⁶ As discussed previously, a limited scope entity may elect to report on the more comprehensive Appendix B.

Specifically, Table A-1 of the final rule makes a limited number of additions to the rows included in Table A-1 of Current Part 371 in order to provide ready electronic access to information that FDIC staff has found to be important in determining whether to transfer or retain QFCs of a failed IDI. These additions include Row A1.1, which requires an “as of” date. This information is important because a records entity often derives data from multiple systems in multiple locations and the FDIC needs to be able to expeditiously determine whether, due to differences in time zone, legal holidays or other factors, any of the data is not current. Other additions are made to allow for systematic, electronic identification of parties. Row A1.2 requires that a records entity identifier be provided and Row A1.4 requires use of a counterparty identifier. Current Part 371 requires that a records entity provide a list of counterparty identifiers, but the new format will facilitate the prompt and accurate identification of counterparties as well as the determination of whether they are affiliated entities. This is important because in an FDIA resolution, QFCs must be transferred on an all-or-none basis with respect to all QFCs entered into with counterparties of the same affiliated group. This may, but does not always, comport with straightforward netting sets, so the efficient identification of affiliated counterparties is critical to the FDIC’s decisions that must be made within the short one-business-day stay period. In addition, Table A-1 requires that the identifier used for records entities as well as counterparties be an LEI, if the records entity or counterparty has one. LEIs are identifiers maintained for companies by a global organization and are increasingly used by financial institutions. In order for an LEI to be properly maintained, it must be kept current and up to date according to the standards established by the Global LEI Foundation. Accordingly, the use of LEIs in Part 371 will

ensure that variations from formal names do not result in the misidentification of a records entity or counterparty and thus help ensure that the FDIC satisfies its obligation to transfer all, or none, of the QFC positions between a failed IDI and a counterparty and its affiliates.

New Rows A1.5 and A1.6, which require that data include the internal booking location identifier and the unique booking unit or desk identifier of a QFC, are intended to improve the ability of the FDIC to identify individuals at a records entity who are familiar with a particular position. This can be of major importance to the FDIC in determining, during the one business day stay period, whether to retain or transfer a QFC. This requirement replaces the requirement in Current Part 371 that the appendices specify a portfolio location identifier and provide a list of booking locations.

Some of the new rows in Table A-1 are designed to provide the FDIC with information about other positions or assets of the records entity to which a QFC relates. For example, where an interest rate swap relates to a loan made by an IDI or to a different swap of the IDI, this information would be of critical importance to the FDIC in making its determination of whether to transfer or retain that QFC. The FDIA provides that a guarantee or other credit enhancement of a QFC is itself a QFC.²⁷ Under Current Part 371, a guarantee or other credit enhancement was reported in the same manner as any other QFC, but experience under Current Part 371 made clear that records on guarantees and credit enhancements would be clearer and more complete with clear information with respect to the type of QFC covered by the enhancement and the QFC party whose

²⁷12 U.S.C. 1821(e)(8)(D).

obligations are being credit enhanced be specified. Accordingly, new rows A1.8 and A1.9 require that information.

Rows A1.19-A1.21 require additional information as to third party credit enhancements in favor of the records entity. This information is important to assessing credit risk and net exposure with respect to QFCs, which will facilitate decisions with respect to transfer of those QFCs. Rows A1.22-A1.24 require information as to positions of the records entity to which the QFC relates. For example, these rows indicate if obligations relating to a loan made by the failed IDI are being hedged by the QFC.

Other changes are intended to facilitate the ability of the FDIC to electronically identify positions and governing agreements. Rows A1.10-A1.12 require identifying information regarding the QFC master agreement or primary agreement (e.g., the guarantee agreement in the case of a guarantee) and, if different, netting agreement, in lieu of the requirement in Current Part 371 that these agreements be separately listed. Row A1.13 adds a requirement that the trade date of a position is specified in order to help the FDIC differentiate between different positions with the same counterparty.

Finally, Table A-1 does not include two data fields in Table A of Current Part 371 that in practice have not generally proved to elicit useful information. These are the rows that require that the purpose of the QFC position and that documentation status be identified.

Table A-2. Like Table A-2 of Current Part 371, Table A-2 requires information as to QFC positions aggregated by counterparty and maintained at each level of netting under the relevant governing agreement. If a master agreement covers multiple types of transactions, but does not require that the different types of transactions be netted against

each other the net exposures under each type of transaction will need to be separately reported. Thus, for example, where a single master agreement covers both interest rate swaps and forward exchange transactions but does not require netting between the swap positions and the repo positions, the net exposures of the interest rate swaps are required to be reported separately from the net exposures of the repurchase agreements.

While there are several non-substantive, clarifying drafting changes and additions to rows included in the existing Table A-2, the substantive additions are limited. Like Table A-1, Table A-2 includes new rows that require records entity identifiers, information as to third party credit enhancements in favor of the records entity and additional information relating to the underlying contracts for QFCs that are themselves credit enhancements.

Rows A2.16-A2.17 require information as to the next margin payment date in order to help the receiver or transferee avoid inadvertent defaults and analyze the positions.

Table A-2 continues to require information as to the net current market value of all positions under a netting agreement, but also requires that the current market value of all positive positions and current market value of all negative positions be separately stated. It also changes the manner in which collateral positions are shown. These breakdowns of information will assist the FDIC in its analysis of the net overall position.

Corporate Organization Master Table. The final rule retains the requirement of Current Part 371 for complete information regarding the organizational structure of the records entity. However, Appendix A requires that a records entity maintain that information in the corporate organizational master table in lieu of any other form of

organizational chart. Requiring this information in this format will make this information more easily accessible to the FDIC with improved functionality.

Counterparty Master Table. The FDIA requires that in making a transfer of a QFC the receiver must either (1) transfer all QFCs between a records entity and a counterparty and the counterparty's affiliates to the same transferee IDI, or (2) transfer none of such QFCs.²⁸ Thus, an understanding of the relationship of the counterparties is critical to the FDIC's function as receiver. Current Part 371 requires this information in the form of a list of affiliates of counterparties that are also counterparties to QFC transactions with a records entity or its affiliates. The final rule requires that a records entity maintain this information in the form of a counterparty organizational master table completed with respect to each counterparty of the records entity. The listing on each such table of the immediate and ultimate parent entity of the counterparty will enable the FDIC to efficiently and reliably identify counterparties that are affiliates of each other without requiring full organizational charts of each counterparty group.

9. Appendix B

Appendix B of the final rule applies to a records entity that is a full scope entity as well as to a limited scope entity that elects to use Appendix B rather than Appendix A. As discussed previously, Appendix B corresponds to the information required for records entities under Part 148. It includes all of the data discussed above that is required by Appendix A plus additional information that is important for understanding the larger and more complex QFC portfolios of the largest IDIs. The file structure for Appendix B requires four data tables: (1) Table A-1–Position-level data, (2) Table A-2–Counterparty

²⁸ 12 U.S.C. 1821(e)(9).

Netting Set Data, (3) Table A-3—Legal Agreements and (4) Table A-4 – Collateral Detail Data. It also requires four master data lookup tables: (1) Corporate Organization Master Table, (2) Counterparty Master Table, (3) Booking Location Master Table and (4) Safekeeping Agent Master Table.

The most significant additional data required by Appendix B, as compared to Appendix A, is provided for in Tables A-3 and A-4 of Appendix B. In general, these Tables require additional information with respect to the master agreements or other contracts governing QFCs as well as additional information regarding collateral supporting QFCs.

In addition, Tables A-1 and A-2 for these entities require that the market value and notional amount of positions be expressed in local currencies, as well as in U.S. dollars, and that information as to amount of collateral subject to re-hypothecation be provided.

Table A-3. This table requires specific information as to each governing agreement, such as an ISDA master agreement or other netting agreement or, in the case of a QFC that is a credit enhancement, the agreement governing such credit enhancement. The required information includes the agreement's governing law, whether the agreement includes a cross-default determined by reference to an entity that is not a party to the agreement and, if so, the identity of such other party, and contact information for each counterparty.

The information as to governing law is needed to evaluate whether there is any likelihood of different treatment of transfer of the QFC, access to collateral or other matters under non-U.S. law. The cross-default information is necessary so that the

likelihood of the QFC terminating on account of the insolvency or payment defaults or other matters relating to a third party can be analyzed. The counterparty contact information may be important in connection with the FDIC's obligations under 12 U.S.C. 1821(e)(10) to take steps reasonably calculated to give notice of transfer of a QFC.

Table A-4. This table requires data as to the different items of collateral that support different netting sets. For each netting set, this table requires information as to the original face amount, local currency, market value, location and jurisdiction of each item of collateral provided. This table also requires an indication of whether the item of collateral is segregated from other assets of the safekeeping agent (which can be a third party or a party to the QFC), and whether re-hypothecation of the item of collateral is permitted. This data will help the FDIC evaluate the adequacy of collateral for each QFC netting set, as well as the potential for the collateral to be subject to ring-fencing by a foreign jurisdiction.

Table A-1. Table A-1 in Appendix B is very similar to Table A-1 in Appendix A. In addition to requiring that data be expressed in U.S. dollars, the table requires that certain data also be expressed in local currency in order to assist the FDIC's analysis of positions. It also requires that the fair value asset classification under GAAP, IFRs or other applicable accounting standards be set forth and that additional information be provided relating to credit enhancements that benefit a QFC counterparty of the records entity. In addition, it requires that the records entity identify itself and its reportable subsidiaries by use of the LEI of the records entity or the reportable subsidiary (as applicable).

Table A-2. Table A-2 in Appendix B is very similar to Table A-2 in Appendix A. The only added rows require information about collateral that is subject to re-hypothecation, information as to the identity of the safekeeping agent, i.e., the party holding the collateral, which can be either a party to the QFC or a third party, and information as to credit enhancements that benefit a QFC counterparty of the records entity.

Booking Location Master Table. This master table requires certain additional information regarding each QFC, including internal booking location identifiers, and booking unit or desk contact information. This information will assist the FDIC in locating personnel at the IDI with knowledge of the QFC.

Safekeeping Agent Master Table. This table provides information as to points of contact for each collateral safekeeping agent. This information will assist the FDIC in locating personnel at the safekeeping agent who are familiar with the collateral and the safekeeping arrangements.

IV. Expected Effects

The FDIC has considered the expected effects of the final rule on covered institutions, the financial sector and the U.S. economy. The final rule will likely pose some costs for covered institutions, but by expanding the QFC recordkeeping requirements for institutions in troubled condition the final rule will enable the FDIC to make better informed decisions on whether to transfer QFCs of covered institutions if they enter into receivership. The final rule also harmonizes the scope and format of Part 371's QFC recordkeeping requirements for full scope entities with the recordkeeping requirements under Part 148 and thereby permits IDIs that become subject to Part 371

and are members of corporate groups subject to Part 148 to use information technology systems developed by their Part 148 affiliates in order to comply with Part 371. Finally, by enabling the FDIC to more efficiently evaluate and understand QFC portfolios the final rule will help the FDIC as receiver minimize unintended defaults through failures to make timely payments or collateral deliveries to QFC counterparties.

During the financial crisis of 2008 and ensuing recession many banks failed, some of which were party to significant volumes of QFCs. Through its experience of working with banks in troubled condition that were establishing systems to comply with the recordkeeping requirements of Current Part 371, the FDIC concluded that institutions with larger and more complex portfolios of QFCs would be more difficult to resolve in an efficient manner unless more QFC information was readily accessible. Readily available information on collateral, guarantees, credit enhancements, etc. would be necessary to evaluate counterparty risk and maximize value to the receivership. The final rule should provide benefits by reducing the likelihood that a future failure of an insured depository institution with a large and complex portfolio of QFCs could result in unnecessary losses to the receivership.

Full Scope Entities

The final rule will likely result in large implementation costs for full scope entities. Significantly more information on QFCs is required to be maintained by the final rule relative to Current Part 371, including additional information as to collateral, guarantees and credit enhancements. The added information will enable the FDIC to more accurately assess and understand the QFC portfolios of institutions this size, which are more likely to be large and complex than the QFC portfolios of limited scope entities.

As of March 31, 2017, based on Consolidated Reports of Condition and Income as of that date, there were 41 FDIC-insured institutions with consolidated assets of \$50 billion or more. There are another 29 FDIC-insured institutions with consolidated assets of less than \$50 billion that are members of corporate groups that are subject to Part 148, resulting in a total of 70 potential full-scope entities. In the event that one of these institutions becomes in a troubled condition and becomes subject to Part 371, as defined in the rule, the FDIC assumes that, on average, it will take approximately 3,000 labor hours to comply with the recordkeeping requirements of the revisions to Part 371 for full scope entities over and above the amount of time that would be expected to be required in order to comply with Current Part 371 for comparable entities. The implementation costs borne by covered institutions primarily include costs that would be incurred in order to accommodate the new data elements. They are anticipated to be incurred when an institution becomes in a troubled condition and begins maintaining the QFC information in accordance with Part 371. Full scope entities that are subject to Current Part 371 when the final rule becomes effective could incur some transition expenses. Ongoing costs of recordkeeping for the final rule are assumed to be approximately similar to those under Current Part 371. The labor hours necessary to comply with the final rule will vary greatly for each institution depending upon the size and complexity of the QFC portfolio, the efficiency of the institution's QFC information management system(s), and the availability and accessibility of information on QFCs. Therefore, they are difficult to accurately estimate. Additionally, a significant portion of the costs related to complying with the rule should be ameliorated for an institution that is a consolidated affiliate of a member of a corporate group subject to the Part 148, since the group's parent company

should have already developed the capacity to meet the recordkeeping requirements for Part 148, which cover the same information, in the same format, as the final rule.

Finally, any implementation costs of the final rule are contingent upon an entity becoming in a troubled condition and subject to the final rule. Based on FDIC supervisory experience, it is estimated that two full scope entities per year, on average, will be subject to the recordkeeping requirements of the final rule. It is anticipated that the final rule will result in an additional 6,000 labor hours per year for covered institutions.²⁹ To comply with the recordkeeping requirements of the rule it is assumed that IDIs in troubled condition will employ attorneys, compliance officers, credit analysts, computer programmers, computer systems analysts, database administrators, financial managers, and computer information systems managers. The FDIC has estimated that the average hourly wage rate for recordkeepers to comply with the recordkeeping burden is approximately \$95.50 per hour based on average hourly wage information by occupation from the U.S. Department of Labor, Bureau of Labor Statistics.³⁰ Therefore the FDIC estimates that the final rule will pose approximately

²⁹ This estimate is potentially somewhat greater than would be expected based upon past practice for two reasons. First, not all institutions that become in a troubled condition ultimately complete recordkeeping compliance, as their condition may improve so that they are no longer in a troubled condition before the commencement or completion of recordkeeping. Secondly, the same institution may have cycled in and out of troubled condition more than once in the 16-year look back period and therefore their recordkeeping costs may have been counted more than once. The additional recordkeeping costs could be significantly lower for subsequent instances of institutions becoming in troubled condition because the recordkeeping procedures and systems have already been established.

³⁰ The average hourly wage estimate is derived from May 2016 Occupational Employment Statistics (OES) from the Bureau of Labor Statistics (BLS) for depository credit intermediation occupations. The reported hourly wage rates are adjusted for changes in the CPI-U between May 2016 and March 2017 (1.86 percent) and grossed up by 155.3 percent to account for non-monetary compensation as reported by the March 2017 Employer Costs for Employee Compensation. Hourly wage rates represent the 75th percentile for Legal Occupations (\$136.71), Computer Programmers (\$80.49), Computer Systems Analyst (\$86.32), Database Administrators (\$92.22), Compliance Officers (\$60.55), Credit Analysts (\$72.82), Financial Managers

\$573,000 in expected additional compliance costs on average, each year, for full scope entities.

Limited Scope Entities

The final rule will likely pose some costs for limited scope entities, but those costs would be relatively small. Only slightly more QFC information is required to be maintained by limited scope entities to comply with the final rule relative to Current Part 371. The FDIC is proposing to remove three data elements from the Current Part 371 recordkeeping requirements while adding less than twenty additional data elements. The FDIC understands that most of the added data elements cover information that is either information that an IDI would need to ascertain in order to comply with Current Part 371 or that would otherwise be readily available to the IDI.

As of March 31, 2017 there were 5,824 FDIC-insured institutions with total consolidated assets less than \$50 billion. Of those institutions 2,099 (36.0 percent) reported some amount of QFCs.³¹ To estimate the number of institutions affected by the final rule the FDIC analyzed the frequency with which FDIC-insured institutions with consolidated assets of less than \$50 billion became in a troubled condition. Based on supervisory experience, it is estimated that limited scope entities become in a troubled condition 304 times per year on average. The annual average estimate of institutions in troubled condition with consolidated assets of less than \$50 billion is adjusted to 110 to

(\$104.41), and Computer and Information Systems Managers (\$130.49).

³¹ Consolidated Reports of Condition and Income, March 31, 2017

reflect the number of institutions in troubled condition that are likely to be a party to some volume of QFCs, and therefore subject to the final rule.³²

In the event that a limited scope entity becomes in a troubled condition, the FDIC assumes that it will take approximately 5 labor hours, on average, to comply with the added recordkeeping requirements of the revisions to Part 371. The implementation costs borne by covered institutions primarily include costs that would be incurred in order to accommodate the new data elements. They are anticipated to be incurred when an institution becomes in a troubled condition and begins maintaining the QFC information in accordance with Part 371. Ongoing costs of recordkeeping for the final rule are assumed to be approximately similar to those under Current Part 371. Therefore, the FDIC estimates that the added compliance costs associated with the final rule are 550 hours annually³³ for limited scope entities that are likely to become in a troubled condition.³⁴ However, assuming that the proportion of limited scope entities that become in a troubled condition in future years remains constant, 65 of the 110 estimated average annual limited scope entities that are likely to become in a troubled condition have less than \$550 million in assets. They are therefore likely to have insignificant volumes of

³² 2,099 FDIC-insured institutions with total consolidated assets of less than \$50 billion out of 5,824 reported some volume of QFCs on their Consolidated Reports of Condition and Income. Therefore it is estimated that 36 percent of the historical average annual rate of institutions in a troubled condition had some volume of QFCs ($304 * 0.36 = 110$)

³³ The estimated average annual compliance burden hours for limited scope entities is calculated as $110 * 5$ hours, which equals 550 hours.

³⁴ As discussed previously with respect to full scope entities, this estimate is potentially somewhat greater than would be expected based upon past practice for two reasons. First, not all institutions that become in a troubled condition ultimately complete recordkeeping compliance, as their condition may improve so that they are no longer in a troubled condition before the commencement or completion of recordkeeping. Secondly, some institutions may be double-counted, because the same institution may have cycled in and out of troubled condition more than once in the 16-year look back period. The additional recordkeeping costs could be significantly lower the second time around.

QFCs and an associated burden estimate of 1 hour or less. The labor hours necessary to comply with the final rule will vary greatly for each institution depending upon the size and complexity of its QFC portfolio, the efficiency of the institution's QFC information management system(s) and the availability and accessibility of information on QFCs. Therefore, the added compliance costs associated with the final rule are difficult to accurately estimate.

To comply with the recordkeeping requirements of the rule it is assumed that entities in troubled condition will employ attorneys, compliance officers, credit analysts, computer programmers, computer systems analysts, database administrators, financial managers, and computer information systems managers. The FDIC has estimated that the average hourly wage rate for recordkeepers to comply with the initial recordkeeping burden is approximately \$95.50 per hour based on average hourly wage information by occupation from the U.S. Department of Labor, Bureau of Labor Statistics.³⁵ Therefore the FDIC estimates that the final rule will pose approximately \$52,525 in expected compliance costs each year on average, for limited scope entities. However, the costs realized by limited scope entities as a result of the final rule are likely to be lower in the first few years given that the final rule allows covered entities already maintaining information in accordance with the current Part 371 rule to continue to do so.

³⁵ The average hourly wage estimate is derived from May 2016 Occupational Employment Statistics (OES) from the Bureau of Labor Statistics (BLS) for depository credit intermediation occupations. The reported hourly wage rates are adjusted for changes in the CPI-U between May 2016 and March 2017 (1.86 percent) and grossed up by 155.3 percent to account for non-monetary compensation as reported by the March 2017 Employer Costs for Employee Compensation. Hourly wage rates represent the 75th percentile for Legal Occupations (\$136.71), Computer Programmers (\$80.49), Computer Systems Analyst (\$86.32), Database Administrators (\$92.22), Compliance Officers (\$60.55), Credit Analysts (\$72.82), Financial Managers (\$104.41), and Computer and Information Systems Managers (\$130.49)..

All Covered Entities

The total estimated compliance costs for all covered entities, both full scope and limited scope, is approximately \$625,525 each year. The realized compliance costs for covered entities are dependent upon future utilization rates of QFCs, and the propensity of institutions to become troubled. Therefore it is difficult to accurately estimate.

The final rule provides some relief from compliance costs relative to Current Part 371 by extending the time period allotted for an institution in troubled condition to start maintaining the required QFC information from 60 days to 270 days, with the exception of accelerated records entities. It has been the FDIC's experience that large institutions with complex QFC portfolios had difficulty meeting the current 60-day compliance deadline. Failure to meet the initial deadline necessitated multiple rounds of extension requests that were cumbersome and time-consuming for institutions in troubled condition and their primary regulator. By extending the compliance period to 270 days for all institutions, both "full scope" and "limited scope" entities, the final rule will reduce the overall compliance costs. Along with the extended the compliance period the final rule also requires institutions to include a project plan with their extension request. However, the inclusion of the project plan provision reflects current FDIC practice, and therefore, poses no additional burden.

The final rule will harmonize QFC recordkeeping requirements for full scope entities in troubled condition with the Part 148 requirements for other members of their corporate groups. This harmonization benefits these IDIs by enabling them to reduce costs by using information technology created for compliance with Part 148 by other members of their corporate group. Moreover, consistency of reporting across the

corporate group will benefit the FDIC as receiver by enabling it to better analyze how an IDI's QFC positions relate to QFC positions of other members of the corporate group.

The final rule should also provide indirect benefits to QFC counterparties of institutions in troubled condition by helping the FDIC as receiver avoid unintended payment or delivery disruptions. The additional information required by the final rule includes detailed information about collateral, guarantees and credit enhancements which will significantly enhance the ability of the FDIC to judiciously exercise its rights and responsibilities related to QFC portfolios for institutions in troubled condition within the statutory one-business day stay period.

V. Alternatives Considered

The FDIC considered a number of alternatives in developing the final rule. The major alternatives include: (i) expanding the recordkeeping scope to include IDIs subject to any cease-and-desist order by, or written agreement with, the appropriate federal banking agency; (ii) expanding the recordkeeping scope for records entities to include all subsidiaries; (iii) recordkeeping thresholds of above and below \$10 billion or \$50 billion in total consolidated assets; (iv) requiring all records entities to maintain QFC records under the tables in Appendix B; (iv) requiring the same compliance period for all records entities; (v) not requiring existing full scope records entities to transition to the new recordkeeping requirements; and (vi) requiring existing limited scope entities to transition to the new recordkeeping requirements.

The FDIC considered expanding the definition of "troubled condition" to include all cease-and-desist orders or written agreements issued by the appropriate Federal banking agency in addition to those requiring action to improve the financial condition of

an IDI. In reviewing the types of orders and agreements, including stipulations and consent orders, that may be issued or entered into, the FDIC determined that the requirement with respect to an action to improve the financial condition of the IDI is appropriate because it is more likely that such orders relate to an institution for which failure is less remote than is likely the case in connection with other types of orders and agreements. As a result, the FDIC decided not to expand this prong of the definition of “troubled condition.” Nonetheless, this preamble clarifies (in Section III.B.2, “*The Final Rule, Section-by-Section Analysis, Definitions*”) that an “action to improve the financial condition,” for purposes of this Part, may include, but is not limited to, an action to improve capital adequacy, asset quality, management, earnings, liquidity, and sensitivity to market risk.

The FDIC also considered requiring IDIs that report on Appendix B to report QFC information for all subsidiaries rather than only “reportable subsidiaries.” However, expanding the scope of recordkeeping to all subsidiaries would be burdensome and would also be redundant for corporate groups that are subject to Part 148 because QFC information for subsidiaries that are not reportable subsidiaries (other than IDIs and insurance companies) is required under Part 148.

In determining the scope of recordkeeping for records entities, the FDIC considered total consolidated asset thresholds above and below \$50 billion. As discussed under Section III.A “*The Final Rule, Summary*”, the FDIC determined the \$50 billion threshold was appropriate because institutions at or above this threshold are more likely to have complex QFC portfolios and it is an asset level used in the several regulations cited in the above section that has been deemed appropriate for enhanced regulation and

supervision. The FDIC determined that a threshold below \$50 billion would impact smaller IDIs and unduly burden community banks.

The final rule requires certain records entities, as described previously, to maintain QFC records according to the tables in Appendix A or B depending on the size of the records entity.

The FDIC considered requiring the same compliance period for all records entities subject to this Part. Based on its experience, the FDIC has found that the longer period (270 days) is appropriate for larger entities. Larger entities that are required to report on Appendix B due to a composite CAMEL rating of 3 generally need a longer period to comply and, because an entity with a composite CAMEL rating of 3 is less likely to fail imminently, the additional time for recordkeeping should not pose significant additional risks that the FDIC as receiver will lack the information it needs with respect to the QFC portfolio. Entities with a composite CAMEL rating of 4 or 5 pose greater risk of near-term failure. For the same reason, the final rule will not increase the length of extensions available for 4 and 5 rated entities (30 days), regardless of their size. Although it may not be feasible for large entities with complex QFC portfolios to complete the recordkeeping requirements within 60 days, the short deadline with the requirement that extension requests be accompanied by progress reports and action plans will help assure that the recordkeeping requirements are being met in the most expeditious manner and that appropriate resources are being devoted to the effort by the IDI in troubled condition.

The FDIC also considered other transition requirements. The alternative of not requiring transition to the new recordkeeping requirements by full scope entities was

rejected because of the importance of having available for these entities, that are more likely to have complex QFC portfolios, all of the additional information included in the final rule, should such an entity become subject to receivership. The FDIC also considered requiring existing limited scope entities to transition to the new recordkeeping requirements, but determined that given the limited nature of almost all existing limited scope entity QFC portfolios the added burden would exceed the benefit of requiring this transition.

Finally, the FDIC considered the alternatives suggested in the TCH/SIFMA Letter. As discussed in detail in Section II.C. “*Background, Comment Received,*” the FDIC accepted certain of the suggestions made in the letter and determined not to accept others.

VI. Regulatory Process

A. Paperwork Reduction Act

Certain provisions of the final rule contain “collection of information” requirements within the meaning of the Paperwork Reduction Act (“PRA”) of 1995 (44 U.S.C. 3501–3521). In accordance with the requirements of the PRA, the FDIC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OMB control number for this collection of information is 3064–0163. As required by the PRA and OMB implementing regulations (5 CFR Part 1320), when the NPR was published, the FDIC submitted the information collection requirements contained in this final rulemaking to OMB for review and approval. OMB filed its Notice of Action with respect to that submission on March 17, 2017 requesting

that the agency address any comments received in response to the NPR in the final rule. The FDIC received one comment letter submitted by two industry trade associations and fully addressed the comments as discussed in the preamble above.

As discussed above, the FDIC is amending its regulations regarding Part 371 which requires IDIs in a troubled condition to keep records relating to QFCs to which they are party. The FDIC estimates that the total compliance burden for covered entities, including full scope and limited scope entities, is as follows:

Title	Type of Burden	Estimated Number of Respondents	Estimated Number of Responses	Estimated Time per Response	Frequency of Response	Total Annual Estimated Burden
Full Scope Entities: Recordkeeping related to QFCs to which they are a party when they are in troubled condition	Recordkeeping	2	1	3,000 hours	On Occasion	6,000 hours
Limited Scope Entities: Recordkeeping related to QFCs to which they are a party when they are in troubled condition	Recordkeeping	110	1	5 hours	On Occasion	550 hours
TOTAL BURDEN						6,550 hours

B. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA), 5 U.S.C. 601 et seq., requires an agency to provide a regulatory flexibility analysis with a final rule, unless the agency certifies that the rule will not have a significant economic impact on a substantial number of small entities (defined by the Small Business Administration for purposes of the RFA to include banking entities with total assets of \$550 million or less).

The final rule will not have a significant economic impact on a substantial number of small entities. Most small entities do not participate in capital markets involving QFCs since QFCs are generally sophisticated financial instruments that are usually used by larger financial institutions to hedge assets, provide funding, or increase income. According to data from the March 31, 2017 Consolidated Reports of Condition and Income the FDIC insures 4,553 small depository institutions and 1,171 (25.7 percent) report some volume of QFCs. To estimate the number of small institutions affected by the final rule the FDIC analyzed the frequency with which FDIC-insured institutions with consolidated assets less than \$550 million became in a troubled condition. Based on FDIC supervisory experience, it is estimated that small institutions became in a troubled condition 252 times per year on average. The annual average estimate of institutions in troubled condition with consolidated assets less than \$550 million is adjusted to 65 to reflect the number of institutions in troubled condition that are likely to be a party to some volume of QFCs, and therefore subject to the final rule.³⁶

In the event that one of these small institutions becomes in a troubled condition, the FDIC assumes that it will take approximately one labor hour, on average, to comply with the added recordkeeping requirements of the revisions to Part 371. Small depository institutions generally do not have large and complex portfolios of QFCs and, therefore, the anticipated burden hours associated with the final rule is going to be low.

Accordingly, the FDIC estimates that the added compliance costs associated with the final rule are 65 hours annually for all small institutions with some volume of QFCs that

³⁶ 1,171 small FDIC-insured institutions out of 4,553 reported some volume of QFCs on their Consolidated Reports of Condition and Income. Therefore it is estimated that 25.7 percent of the historical average annual rate of small institutions in a troubled condition had some volume of QFCs ($252 * .257 = 65$)

become in a troubled condition. The labor hours necessary to comply with the final rule will vary greatly for each institution depending upon the size and complexity of the QFC portfolio, the efficiency of the institution's QFC information management system(s) and the availability and accessibility of information on QFCs.

To comply with the recordkeeping requirements of the rule it is assumed that entities in troubled condition will employ attorneys, compliance officers, credit analysts, computer programmers, computer systems analysts, database administrators, financial managers, and computer information systems managers. The FDIC has estimated that the average hourly wage rate for recordkeepers to comply with the initial recordkeeping burden is approximately \$95.50 per hour based on average hourly wage information by occupation from the U.S. Department of Labor, Bureau of Labor Statistics.³⁷ Therefore the FDIC estimates that the final rule will pose \$6,208 in expected compliance costs each year on average, for small depository institutions. However, the costs realized by limited scope entities as a result of the final rule are likely to be lower in the first few years given that the final rule allows covered entities already maintaining information in accordance with the current Part 371 rule to continue to do so. For these reasons, the FDIC hereby certifies that the final rule will not have a significant economic impact on a substantial number of small entities.

C. The Treasury and General Government Appropriations Act, 1999

³⁷ The average hourly wage estimate is derived from May 2016 Occupational Employment Statistics (OES) from the Bureau of Labor Statistics (BLS) for depository credit intermediation occupations. The reported hourly wage rates are adjusted for changes in the CPI-U between May 2016 and March 2017 (1.86 percent) and grossed up by 155.3 percent to account for non-monetary compensation as reported by the March 2017 Employer Costs for Employee Compensation. Hourly wage rates represent the 75th percentile for Legal Occupations (\$136.71), Computer Programmers (\$80.49), Computer Systems Analyst (\$86.32), Database Administrators (\$92.22), Compliance Officers (\$60.55), Credit Analysts (\$72.82), Financial Managers (\$104.41), and Computer and Information Systems Managers (\$130.49).

The FDIC has determined that the final rule will not affect family well-being within the meaning of section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681).

D. Small Business Regulatory Enforcement Act

The Office of Management and Budget has determined that the final rule is not a “major rule” within the meaning of the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), (5 U.S.C. 801 *et seq.*). As required by the SBREFA, the FDIC will file the appropriate reports with Congress and the General Accounting Office so that the final rule may be reviewed.

E. Riegle Community Development and Regulatory Improvement Act

The Riegle Community Development and Regulatory Improvement Act of 1994 requires that the FDIC, in determining the effective date and administrative compliance requirements for new regulations that impose additional reporting, disclosure, or other requirements on insured depository institutions, consider, consistent with principles of safety and soundness and the public interest, any administrative burdens that such regulations would place on depository institutions, including small depository institutions, and customers of depository institutions, as well as the benefits of such regulations. In addition, subject to certain exceptions, new regulations that impose additional reporting, disclosures, or other new requirements on insured depository institutions must take effect on the first day of a calendar quarter that begins on or after the date on which the regulations are published in final form.

In accordance with these provisions and as discussed above, the FDIC considered any administrative burdens, as well as benefits, that the final rule would place on depository institutions and their customers in determining the effective date and administrative compliance requirements of the final rule. The final rule will be effective no earlier than the first day of a calendar quarter that begins on or after the date on which the final rule is published.

F. Plain Language

Section 722 of the Gramm-Leach-Bliley Act (Pub. L. 106-102, sec. 722, 113 Stat. 1338, 1471 (1999)) requires the FDIC to use plain language in all proposed and final rules published after January 1, 2000. The FDIC has sought to present the final rule in a simple and straightforward manner.

List of Subjects in 12 CFR Part 371

Administrative practice and procedure, Bank deposit insurance, Banking, Banks, Reporting and recordkeeping requirements, Securities, State non-member banks.

Authority and Issuance

For the reasons set forth in the preamble, the Federal Deposit Insurance Corporation revises 12 CFR part 371 to read as follows:

PART 371—RECORDKEEPING REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS

Sec.

371.1 Scope, purpose, and compliance dates.

371.2 Definitions.

371.3 Maintenance of records.

371.4 Content of records.

371.5 Exemptions.

371.6 Transition for existing records entities.

371.7 Enforcement actions.

Appendix A to Part 371— File Structure for Qualified Financial Contract (QFC) Records for Limited Scope Entities

Appendix B to Part 371— File Structure for Qualified Financial Contract Records for Full Scope Entities

Authority: 12 U.S.C. 1819(a)(Tenth); 1820(g); 1821(e)(8)(D) and (H); 1831g; 1831i; and 1831s.

§ 371.1 Scope, purpose, and compliance dates.

(a) Scope. This part applies to each insured depository institution that qualifies as a “records entity” under the definition set forth in § 371.2(r).

(b) Purpose. This part establishes recordkeeping requirements with respect to qualified financial contracts for insured depository institutions that are in a troubled condition.

(c) Compliance dates. (1) Within 3 business days of becoming a records entity, the records entity shall provide to the FDIC, in writing, the name and contact information for the person at the records entity who is responsible for recordkeeping under this part and, unless not required to maintain files in electronic form pursuant to § 371.4(d), a directory of the electronic files that will be used to maintain the information required to be kept by this part.

(2) Except as provided in § 371.6:

(i) A records entity, other than an accelerated records entity, shall comply with all applicable recordkeeping requirements of this part within 270 days after it becomes a records entity.

(ii) An accelerated records entity shall comply with all applicable recordkeeping requirements of this part within 60 days after it becomes a records entity.

(iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, a records entity that becomes an accelerated records entity after it became a records entity shall comply with all applicable recordkeeping requirements of this part within 60 days after it becomes an accelerated records entity or its original 270 day compliance period, whichever time period is shorter.

(d) Extensions of time to comply. The FDIC may, in its discretion, grant one or more extensions of time for compliance with the recordkeeping requirements of this part.

(1) Except as provided in paragraph (d)(2) of this section, no single extension for a records entity shall be for a period of more than 120 days.

(2) For a records entity that is an accelerated records entity at the time of a request for an extension, no single extension shall be for a period of more than 30 days.

(3) A records entity may request an extension of time by submitting a written request to the FDIC at least 15 days prior to the deadline for its compliance with the recordkeeping requirements of this part. The written request for an extension must contain a statement of the reasons why the records entity cannot comply by the deadline for compliance, a project plan (including timeline) for achieving compliance, and a progress report describing the steps taken to achieve compliance.

§ 371.2 Definitions.

For purposes of this part:

(a) Accelerated records entity means a records entity that:

(1) Has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 4 or 5 under the Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating; or

(2) Is determined by the appropriate Federal banking agency or by the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

(b) Affiliate means any entity that controls, is controlled by, or is under common control with another entity.

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(c) Appropriate Federal banking agency means the agency or agencies designated under 12 U.S.C. 1813(q).

(d) Business day means any day other than any Saturday, Sunday or any day on which either the New York Stock Exchange or the Federal Reserve Bank of New York is closed.

(e) Control. An entity controls another entity if:

(1) The entity directly or indirectly or acting through one or more persons owns, controls, or has power to vote 25 per centum or more of any class of voting securities of the other entity;

(2) The entity controls in any manner the election of a majority of the directors or trustees of the other entity; or

(3) The Board of Governors of the Federal Reserve System has determined, after notice and opportunity for hearing in accordance with 12 CFR 225.31, that the entity directly or indirectly exercises a controlling influence over the management or policies of the other entity.

(f) Corporate group means an entity and all affiliates of that entity.

(g) 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 or, if the records entity is required or chooses to maintain the records specified in § 371.4(b), a reportable subsidiary of such records entity.

(h) Effective date means October 1, 2017. (i) Full scope entity means a records entity that has total consolidated assets equal to or greater than \$50 billion or that is a Part 148 affiliate.

(j) Insured depository institution means any bank or savings association, as defined in 12 U.S.C. 1813, the deposits of which are insured by the FDIC.

(k) Legal entity identifier or LEI for an entity means the global legal entity identifier maintained for such entity by a utility accredited by the Global LEI Foundation or by a utility endorsed by the Regulatory Oversight Committee. As used in this definition:

(1) Regulatory Oversight Committee means the Regulatory Oversight Committee (of the Global LEI System), whose charter was set forth by the Finance Ministers and

Central Bank Governors of the Group of Twenty and the Financial Stability Board, or any successor thereof; and

(2) Global LEI Foundation means the not-for-profit organization organized under Swiss law by the Financial Stability Board in 2014, or any successor thereof.

(l) Limited scope entity means a records entity that is not a full scope entity.

(m) Parent entity with respect to an entity means an entity that controls that entity.

(n) Part 148 means 31 CFR part 148.

(o) Part 148 affiliate means a records entity that, on financial statements prepared in accordance with U.S. generally accepted accounting principles or other applicable accounting standards, consolidates, or is consolidated by or with (or is required to consolidate or be consolidated by or with), a member of a corporate group one or more members of which are required to maintain QFC records pursuant to Part 148.

(p) Position means an individual transaction under a qualified financial contract and includes the rights and obligations of a person or entity as a party to an individual transaction under a qualified financial contract.

(q) Qualified financial contract or QFC means any qualified financial contract as defined in 12 U.S.C. 1821(e)(8)(D), and any agreement or transaction that the FDIC determines by regulation, resolution, or order to be a QFC, including without limitation, any securities contract, commodity contract, forward contract, repurchase agreement, and swap agreement.

(r) Records entity means any insured depository institution that has received written notice from the institution's appropriate Federal banking agency or the FDIC that

it is in a troubled condition and written notice from the FDIC that it is subject to the recordkeeping requirements of this part.

(s) Reportable subsidiary means any subsidiary of a records entity that is incorporated or organized under U.S. federal law or the laws of any State that is not:

- (1) A functionally regulated subsidiary as defined in 12 U.S.C. 1844(c)(5);
- (2) A security-based swap dealer as defined in 15 U.S.C. 78c(a)(71); or
- (3) A major security-based swap participant as defined in 15 U.S.C. 78c(a)(67).

(t) State means any state, commonwealth, territory or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, American Samoa, Guam or the United States Virgin Islands.

(u) Subsidiary, with respect to another entity, means an entity that is, or is required to be, consolidated by such other entity on such other entity's financial statements prepared in accordance with U.S. generally accepted accounting principles or other applicable accounting standards.

(v) Total consolidated assets means the total consolidated assets of a records entity and its consolidated subsidiaries as reported in the records entity's most recent year-end audited consolidated statement of financial condition filed with the appropriate Federal banking agency.

(w) Troubled condition means an insured depository institution that:

(1) Has a composite rating, as determined by its appropriate Federal banking agency in its most recent report of examination, of 3 (only for insured depository institutions with total consolidated assets of \$10 billion or greater), 4 or 5 under the

Uniform Financial Institution Rating System, or in the case of an insured branch of a foreign bank, an equivalent rating;

(2) Is subject to a proceeding initiated by the FDIC for termination or suspension of deposit insurance;

(3) Is subject to a cease-and-desist order or written agreement issued by the appropriate Federal banking agency, as defined in 12 U.S.C. 1813(q), that requires action to improve the financial condition of the insured depository institution or is subject to a proceeding initiated by the appropriate Federal banking agency which contemplates the issuance of an order that requires action to improve the financial condition of the insured depository institution, unless otherwise informed in writing by the appropriate Federal banking agency;

(4) Is informed in writing by the insured depository institution's appropriate Federal banking agency that it is in troubled condition for purposes of 12 U.S.C. 1831i on the basis of the institution's most recent report of condition or report of examination, or other information available to the institution's appropriate Federal banking agency; or

(5) Is determined by the appropriate Federal banking agency or the FDIC in consultation with the appropriate Federal banking agency to be experiencing a significant deterioration of capital or significant funding difficulties or liquidity stress, notwithstanding the composite rating of the institution by its appropriate Federal banking agency in its most recent report of examination.

§ 371.3 Maintenance of records.

(a) Form and availability. (1) Unless it is not required to maintain records in electronic form as provided in § 371.4(d), a records entity shall maintain the

records described in § 371.4 in electronic form and shall be capable of producing such records electronically in the format set forth in the appendices of this part.

(2) All such records shall be updated on a daily basis and shall be based upon values and information no less current than previous end-of-day values and information.

(3) Except as provided in § 371.4(d), a records entity shall compile the records described in § 371.4(a) or § 371.4(b) (as applicable) in a manner that permits aggregation and disaggregation of such records by counterparty. If the records are maintained pursuant to § 371.4(b), they must be compiled by the records entity on a consolidated basis for itself and its reportable subsidiaries in a manner that also permits aggregation and disaggregation of such records by the records entity and its reportable subsidiary.

(4) Records maintained pursuant to § 371.4(b) by a records entity that is a Part 148 affiliate shall be compiled consistently, in all respects, with records compiled by its affiliate(s) pursuant to Part 148.

(5) A records entity shall maintain each set of daily records for a period of not less than five business days.

(b) Change in point of contact. A records entity shall provide to the FDIC, in writing, any change to the name and contact information for the person at the records entity who is responsible for recordkeeping under this part within 3 business days of any change to such information.

(c) Access to records. A records entity shall be capable of providing the records specified in § 371.4 (based on the immediately preceding day's end-of-day values and information) to the FDIC no later than 7 a.m. (Eastern Time) each day. A records entity is required to make such records available to the FDIC following a written request by the

FDIC for such records. Any such written request shall specify the date such records are to be made available (and the period of time covered by the request) and shall provide the records entity at least 8 hours to respond to the request. If the request is made less than 8 hours before such 7 a.m. deadline, the deadline shall be automatically extended to the time that is 8 hours following the time of the request.

(d) Maintenance of records after a records entity is no longer in a troubled condition. A records entity shall continue to maintain the capacity to produce the records required under this part on a daily basis for a period of one year after the date that the appropriate Federal banking agency or the FDIC notifies the institution, in writing, that it is no longer in a troubled condition as defined in § 371.2(w).

(e) Maintenance of records after an acquisition of a records entity. If a records entity ceases to exist as an insured depository institution as a result of a merger or a similar transaction with an insured depository institution that is not in a troubled condition immediately following the transaction, the obligation to maintain records under this part on a daily basis will terminate when the records entity ceases to exist as a separately insured depository institution.

§ 371.4 Content of records.

(a) Limited scope entities. Except as provided in § 371.6, a limited scope entity must maintain (at the election of such records entity) either the records described in paragraph (b) of this section or the following records:

(1) The position-level data listed in Table A-1 in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(2) The counterparty-level data listed in Table A-2 in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(3) The corporate organization master table in Appendix A of this part for the records entity and its affiliates.

(4) The counterparty master table in Appendix A of this part with respect to each QFC to which it is a party, without duplication.

(5) All documents that govern QFC transactions between the records entity and each counterparty, including, without limitation, master agreements and annexes, schedules, netting agreements, supplements, or other modifications with respect to the agreements, confirmations for each QFC position that has been confirmed and all trade acknowledgments for each QFC position that has not been confirmed, all credit support documents including, but not limited to, credit support annexes, guarantees, keep-well agreements, or net worth maintenance agreements that are relevant to one or more QFCs, and all assignment or novation documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment or novation have been obtained or satisfied.

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

(b) Full scope entities. Except as provided in § 371.6, a full scope entity must maintain the following records:

(1) The position-level data listed in Table A-1 in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(2) The counterparty-level data listed in Table A-2 in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(3) The legal agreements information listed in Table A-3 in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(4) The collateral detail data listed in Table A-4 in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(5) The corporate organization master table in Appendix B of this part for the records entity and its affiliates.

(6) The counterparty master table in Appendix B of this part with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(7) The booking location master table in Appendix B of this part for each booking location used with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(8) The safekeeping agent master table in Appendix B of this part for each safekeeping agent used with respect to each QFC to which it or any of its reportable subsidiaries is a party, without duplication.

(9) All documents that govern QFC transactions between the records entity (or any of its reportable subsidiaries) and each counterparty, including, without limitation, master agreements and annexes, schedules, netting agreements, supplements, or other modifications with respect to the agreements, confirmations for each QFC position that

has been confirmed and all trade acknowledgments for each QFC position that has not been confirmed, all credit support documents including, but not limited to, credit support annexes, guarantees, keep-well agreements, or net worth maintenance agreements that are relevant to one or more QFCs, and all assignment or novation documents, if applicable, including documents that confirm that all required consents, approvals, or other conditions precedent for such assignment or novation have been obtained or satisfied.

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

(c) Change in recordkeeping status. (1) A records entity that was a limited scope entity maintaining the records specified in paragraphs (a)(1) through (6) of this section and that subsequently becomes a full scope entity must maintain the records specified in paragraph (b) of this section within 270 days of becoming a full scope entity (or 60 days of becoming a full scope entity if it is an accelerated records entity). Until the records entity maintains the records required by paragraph (b) of this section it must continue to maintain the records required by paragraphs (a)(1) through (6) of this section.

(2) A records entity that was a full scope entity maintaining the records specified in paragraph (b) of this section and that subsequently becomes a limited scope entity may continue to maintain the records specified in paragraph (b) of this section or, at its option, may maintain the records specified in paragraphs (a)(1) through (6) of this section, provided however, that such records entity shall continue to maintain the records specified in paragraph (b) of this section until it maintains the records specified in paragraphs (a)(1) through (6) of this section.

(3) A records entity that changes from a limited scope entity to a full scope entity and at the time it becomes a full scope entity is not yet maintaining the records specified in paragraph (a) of this section or paragraph (b) of this section must satisfy the recordkeeping requirements of paragraph (b) of this section within 270 days of first becoming a records entity (or 60 days of first becoming a records entity if it is an accelerated records entity).

(4) A records entity that changes from a full scope entity to a limited scope entity and at the time it becomes a limited scope entity is not yet maintaining the records specified in paragraph (b) of this section must satisfy the recordkeeping requirements of paragraph (a) of this section within 270 days of first becoming a record entity (or 60 days of first becoming a record entity if it is an accelerated records entity).

(d) Records entities with 50 or fewer QFC positions. Notwithstanding any other requirement of this part, if a records entity and, if it is a full scope entity, its reportable subsidiaries, have 50 or fewer open QFC positions in total (without duplication) on the date the institution becomes a records entity, the records required by this section are not required to be recorded and maintained in electronic form as would otherwise be required by this section, so long as all required records are capable of being updated on a daily basis. If at any time after it becomes a records entity, the institution and, if it is a full scope entity, its reportable subsidiaries, if applicable, have more than 50 open QFC positions in total (without duplication), it must record and maintain records in electronic form as required by this section within 270 days (or, if it is an accelerated records entity at that time, within 60 days). The records entity must provide to the FDIC, within 3

business days of reaching the 51-QFC threshold, a directory of the electronic files that will be used to maintain the information required to be kept by this section.

§ 371.5 Exemptions.

- (a) Request. A records entity may request an exemption from one or more of the requirements of § 371.4 by submitting a written request to the Executive Secretary of the FDIC referring to this part. The written request for an exemption must:
- (1) Specify the requirement(s) under this part from which the records entity is requesting to be exempt and whether the exemption is sought to apply solely to the records entity or to one or more identified reportable subsidiaries of the records entity or to the records entity and one or more identified reportable subsidiaries;
 - (2) Specify the reasons why it would be appropriate for the FDIC to grant the exemption;
 - (3) Specify the reasons why granting the exemption will not impair or impede the FDIC's ability to fulfill its statutory obligations under 12 U.S.C. 1821(e)(8), (9), or (10) or the FDIC's ability to obtain a comprehensive understanding of the QFC exposures of the records entity and its reportable subsidiaries; and
 - (4) Include such additional information (if any) that the FDIC may require.
- (b) Determination. Following its evaluation of a request for exemption, the FDIC will determine, in its sole discretion, whether to grant or deny the request.

§ 371.6 Transition for existing records entities.

(a) Limited scope entities. Notwithstanding any other provision of this part, an insured depository institution that became a records entity prior to October 1, 2017, and constitutes a limited scope entity on October 1, 2017, shall continue to comply with this part as in effect immediately prior to October 1, 2017, or, if it elects to comply with this part as in effect on and after October 1, 2017, as so in effect, for so long as the entity remains a limited scope entity that has not ceased to be required to maintain the capacity to produce records pursuant to § 371.3(d).

(b) Transition for full scope entities maintaining records on effective date. If an insured depository institution that constitutes a full scope entity on October 1, 2017, became a records entity prior to October 1, 2017, and is maintaining the records required by this part as in effect immediately prior to October 1, 2017, then:

- (1) Except as provided in paragraph (b)(2) of this section, such records entity shall comply with the recordkeeping requirements of this part within 270 days after October 1, 2017 (or no later than 60 days after October 1, 2017 if it is an accelerated records entity); and
- (2) If—
 - (i) Such records entity is a Part 148 affiliate and, on October 1, 2017, is not an accelerated records entity; and
 - (ii) The compliance date for any other member of such record entity's corporate group to comply with Part 148 is set forth in 31 CFR 148.1(d)(1)(i)(B),(C), or (D), as in effect on October 1, 2017, such records entity shall be permitted to delay compliance with the recordkeeping requirements of this part until the first date on which members of

any corporate group of which such records entity is a member is required to comply with Part 148 pursuant to 31 CFR 148.1(d)(1)(i)(B),(C), or (D), as in effect on October 1, 2017; provided, that if such records entity becomes an accelerated records entity, it shall comply with the recordkeeping requirements of this part no later than 60 days after it becomes an accelerated records entity; provided, that in the case of each of paragraphs (b)(1) and (2) of this section until such full scope entity maintains the records required by § 371.4, it continues to maintain the records required by this part as in effect immediately prior to October 1, 2017.

(c) Transition for full scope entities not maintaining records on effective date. If an insured depository institution that constitutes a full scope entity on October 1, 2017, became a records entity prior to October 1, 2017, but is not maintaining the records required by this part as in effect immediately prior to October 1, 2017, such records entity shall comply with all recordkeeping requirements of this part within 270 days after the date that it first became a records entity (or no later than 60 days after it first became a records entity if it is an accelerated records entity).

§ 371.7 Enforcement actions.

Violating the terms or requirements set forth in this part constitutes a violation of a regulation and subjects the records entity to enforcement actions under Section 8 of the Federal Deposit Insurance Act (12 U.S.C. 1818).

TABLE A-1—POSITION-LEVEL DATA

	Field	Example	Instructions and data application	Definition	Validation
A1.1	As of date	2015-01-05	Provide data extraction date.	YYYY-MM-DD	
A1.2	Records entity identifier	999999999	Provide LEI for records entity if available. Information needed to review position-level data by records entity.	Varchar(50)	Validated against CO.2
A1.3	Position identifier	20058953	Provide a position identifier. Use the unique transaction identifier if available. Information needed to readily track and distinguish positions.	Varchar(100)	
A1.4	Counterparty identifier	888888888	Provide a counterparty identifier. Use LEI if counterparty has one. Information needed to identify counterparty by reference to Counterparty Master Table.	Varchar(50)	Validated against CP.2
A1.5	Internal booking location identifier	New York, New York	Provide office where the position is booked. Information needed to determine system on which the trade is booked and settled.	Varchar(50)	
A1.6	Unique booking unit or desk identifier	xxxxxx	Provide an identifier for unit or desk at which the position is booked. Information needed to help determine purpose of position.	Varchar(50)	
A1.7	Type of QFC	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, loan repurchase agreement, guarantee or other third party credit enhancement of a QFC	Provide type of QFC. Use unique product identifier if available. Information needed to determine the nature of the QFC.	Varchar(100)	

A1.8	Type of QFC covered by guarantee or other third party credit enhancement	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, or loan repurchase agreement	If QFC type is guarantee or other third party credit enhancement, provide type of QFC that is covered by such guarantee or other third party credit enhancement. Use unique product identifier if available. If multiple asset classes are covered by the guarantee or credit enhancement, enter the asset classes separated by comma. If all the QFCs of the underlying QFC obligor identifier are covered by the guarantee or other third party credit enhancement, enter "All."	Varchar(200)	Only required if QFC type (A1.7) is a guarantee or other third party credit enhancement.
A1.9	Underlying QFC obligor identifier	888888888	If QFC type is guarantee or other third party credit enhancement, provide an identifier for the QFC obligor whose obligation is covered by the guarantee or other third party credit enhancement. Use LEI if underlying QFC obligor has one. Complete the counterparty master table with respect to a QFC obligor that is a non-affiliate.	Varchar(50)	Only required if QFC asset type (A1.7) is a guarantee or other third party credit enhancement. Validated against CO.2 if affiliate or CP.2 if non-affiliate.
A1.10	Agreement identifier	xxxxxxxx	Provide an identifier for primary governing documentation, e.g. the master agreement or guarantee agreement, as applicable.	Varchar(50)	
A1.11	Netting agreement identifier	xxxxxxxx	Provide an identifier for netting agreement. If this agreement is the same as provided in A1.10, use same identifier. Information needed to identify unique netting sets.	Varchar(50)	
A1.12	Netting agreement counterparty identifier	xxxxxxxx	Provide a netting agreement counterparty identifier. Use same identifier as provided in A1.4 if counterparty and netting agreement counterparty are the same. Use LEI if netting agreement counterparty has one. Information needed to identify unique netting sets.	Varchar(50)	Validated against CP.2
A1.13	Trade date	2014-12-20	Provide trade or other commitment date for the QFC. Information needed to determine when the entity's rights and obligations regarding the position originated.	YYYY-MM-DD	

A1.14	Termination date	2014-03-31	Provide date the QFC terminates or is expected to terminate, expire, mature, or when final performance is required. Information needed to determine when the entity's rights and obligations regarding the position are expected to end.	YYYY-MM-DD	
A1.15	Next call, put, or cancellation date	2015-01-25	Provide next call, put, or cancellation date.	YYYY-MM-DD	
A1.16	Next payment date	2015-01-25	Provide next payment date.	YYYY-MM-DD	
A1.17	Current market value of the position in U.S. dollars	995000	In the case of a guarantee or other third party credit enhancements, provide the current mark-to-market expected value of the exposure. Information needed to determine the current size of the obligation/benefit associated with the QFC.	Num (25,5)	
A1.18	Notional or principal amount of the position In U.S. dollars	1000000	Provide the notional or principal amount, as applicable, in U.S. dollars. In the case of a guarantee or other third party credit enhancements, provide the maximum possible exposure. Information needed to help evaluate the position.	Num (25,5)	
A1.19	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Indicate whether QFC is covered by a guarantee or other third-party credit enhancement. Information needed to determine credit enhancement.	Char(1)	Should be "Y" or "N"
A1.20	Third-party credit enhancement provider identifier (for the benefit of the records entity)	999999999	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for provider. Use LEI if available. Complete the counterparty master table with respect to a provider that is a non-affiliate.	Varchar(50)	Required if A1.20 is "Y". Validated against CP.2
A1.21	Third-party credit enhancement agreement identifier (for the benefit of the records entity)		If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for the agreement.	Varchar(50)	Required if A1.20 is "Y".
A1.22	Related position of records entity	3333333	Use this field to link any related positions of the records entity. All positions that are related to one another should have same designation in this field.	Varchar(100)	

A1.23	Reference number for any related loan	9999999	Provide a unique reference number for any loan held by the records entity or a member of its corporate group related to the position (with multiple entries delimited by commas).	Varchar(500)	
A1.24	Identifier of the lender of the related loan	999999999	For any loan recorded in A1.23, provide identifier for records entity or member of its corporate group that holds any related loan. Use LEI if entity has one.	Varchar(500)	

TABLE A-2—COUNTERPARTY NETTING SET DATA

	Field	Example	Instructions and data application	Def	Validation
A2.1	As of date	2015-01-05	Data extraction date.	YYYY-MM-DD	
A2.2	Records entity identifier	999999999	Provide the LEI for the records entity if available.	Varchar(50)	Validated against CO.2
A2.3	Netting agreement counterparty identifier	888888888	Provide an identifier for the netting agreement counterparty. Use LEI if counterparty has one.	Varchar(50)	Validated against CP.2
A2.4	Netting agreement identifier	xxxxxxxxx	Provide an identifier for the netting agreement.	Varchar(50)	
A2.5	Underlying QFC obligor identifier	888888888	Provide identifier for underlying QFC obligor if netting agreement is associated with a guarantee or other third party credit enhancement. Use LEI if available.	Varchar(50)	Validated against CO.2 or CP.2
A2.6	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Indicate whether the positions subject to the netting set agreement are covered by a third-party credit enhancement agreement.	Char(1)	Should be "Y" or "N"

A2.7	Third-party credit enhancement provider identifier (for the benefit of the records entity)	999999999	Use LEI if available. Information needed to identify third-party credit enhancement provider.	Varchar(50)	Required if A2.6 is "Y". Should be a valid entry in the Counterparty Master Table. Validated against CP.2
A2.8	Third-party credit enhancement agreement identifier (for the benefit of the records entity)	4444444		Varchar(50)	Required if A2.6 is "Y".
A2.9	Aggregate current market value in U.S. dollars of all positions under this netting agreement	-1000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all positions in A1 for the given netting agreement identifier should be equal to this value. $A2.9 = A2.10 + A2.11$
A2.10	Current market value in U.S. dollars of all positive positions, as aggregated under this netting agreement	3000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all positive positions in A1 for the given netting agreement identifier should be equal to this value. $A2.9 = A2.10 + A2.11$
A2.11	Current market value in U.S. dollars of all negative positions, as aggregated under this netting agreement	-4000000	Information needed to help evaluate the positions subject to the netting agreement.	Num (25,5)	Market value of all negative positions in A1 for the given Netting Agreement Identifier should be equal to this value. $A2.9 = A2.10 + A2.11$
A2.12	Current market value in U.S. dollars of all collateral posted by records entity, as aggregated under this netting agreement.	950000	Information needed to determine the extent to which collateral has been provided by records entity.	Num (25,5)	
A2.13	Current market value in U.S. dollars of all collateral posted by counterparty, as aggregated under this netting agreement.	50000	Information needed to determine the extent to which collateral has been provided by counterparty.	Num (25,5)	

A2.14	Records entity collateral - net	950,000	Provide records entity's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.	Num (25,5)	Should be less than or equal to A2.15
A2.15	Counterparty collateral - net	950,000	Provide counterparty's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable.	Num (25,5)	Should be less than or equal to A2.16
A2.16	Next margin payment date	2015-11-05	Provide next margin payment date for position.	YYYY-MM-DD	
A2.17	Next margin payment amount in U.S. dollars	150,000	Use positive value if records entity is due a payment and use negative value if records entity has to make the payment.	Num (25,5)	

CORPORATE ORGANIZATION MASTER TABLE*

	Field	Example	Instructions and data application	Def	Validation
CO.1	As of date	2015-01-05	Data extraction date.	YYYY-MM-DD	
CO.2	Entity identifier	888888888	Provide unique identifier. Use LEI if available. Information needed to identify entity.	Varchar(50)	Should be unique across all record entities
CO.3	Has LEI been used for entity identifier?	Y/N	Specify whether the entity identifier provided is an LEI.	Char(1)	Should be "Y" or "N"
CO.4	Legal name of entity	John Doe & Co.	Provide legal name of entity.	Varchar(200)	
CO.5	Immediate parent entity identifier	77777777	Use LEI if available. Information needed to complete org structure.	Varchar(50)	
CO.6	Has LEI been used for immediate parent entity identifier?	Y/N	Specify whether the immediate parent entity identifier provided is an LEI.	Char(1)	Should be "Y" or "N"
CO.7	Legal name of immediate parent entity	John Doe & Co.	Information needed to complete org structure.	Varchar(200)	
CO.8	Percentage ownership of immediate parent entity in the entity	100.00	Information needed to complete org structure.	Num (5,2)	

CO.9	Entity type	Subsidiary, foreign branch, foreign division	Information needed to complete org structure.	Varchar(50)	
CO.10	Domicile	New York, New York	Enter as city, state or city, foreign country.	Varchar(50)	
CO.11	Jurisdiction under which incorporated or organized	New York	Enter as state or foreign jurisdiction.	Varchar(50)	

* Foreign branches and divisions shall be separately identified to the extent they are identified in an entity's reports to its appropriate Federal banking agency.

COUNTERPARTY MASTER TABLE

	Field	Example	Instructions and data application	Def	Validation
CP.1	As of date	2015-01-05	Data extraction date.	YYYY-MM-DD	
CP.2	Counterparty identifier	888888888	Use LEI if counterparty has one. The counterparty identifier shall be the global legal entity identifier if one has been issued to the entity. If a counterparty transacts with the records entity through one or more separate foreign branches or divisions and any such branch or division does not have its own unique global legal entity identifier, the records entity must include additional identifiers, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for each entity with the same ultimate parent entity as the counterparty.	Varchar(50)	
CP.3	Has LEI been used for counterparty identifier?	Y/N	Indicate whether the counterparty identifier is an LEI.	Char(1)	Should be "Y" or "N"
CP.4	Legal name of counterparty	John Doe & Co.	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200)	
CP.5	Domicile	New York, New York	Enter as city, state or city, foreign country.	Varchar(50)	

CP.6	Jurisdiction under which incorporated or organized	New York	Enter as state or foreign jurisdiction.	Varchar(50)	
CP.7	Immediate parent entity identifier	77777777	Provide an identifier for the parent entity that directly controls the counterparty. Use LEI if immediate parent entity has one.	Varchar(50)	
CP.8	Has LEI been used for immediate parent entity identifier?	Y/N	Indicate whether the immediate parent entity identifier is an LEI.	Char(1)	Should be "Y" or "N"
CP.9	Legal name of immediate parent entity	John Doe & Co.	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(200)	
CP.10	Ultimate parent entity identifier	66666666	Provide an identifier for the parent entity that is a member of the corporate group of the counterparty that is not controlled by another entity. Information needed to identify counterparty. Use LEI if ultimate parent entity has one.	Varchar(50)	
CP.11	Has LEI been used for ultimate parent entity identifier?	Y/N	Indicate whether the ultimate parent entity identifier is an LEI.	Char(1)	Should be "Y" or "N"
CP.12	Legal name of ultimate parent entity	John Doe & Co.	Information needed to identify and, if necessary, communicate with counterparty.	Varchar(100)	

DETAILS OF FORMATS

Format	Content in brief	Additional explanation	Examples
YYYY-MM-DD	Date	YYYY = four digit date, MM = 2 digit month, DD = 2 digit date	2015-11-12
Num (25,5)	Up to 25 numerical characters including 5 decimals	Up to 20 numerical characters before the decimal point and up to 5 numerical characters after the decimal point. The dot character is used to separate decimals.	1352.67 12345678901234567890.12345 0 -20000.25 -0.257
Char(3)	3 alphanumeric characters	The length is fixed at 3 alphanumeric characters.	USD X1X 999

Varchar(25)	Up to 25 alphanumeric characters	The length is not fixed but limited at up to 25 alphanumeric characters.	asgaGEH3268EFdsagtTRCF543
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Appendix B to Part 371 – File Structure for Qualified Financial Contract Records for Full Scope Entities

Pursuant to § 371.4(b), the records entity is required to provide the information required by this appendix B for itself and each of its reportable subsidiaries in a manner that can be disaggregated by legal entity. Accordingly, the reference to “records entity” in the tables of appendix B should be read as referring to each of the separate legal entities (i.e., the records entity and each reportable subsidiary).

TABLE A-1 – POSITION-LEVEL DATA

	Field	Example	Instructions and data application	Definition	Validation
A1.1	As of date	2015-01-05	Provide data extraction date	YYYY-MM-DD	
A1.2	Records entity identifier	999999999	Provide LEI for records entity. Information needed to review position-level data by records entity	Varchar(50)	Validated against CO.2
A1.3	Position identifier	20058953	Provide a position identifier. Should be used consistently across all records entities. Use the unique transaction identifier if available. Information needed to readily track and distinguish positions	Varchar(100)	

A1.4	Counterparty identifier	888888888	Provide a counterparty identifier. Use LEI if counterparty has one. Should be used consistently by all records entities. Information needed to identify counterparty by reference to Counterparty Master Table	Varchar(50)	Validated against CP.2
A1.5	Internal booking location identifier	New York, New York	Provide office where the position is booked. Information needed to determine system on which the trade is booked and settled	Varchar(50)	Combination A1.2 + A1.5 + A1.6 should have a corresponding unique combination BL.2 + BL.3 + BL.4 entry in Booking Location Master Table
A1.6	Unique booking unit or desk identifier	xxxxxx	Provide an identifier for unit or desk at which the position is booked. Information needed to help determine purpose of position	Varchar(50)	Combination A1.2 + A1.5 + A1.6 should have a corresponding unique combination BL.2 + BL.3 + BL.4 entry in Booking Location Master Table
A1.7	Type of QFC	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, loan repurchase agreement, guarantee or other third party credit enhancement of a QFC	Provide type of QFC. Use unique product identifier if available. Information needed to determine the nature of the QFC	Varchar(100)	
A1.7.1	Type of QFC covered by guarantee or other third party credit enhancement	Credit, equity, foreign exchange, interest rate (including cross-currency), other commodity, securities repurchase agreement, securities lending, or loan repurchase agreement	If QFC type is guarantee or other third party credit enhancement, provide type of QFC that is covered by such guarantee or other third party credit enhancement. Use unique product identifier if available. If multiple asset classes are covered by the guarantee or credit enhancement, enter the asset classes separated by comma. If all the QFCs of the underlying QFC obligor identifier are covered by the guarantee or other third party credit enhancement, enter "All."	Varchar(500)	Only required if QFC type (A1.7) is a guarantee or other third party credit enhancement.

A1.7.2	Underlying QFC obligor identifier	888888888	If QFC type is guarantee or other third party credit enhancement, provide an identifier for the QFC obligor whose obligation is covered by the guarantee or other third party credit enhancement. Use LEI if underlying QFC obligor has one. Complete the counterparty master table with respect to a QFC obligor that is a non-affiliate	Varchar(50)	Only required if QFC asset type (A1.7) is a guarantee or other third party credit enhancement. Validated against CO.2 if affiliate or CP.2 if non-affiliate.
A1.8	Agreement identifier	xxxxxxxx	Provide an identifier for the primary governing documentation, <i>e.g.</i> , the master agreement or guarantee agreement, as applicable	Varchar(50)	Validated against A3.3
A1.9	Netting agreement identifier	xxxxxxxx	Provide an identifier for netting agreement. If this agreement is the same as provided in A1.8, use same identifier. Information needed to identify unique netting sets	Varchar(50)	Validated against A3.3
A1.10	Netting agreement counterparty identifier	xxxxxxxx	Provide a netting agreement counterparty identifier. Use same identifier as provided in A1.4 if counterparty and netting agreement counterparty are the same. Use LEI if netting agreement counterparty has one. Information needed to identify unique netting sets	Varchar(50)	Validated against CP.2
A1.11	Trade date	2014-12-20	Provide trade or other commitment date for the QFC. Information needed to determine when the entity's rights and obligations regarding the position originated	YYYY-MM-DD	
A1.12	Termination date	2014-03-31	Provide date the QFC terminates or is expected to terminate, expire, mature, or when final performance is required. Information needed to determine when the entity's rights and obligations regarding the position are expected to end	YYYY-MM-DD	
A1.13	Next call, put, or cancellation date	2015-01-25	Provide next call, put, or cancellation date	YYYY-MM-DD	
A1.14	Next payment date	2015-01-25	Provide next payment date	YYYY-MM-DD	
A1.15	Local Currency Of Position	USD	Provide currency in which QFC is denominated. Use ISO currency code	Char(3)	

A1.16	Current market value of the position in local currency	995000	Provide current market value of the position in local currency. In the case of a guarantee or other third party credit enhancements, provide the current mark-to-market expected value of the exposure. Information needed to determine the current size of the obligation or benefit associated with the QFC	Num (25,5)	
A1.17	Current market value of the position in U.S. dollars	995000	In the case of a guarantee or other third party credit enhancements, provide the current mark-to-market expected value of the exposure. Information needed to determine the current size of the obligation/benefit associated with the QFC	Num (25,5)	
A1.18	Asset Classification	1	Provide fair value asset classification under GAAP, IFRS, or other accounting principles or standards used by records entity. Provide "1" for Level 1, "2" for Level 2, or "3" for Level 3. Information needed to assess fair value of the position	Char(1)	
A1.19	Notional or principal amount of the position in local currency	1000000	Provide the notional or principal amount, as applicable, in local currency. In the case of a guarantee or other third party credit enhancement, provide the maximum possible exposure. Information needed to help evaluate the position	Num (25,5)	
A1.20	Notional or principal amount of the position In U.S. dollars	1000000	Provide the notional or principal amount, as applicable, in U.S. dollars. In the case of a guarantee or other third party credit enhancements, provide the maximum possible exposure. Information needed to help evaluate the position	Num (25,5)	
A1.21	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Indicate whether QFC is covered by a guarantee or other third-party credit enhancement. Information needed to determine credit enhancement	Char(1)	Should be "Y" or "N"
A1.21.1	Third-party credit enhancement provider identifier (for the benefit of the records entity)	999999999	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for provider. Use LEI if available. Complete the counterparty master table with respect to a provider that is a non-affiliate	Varchar(50)	Required if A1.21 is "Y". Validated against CP.2
A1.21.2	Third-party credit enhancement agreement identifier (for the benefit of the	4444444	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for the agreement	Varchar(50)	Required if A1.21 is "Y." Validated against A3.3

	records entity)				
A1.21.3	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	Y/N	Indicate whether QFC is covered by a guarantee or other third-party credit enhancement. Information needed to determine credit enhancement	Char(1)	Should be "Y" or "N"
A1.21.4	Third-party credit enhancement provider identifier (for the benefit of the counterparty)	999999999	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for provider. Use LEI if available. Complete the counterparty master table with respect to a provider that is a non-affiliate	Varchar(50)	Required if A1.21.3 is "Y". Validated against CO.2 or CP.2
A1.21.5	Third-party credit enhancement agreement identifier (for the benefit of the counterparty)	4444444	If QFC is covered by a guarantee or other third-party credit enhancement, provide an identifier for agreement	Varchar(50)	Required if A1.21.3 is "Y". Validated against A3.3
A1.22	Related position of records entity	3333333	Use this field to link any related positions of the records entity. All positions that are related to one another should have same designation in this field	Varchar(100)	
A1.23	Reference number for any related loan	9999999	Provide a unique reference number for any loan held by the records entity or a member of its corporate group related to the position (with multiple entries delimited by commas).	Varchar(500)	
A1.24	Identifier of the lender of the related loan	999999999	For any loan recorded in A1.23, provide identifier for records entity or member of its corporate group that holds any related loan. Use LEI if entity has one	Varchar(500)	

TABLE A-2 – COUNTERPARTY NETTING SET DATA

	Field	Example	Instructions and data application	Def	Validation
A2.1	As of date	2015-01-05	Data extraction date	YYYY-MM-DD	
A2.2	Records entity identifier	999999999	Provide the LEI for the records entity	Varchar(50)	Validated against CO.2

A2.3	Netting agreement counterparty identifier	888888888	Provide an identifier for the netting agreement counterparty. Use LEI if counterparty has one	Varchar(50)	Validated against CP.2
A2.4	Netting agreement identifier	xxxxxxxxx	Provide an identifier for the netting agreement	Varchar(50)	Validated against A3.3
A2.4.1	Underlying QFC obligor identifier	888888888	Provide identifier for underlying QFC obligor if netting agreement is associated with a guarantee or other third party credit enhancement. Use LEI if available	Varchar(50)	Validated against CO.2 or CP.2
A2.5	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Indicate whether the positions subject to the netting set agreement are covered by a third-party credit enhancement agreement	Char(1)	Should be "Y" or "N"
A2.5.1	Third-party credit enhancement provider identifier (for the benefit of the records entity)	999999999	Use LEI if available. Information needed to identify third-party credit enhancement provider	Varchar(50)	Required if A2.5 is "Y". Validated against CP.2
A2.5.2	Third-party credit enhancement agreement identifier (for the benefit of the records entity)	4444444		Varchar(50)	Required if A2.5 is "Y". Validated against A3.3.
A2.5.3	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	Y/N	Information needed to determine credit enhancement	Char(1)	Should be "Y" or "N"

A2.5.4	Third-party credit enhancement provider identifier (for the benefit of the counterparty)	99999999	Use LEI if available. Information needed to identify third-party credit enhancement provider	Varchar(50)	Required if A2.5.3 is "Y". Should be a valid entry in the Counterparty Master Table. Validated against CP.2
A2.5.5	Third-party credit enhancement agreement identifier (for the benefit of the counterparty)	4444444	Information used to determine guarantee or other third-party credit enhancement	Varchar(50)	Required if A2.5.3 is "Y". Validated against A3.3
A2.6	Aggregate current market value in U.S. dollars of all positions under this netting agreement	-1000000	Information needed to help evaluate the positions subject to the netting agreement	Num (25,5)	Market value of all positions in A1 for the given netting agreement identifier should be equal to this value. $A2.6 = A2.7 + A2.8$
A2.7	Current market value in U.S. dollars of all positive positions, as aggregated under this netting agreement	3000000	Information needed to help evaluate the positions subject to the netting agreement	Num (25,5)	Market value of all positive positions in A1 for the given netting agreement identifier should be equal to this value. $A2.6 = A2.7 + A2.8$
A2.8	Current market value in U.S. dollars of all negative positions, as aggregated under this netting agreement	-4000000	Information needed to help evaluate the positions subject to the netting agreement	Num (25,5)	Market value of all negative positions in A1 for the given Netting Agreement Identifier should be equal to this value. $A2.6 = A2.7 + A2.8$
A2.9	Current market value in U.S. dollars of all collateral posted by records entity, as aggregated under this netting agreement	950000	Information needed to determine the extent to which collateral has been provided by records entity	Num (25,5)	Market value of all collateral posted by records entity for the given netting agreement Identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4
A2.10	Current market value in U.S. dollars of all collateral posted by counterparty, as aggregated under this netting agreement	50000	Information needed to determine the extent to which collateral has been provided by counterparty	Num (25,5)	Market value of all collateral posted by counterparty for the given netting agreement identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4

A2.11	Current market value in U.S. dollars of all collateral posted by records entity that is subject to re-hypothecation, as aggregated under this netting agreement	950,000	Information needed to determine the extent to which collateral has been provided by records entity	Num (25,5)	
A2.12	Current market value in U.S. dollars of all collateral posted by counterparty that is subject to re-hypothecation, as aggregated under this netting agreement	950,000	Information needed to determine the extent to which collateral has been provided by records entity	Num (25,5)	
A2.13	Records entity collateral – net	950,000	Provide records entity's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable	Num (25,5)	Should be less than or equal to A2.9
A2.14	Counterparty collateral – net	950,000	Provide counterparty's collateral excess or deficiency with respect to all of its positions, as determined under each applicable agreement, including thresholds and haircuts where applicable	Num (25,5)	Should be less than or equal to A2.10
A2.15	Next margin payment date	2015-11-05	Provide next margin payment date for position	YYYY-MM-DD	
A2.16	Next margin payment amount in U.S. dollars	150,000	Use positive value if records entity is due a payment and use negative value if records entity has to make the payment	Num (25,5)	
A2.17	Safekeeping agent identifier for records entity	888888888	Provide an identifier for the records entity's safekeeping agent, if any. Use LEI if safekeeping agent has one	Varchar(50)	Validated against SA.2
A2.18	Safekeeping agent identifier for counterparty	888888888	Provide an identifier for the counterparty's safekeeping agent, if any. Use LEI if safekeeping agent has one	Varchar(50)	Validated against SA.2

TABLE A-3 – LEGAL AGREEMENTS

	Field	Example	Instructions and data application	Def	Validation
A3.1	As Of Date	2015-01-05	Data extraction date	YYYY-MM-DD	
A3.2	Records entity identifier	999999999	Provide LEI for records entity	Varchar(50)	Validated against CO.2

A3.3	Agreement identifier	xxxxxx	Provide identifier for each master agreement, governing document, netting agreement or third-party credit enhancement agreement	Varchar(50)	
A3.4	Name of agreement or governing document	ISDA Master 1992 or Guarantee Agreement or Master Netting Agreement	Provide name of agreement or governing document	Varchar(50)	
A3.5	Agreement date	2010-01-25	Provide the date of the agreement	YYYY-MM-DD	
A3.6	Agreement counterparty identifier	888888888	Use LEI if counterparty has one. Information needed to identify counterparty	Varchar(50)	Validated against field CP.2
A3.6.1	Underlying QFC obligor identifier	888888888	Provide underlying QFC obligor identifier if document identifier is associated with a guarantee or other third party credit enhancement. Use LEI if underlying QFC obligor has one	Varchar(50)	Validated against CO.2 or CP.2
A3.7	Agreement governing law	New York	Provide law governing contract disputes	Varchar(50)	
A3.8	Cross-default provision?	Y/N	Specify whether agreement includes default or other termination event provisions that reference an entity not a party to the agreement (“cross-default Entity”). Information needed to determine exposure to affiliates or other entities	Char(1)	Should be "Y" or "N"
A3.9	Identity of cross-default entities	777777777	Provide identity of any cross-default entities referenced in A3.8. Use LEI if entity has one. Information needed to determine exposure to other entities	Varchar(500)	Required if A3.8 is "Y". ID should be a valid entry in Corporate Org Master Table or Counterparty Master Table, if applicable. Multiple entries comma separated
A3.10	Covered by third-party credit enhancement agreement (for the benefit of the records entity)?	Y/N	Information needed to determine credit enhancement	Char(1)	Should be "Y" or "N"
A3.11	Third-party credit enhancement provider identifier (for the benefit of the records entity)	999999999	Use LEI if available. Information needed to identify Third-Party Credit Enhancement Provider	Varchar(50)	Required if A3.10 is "Y". Should be a valid entry in the Counterparty Master Table. Validated against CP.2

A3.12	Associated third-party credit enhancement agreement document identifier (for the benefit of the records entity)	33333333	Information needed to determine credit enhancement	Varchar(50)	Required if A3.10 is "Y". Validated against field A3.3
A3.12.1	Covered by third-party credit enhancement agreement (for the benefit of the counterparty)?	Y/N	Information needed to determine credit enhancement	Char(1)	Should be "Y" or "N"
A3.12.2	Third-party credit enhancement provider identifier (for the benefit of the counterparty)	99999999	Use LEI if available. Information needed to identify Third-Party Credit Enhancement Provider	Varchar(50)	Required if A3.12.1 is "Y". Should be a valid entry in the Counterparty Master. Validated against CP.2
A3.12.3	Associated third-party credit enhancement agreement document identifier (for the benefit of the counterparty)	33333333	Information needed to determine credit enhancement	Varchar(50)	Required if A3.12.1 is "Y". Validated against field A3.3
A3.13	Counterparty contact information: name	John Doe & Co.	Provide contact name for counterparty as provided under notice section of agreement	Varchar(200)	
A3.14	Counterparty contact information: address	123 Main St, City, State Zip code	Provide contact address for counterparty as provided under notice section of agreement	Varchar(100)	
A3.15	Counterparty contact information: phone	1-999-999-9999	Provide contact phone number for counterparty as provided under notice section of agreement	Varchar(50)	
A3.16	Counterparty's contact information: email address	Jdoe@JohnDoe.com	Provide contact email address for counterparty as provided under notice section of agreement	Varchar(100)	

TABLE A-4 – COLLATERAL DETAIL DATA

	Field	Example	Instructions and data application	Def	Validation
A4.1	As of date	2015-01-05	Data extraction date	YYYY-MM-DD	

A4.2	Records entity identifier	999999999	Provide LEI for records entity	Varchar(50)	Validated against CO.2
A4.3	Collateral posted / collateral received flag	P/N	Enter "P" if collateral has been posted by the records entity. Enter "R" for collateral received by Records Entity	Char(1)	
A4.4	Counterparty identifier	888888888	Provide identifier for counterparty. Use LEI if counterparty has one	Varchar(50)	Validated against CP.2
A4.5	Netting agreement identifier	xxxxxxxx	Provide identifier for applicable netting agreement	Varchar(50)	Validated against field A3.3
A4.6	Unique collateral item identifier	CUSIP / ISIN	Provide identifier to reference individual collateral posted	Varchar(50)	
A4.7	Original face amount of collateral item in local currency	1500000	Information needed to evaluate collateral sufficiency and marketability	Num (25,5)	
A4.8	Local currency of collateral item	USD	Use ISO currency code	Char(3)	
A4.9	Market value amount of collateral item in U.S. dollars	850000	Information needed to evaluate collateral sufficiency and marketability and to permit aggregation across currencies	Num (25,5)	Market value of all collateral posted by Records Entity or Counterparty A2.9 or A2.10 for the given netting agreement identifier should be equal to sum of all A4.9 for the same netting agreement identifier in A4
A4.10	Description of collateral item	U.S. Treasury Strip, maturity 2020/6/30	Information needed to evaluate collateral sufficiency and marketability	Varchar(200)	
A4.11	Asset classification	1	Provide fair value asset classification for the collateral item under GAAP, IFRS, or other accounting principles or standards used by records entity. Provide "1" for Level 1, "2" for Level 2, or "3" for Level 3	Char(1)	Should be "1" or "2" or "3"
A4.12	Collateral or portfolio segregation status	Y/N	Specify whether the specific item of collateral or the related collateral portfolio is segregated from assets of the safekeeping agent	Char(1)	Should be "Y" or "N"

A4.13	Collateral location	ABC broker-dealer (in safekeeping account of counterparty)	Provide location of collateral posted	Varchar(200)	
A4.14	Collateral jurisdiction	New York, New York	Provide jurisdiction of location of collateral posted	Varchar(50)	
A4.15	Is collateral re-hypothecation allowed?	Y/N	Information needed to evaluate exposure of the records entity to the counterparty or vice-versa for re-hypothecated collateral	Char(1)	Should be "Y" or "N"

CORPORATE ORGANIZATION MASTER TABLE *

	Field	Example	Instructions and data application	Def	Validation
CO.1	As of date	2015-01-05	Data extraction date	YYYY-MM-DD	
CO.2	Entity identifier	888888888	Provide unique identifier. Use LEI if available. Information needed to identify entity	Varchar(50)	Should be unique across all records entities
CO.3	Has LEI been used for entity identifier?	Y/N	Specify whether the entity identifier provided is an LEI	Char(1)	Should be "Y" or "N"
CO.4	Legal name of entity	John Doe & Co.	Provide legal name of entity	Varchar(200)	
CO.5	Immediate parent entity identifier	77777777	Use LEI if available. Information needed to complete org structure	Varchar(50)	
CO.6	Has LEI been used for immediate parent entity identifier?	Y/N	Specify whether the immediate parent entity identifier provided is an LEI	Char(1)	Should be "Y" or "N"
CO.7	Legal name of immediate parent entity	John Doe & Co.	Information needed to complete org structure	Varchar(200)	
CO.8	Percentage ownership of immediate parent entity in the entity	100.00	Information needed to complete org structure	Num (5,2)	
CO.9	Entity type	Subsidiary, foreign branch, foreign division	Information needed to complete org structure	Varchar(50)	
CO.10	Domicile	New York, New York	Enter as city, state or city, foreign country	Varchar(50)	
CO.11	Jurisdiction under which incorporated or organized	New York	Enter as state or foreign jurisdiction	Varchar(50)	

* Foreign branches and divisions shall be separately identified to the extent they are identified in an entity's reports to its appropriate Federal banking agency.

COUNTERPARTY MASTER TABLE

	Field	Example	Instructions and data application	Def	Validation
CP.1	As of date	2015-01-05	Data extraction date	YYYY-MM-DD	
CP.2	Counterparty identifier	888888888	Use LEI if counterparty has one. Should be used consistently across all records entities within a corporate group. The counterparty identifier shall be the global legal entity identifier if one has been issued to the entity. If a counterparty transacts with the records entity through one or more separate foreign branches or divisions and any such branch or division does not have its own unique global legal entity identifier, the records entity must include additional identifiers, as appropriate to enable the FDIC to aggregate or disaggregate the data for each counterparty and for each entity with the same ultimate parent entity as the counterparty	Varchar(50)	
CP.3	Has LEI been used for counterparty identifier?	Y/N	Indicate whether the counterparty identifier is an LEI	Char(1)	Should be "Y" or "N"
CP.4	Legal name of counterparty	John Doe & Co.	Information needed to identify and, if necessary, communicate with counterparty	Varchar(200)	
CP.5	Domicile	New York, New York	Enter as city, state or city, foreign country	Varchar(50)	
CP.6	Jurisdiction under which incorporated or organized	New York	Enter as state or foreign jurisdiction	Varchar(50)	
CP.7	Immediate parent entity identifier	77777777	Provide an identifier for the parent entity that directly controls the counterparty. Use LEI if immediate parent entity has one	Varchar(50)	
CP.8	Has LEI been used for immediate parent entity identifier?	Y/N	Indicate whether the immediate parent entity identifier is an LEI	Char(1)	Should be "Y" or "N"

CP.9	Legal name of immediate parent entity	John Doe & Co.	Information needed to identify and, if necessary, communicate with counterparty	Varchar(200)	
CP.10	Ultimate parent entity identifier	666666666	Provide an identifier for the parent entity that is a member of the corporate group of the counterparty that is not controlled by another entity. Information needed to identify counterparty. Use LEI if ultimate parent entity has one	Varchar(50)	
CP.11	Has LEI been used for ultimate parent entity identifier?	Y/N	Indicate whether the ultimate parent entity identifier is an LEI	Char(1)	Should be "Y" or "N"
CP.12	Legal name of ultimate parent entity	John Doe & Co.	Information needed to identify and, if necessary, communicate with Counterparty	Varchar(100)	

BOOKING LOCATION MASTER TABLE

	Field	Example	Instructions and data application	Def	Validation
BL.1	As of date	2015-01-05	Data extraction date	YYYY-MM-DD	
BL.2	Records entity identifier	999999999	Provide LEI	Varchar(50)	Should be a valid entry in the Corporate Org Master Table
BL.3	Internal booking location identifier	New York, New York	Provide office where the position is booked. 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.	Varchar(50)	
BL.4	Unique booking unit or desk identifier	xxxxxx	Provide unit or desk at which the position is booked. Information needed to help determine purpose of position.	Varchar(50)	
BL.5	Unique booking unit or desk description	North American trading desk	Additional information to help determine purpose of position.	Varchar(50)	
BL.6	Booking unit or desk contact – phone	1-999-999-9999	Information needed to communicate with the booking unit or desk	Varchar(50)	
BL.7	Booking unit or desk contact - email	Desk@Desk.com	Information needed to communicate with the booking unit or desk	Varchar(100)	

SAFEKEEPING AGENT MASTER TABLE

	Field	Example	Instructions and data application	Def	Validation
SA.1	As of date	2015-01-05	Data extraction date	YYYY-MM-DD	
SA.2	Safekeeping agent identifier	888888888	Provide an identifier for the safekeeping agent. Use LEI if safekeeping agent has one.	Varchar(50)	
SA.3	Legal name of safekeeping agent	John Doe & Co.	Information needed to identify and, if necessary, communicate with the safekeeping agent	Varchar(200)	
SA.4	Point of contact - name	John Doe	Information needed to identify and, if necessary, communicate with the safekeeping agent	Varchar(200)	
SA.5	Point of contact - address	123 Main St, City, State Zip Code	Information needed to identify and, if necessary, communicate with the safekeeping agent	Varchar(100)	
SA.6	Point of contact - phone	1-999-999-9999	Information needed to identify and, if necessary, communicate with the safekeeping agent	Varchar(50)	
SA.7	Point of contact - email	Jdoe@JohnDoe.com	Information needed to identify and, if necessary, communicate with the safekeeping agent	Varchar(100)	

DETAILS OF FORMATS

Format	Content in brief	Additional explanation	Examples
YYYY-MM-DD	Date	YYYY = four digit date, MM = 2 digit month, DD = 2 digit date	2015-11-12
Num (25,5)	Up to 25 numerical characters including 5 decimals	Up to 20 numerical characters before the decimal point and up to 5 numerical characters after the decimal point. The dot character is used to separate decimals	1352.67 12345678901234567890.12345 0 -20000.25 -0.257
Char(3)	3 alphanumeric characters	The length is fixed at 3 alphanumeric characters	USD X1X 999
Varchar(25)	Up to 25 alphanumeric characters	The length is not fixed but limited at up to 25 alphanumeric characters	asgaGEH3268EFdsagtTRCF543

Dated at Washington, D.C., this 18th day of July 2017.

By order of the Board of Directors.

Federal Deposit Insurance Corporation

Robert E. Feldman

Executive Secretary

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