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DEPARTMENT OF THE TREASURY

Office of Financial Research

12 CFR Part 1610

RIN 1505-AC58

Ongoing Data Collection of Centrally Cleared Transactions in the U.S. Repurchase Agreement Market

AGENCY: Office of Financial Research, Treasury

ACTION: Final rule.

SUMMARY: The U.S. Department of the Treasury’s Office of Financial Research (the “Office” or the “OFR”) is adopting final rules (the “Final Rules”) establishing a data collection covering centrally cleared transactions in the U.S. repurchase agreement (“repo”) market. This collection requires daily reporting to the Office by covered central counterparties (“CCPs”). The collected data will be used to support the work of the Financial Stability Oversight Council (the “Council”), its member agencies, and the Office to identify and monitor risks to financial stability, and to support the calculation of certain reference rates.

DATES: *Effective date:* This rule is effective [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

Compliance dates: See the amendment to 12 CFR 1610.10(e).

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SUPPLEMENTARY INFORMATION:

I. Introduction

The OFR is adopting the Final Rules to establish a data collection for centrally cleared transactions in the U.S. repo market. The Final Rules will require reporting by certain U.S. CCPs for repo transactions and will serve two primary purposes: (1) to enhance the ability of the Council, its member agencies, and the Office to identify and monitor risks to financial stability; and (2) to support the calculation of certain reference rates. Under the Dodd-Frank Wall Street Reform and Consumer Protection Act (the “Dodd-Frank Act”), the Office is authorized to issue rules and regulations in order to collect and standardize data to support the Council in fulfilling its purposes and duties, such as identifying risks to U.S. financial stability. The Council recommended a permanent collection of repo data in its 2016 annual report to Congress and, as required by law, the Office consulted with the Council on the schedule of collection in September 2016.¹ The Council maintained this recommendation in its 2017 annual report, and

¹ See Minutes of the Financial Stability Oversight Council (September 22, 2016), https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/September222016_minutes.pdf and 12 U.S.C. 5344(b)(1)(B)(iii).

the Office provided a public update to the Council on November 16, 2017.² The Final Rules will require reporting on centrally cleared repo transactions comprising approximately one-quarter of all U.S. repo market transactions. Together with data collected regarding approximately another one-quarter of the market by the Federal Reserve Bank of New York (the “FRBNY”) pursuant to the supervisory authority of the Board of Governors of the Federal Reserve System (the “Federal Reserve Board”), the Final Rules mark an important step toward fully addressing the Council’s recommendation. The expanded monitoring of the repo market made possible by the Final Rules will help fulfill the Council’s purposes and duties because of the repo market’s crucial role in providing short-term funding and performing other functions for U.S. markets, making it important for financial stability monitoring. The data will also support the calculation of the Secured Overnight Funding Rate (“SOFR”), which was selected by the Alternative Reference Rates Committee as its preferred alternative rate to the U.S. dollar London Interbank Offered Rate (“LIBOR”), as well as the Broad General Collateral Rate (“BGCR”), helping fulfill another Council recommendation on the creation of alternative reference rates.³

The Office published a notice of proposed rulemaking on July 10, 2018 (the “NPRM” or the “Proposed Rules”), and requested that any comments be submitted by September 10, 2018.⁴ The Office received relevant comments on the NPRM from a clearing organization, a trade

² See Financial Stability Oversight Council, meeting minutes (November 16, 2017), https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/November162017_minutes.pdf, and Office, OFR Update on Bilateral Repo Collection (November 22, 2017), <https://www.financialresearch.gov/from-the-managementteam/2017/11/22/ofr-update-on-bilateral-repocollection/>.

³ See Financial Stability Oversight Council, *2014 Annual Report*, p. 10; *2015 Annual Report*, p. 17; *2016 Annual Report*, pp. 14-15; and *2017 Annual Report*, pp. 12-13, <https://www.treasury.gov/initiatives/fsoc/studies-reports/Pages/2017-Annual-Report.aspx>.

⁴ 83 FR 31896 (July 10, 2018).

association, an asset manager, a standards advisory group, and a nonprofit foundation.⁵ In general, all commenters supported the proposed data collection, noting such potential benefits as monitoring risks to financial stability and supporting the calculation of an alternative reference rate to LIBOR. In addition, commenters identified certain issues that the Office has addressed in the discussion below and, in some cases, through regulatory text changes reflected in the Final Rules. In making these changes, the Office intends to minimize the burden of the Final Rules while still assuring that the aims of the collection, as expressed in the NPRM and below, are met.

II. Description of Final Rules

The following discussion summarizes the NPRM, the comments received, and the Office's response to those comments, including modifications reflected in the Final Rules.

a. Purpose of Rules

As noted in the NPRM, the collection of data pursuant to the Final Rules has two primary purposes, both of which support the Council, its member agencies, and the Office in carrying out their responsibilities. First, the data will be used to identify and monitor financial stability risks in a significant portion of the U.S. repo market. Second, the data will be used to support the calculation of reference rates, including the SOFR. Both of these aims received strong support in the comment letters. Public commenters endorsed the enhancement of information on the U.S. repo market that is to be accomplished through the collection, and they also noted such data

⁵ In total, the OFR received five substantive comments on the Proposed Rules, including letters from the Depository Trust & Clearing Corporation ("DTCC"), the Securities Industry and Financial Markets Association ("SIFMA"), Citadel L.L.C., The Standards Advisory Group of the International Organization for Standardization's ("ISO") Technical Committee 68 for Financial Services ("ISO/TC 68"), and the Global Legal Entity Identifier ("LEI") Foundation.

would strengthen the calculation method and resiliency of the collection mechanism for the SOFR.⁶

i. Importance of Centrally Cleared Repurchase Agreement Data For Monitoring Financial Stability Risks

The collection of data on the centrally cleared segments of the repo market marks an important step in fulfilling the Council’s recommendation to expand and make permanent the collection of data on the U.S. repo market. The Council recommended a permanent collection of repo data in its 2016 annual report to improve transparency and risk monitoring, which was reiterated in its 2017 annual report.⁷ The Office believes that the adopted approach of collecting certain cleared repo data from CCPs, which already obtain most or all of the requested data during trade processing, will result in lower aggregate costs to market participants than a collection from individual participants. As explained below, the Office believes that there is only one reporter currently covered by the Final Rules’ scope: Fixed Income Clearing Corporation (“FICC”), a subsidiary of DTCC. FICC has indicated that on average, it matches, nets, settles, and risk-manages centrally cleared repo transactions valued at more than \$1.7 trillion per day.⁸ The collection is expected to result initially in reporting only from two FICC services: the General Collateral Finance Repo Service (“GCF Repo Service”) (a service that clears general collateral trades, in which the trade reported to the CCP is for a category of

⁶ See, e.g., SIFMA letter, pp. 1-2.

⁷ See Financial Stability Oversight Council, *2017 Annual Report*, p. 14, https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf and *2016 Annual Report*, p. 14, <https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf>.

⁸ See Depository Trust & Clearing Corporation, DVP Repo Transactions, undated online content, <https://www.dtcclearing.com/products-and-services/fixed-income-clearing/government-securities-division-gsd/dvp-service/dvp-repo-transactions.html>.

securities as opposed to a specific security), including FICC’s Centrally Cleared Institutional Triparty Service; and the Delivery-Versus-Payment Service (“DVP Service”) (a specific-security repo service). This collection, together with existing data collections covering the tri-party repo market, will allow about half of the estimated activity in the U.S. repo market by volume to be analyzed and monitored.⁹

The collection of transactional data on centrally cleared repos is key to the Council’s effective identification and monitoring of emerging threats to the stability of the U.S. financial system. The repo market has a number of critical functions with associated vulnerabilities that could give rise to conditions that could impair its ability to perform such functions.¹⁰ These functions also create linkages between different financial markets and institutions, and therefore potential channels for the propagation of shocks through the wider financial system. These vulnerabilities have developed in the past into threats to U.S. financial stability, most notably during the 2007-09 financial crisis.¹¹

Despite the vulnerabilities, only tri-party repo transactions are currently subject to a mandatory regulatory data collection. Data gaps and the absence of mandatory collections are a significant impediment to the ongoing ability of the market, the Council, Council member agencies, and the Office to monitor developments in the repo market and potential emerging threats to financial stability. The lack of comprehensive data on repos creates material blind

⁹ See Baklanova, Caglio, Cipriani, and Copeland (January 13, 2016), using a method first outlined in Copeland, et al., “Lifting the Veil on the U.S. Bilateral Repo Market,” Liberty Street Economics: <http://libertystreeteconomics.newyorkfed.org/2014/07/lifting-the-veil-on-the-us-bilateral-repo-market.html>.

¹⁰ There are four functions that repo transactions can serve for individual participants: low-risk cash investment, monetization of assets, transformation of collateral, and facilitation of hedging. Repos also benefit financial markets broadly by supporting secondary market efficiency and liquidity.

¹¹ During the financial crisis, the repo market first began to show stress in the summer of 2007, and runs on repos played a central role in the failures of Bear Stearns and Lehman Brothers. These threats can manifest quickly; the run on Bear Stearns took place over less than a week. See Financial Crisis Inquiry Commission, “Conclusions of the Financial Crisis Inquiry Commission” (January 2011), pp. 286-290.

spots with regard to the most active short-term funding market in the U.S. financial system. This mandatory collection is an important step in eliminating these blind spots.

From a financial stability perspective, it is important to monitor transactions in centrally cleared repo for three reasons. First, repos that are transacted through a CCP on a blind-brokered basis can act as a critical funding source for repo borrowers that are under stress. Uncleared repos backed by high-quality collateral can become sensitive to counterparty risk, potentially resulting in a run on an institution's funding.¹² Shifts in activity from specific-counterparty repos to blind-brokered transactions can therefore indicate market perceptions that a firm may be under stress.

Second, while counterparty risk is mitigated by the use of CCPs, adverse changes in the value of collateral can propagate shocks arising elsewhere in the financial system to CCP members by impacting their ability to borrow using centrally cleared repo.¹³ Further, collateral held at tri-party custodian banks that is used in centrally cleared repos within the tri-party system is not available for delivery outside of the tri-party system, making information on the collateral used in this venue important for understanding broader market dynamics.

Third, while CCPs offer benefits in terms of settlement and risk management, they may also propagate shocks to their members in other ways. If a repo CCP were to fail during a period

¹² See Adam Copeland, Antoine Martin, and Martin Walker, "Repo Runs: Evidence from the Tri-Party Repo Market" (2011), *Federal Reserve Bank of New York Staff Reports*.

¹³ The linkages between asset and funding markets create a risk of spillovers from one market to another because asset values help determine both the value of an asset as collateral and also the availability of funding for leveraged market participants that hold the asset. Price impacts on collateral arising from forced asset sales due to a lack of confidence in such assets or in a particular counterparty can have widespread effects beyond the original transactions, leading to contagion that can culminate in broader fire sales and potential threats to financial stability. Further, the use of common underlying assets between different segments of the repo market therefore creates a channel through which centrally cleared repo transactions can be affected by activity in other portions of the repo market.

of market stress, the repo intermediation capacity of the financial system would be impaired. Even if this risk were judged to be remote, in a circumstance where, as here, there is significant market centralization, disruption of such a critical service could have severe implications. For these reasons, and as noted by the Council in its 2017 annual report, further monitoring and analysis of risks related to CCPs is appropriate.¹⁴

ii. Importance of Centrally Cleared Repurchase Agreement Data to Alternative Reference Rates

This collection is expected to support the calculation of reference rates including the SOFR, the Alternative Reference Rates Committee’s preferred alternative reference rate to U.S. dollar LIBOR. The SOFR relies on data on repos backed by Treasury securities in three segments of the U.S. repo market. The Federal Reserve Board collects data for the tri-party portion through its supervisory authority over the clearing banks. While some data on GCF Repo Service and DVP Service transactions are available to the FRBNY through a voluntary agreement with an affiliate of FICC, DTCC Solutions LLC (“DTCC Solutions”), an expanded and ongoing mandatory collection of these data will increase confidence that the alternative reference rate’s inputs will continue to be available. This is especially true if new CCPs enter the market. This viability is important because the long-term success of any alternative reference rate relies on the confidence of market participants.

Another benefit of this collection is the ability to require specific data fields from centrally cleared general collateral repo and centrally cleared specific-security repo services for

¹⁴ See Financial Stability Oversight Council, *2017 Annual Report*, pp. 123-4, https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC_2017_Annual_Report.pdf.

use in reference rate calculation. The Office has reviewed these data fields with the FRBNY and believes the information will help to improve and ensure the ongoing quality of the SOFR and BGCR. From an early stage, the Office has contributed to the development of alternative reference rates and has designed this collection to maximize its compatibility with reference rate production. Some of the data fields in this collection are not currently received under the voluntary agreement between the FRBNY and DTCC Solutions, but will help ensure the continued quality of the rates. Most notably, the identity of transaction counterparties is important for rate calculation, as it allows the calculation agent to identify and, as appropriate, exclude transactions that may not be representative of market activity (e.g., certain affiliate transactions). Further, by making available data on repos that are outside the current scope of the voluntary data collection, this collection will allow the Federal Reserve and the Office to better monitor the evolution of markets and ensure that the rates continue to target their intended underlying interests.

Finally, the collection will help ensure the long-term viability of the SOFR and BGCR by including within its scope reporting from any additional CCPs that meet the \$50 billion activity-based materiality threshold in the future, regardless of their supervisor or regulator. This ensures rate production will include new comparable transactions in the calculation of the rate as U.S. repo markets evolve. This is of particular importance given that trading in products tied to the new rate might eventually subsume most volume that is currently tied to U.S. dollar LIBOR.

b. Uses of the Data Collection

The collection will be used by the Office to improve the ability of the Council, Council member agencies, and the Office to monitor the U.S. repo market and identify and assess

potential financial stability risks. The additional daily transaction data this collection will facilitate identification of potential repo market vulnerabilities and will also help identify shifting repo market trends that could be destabilizing or indicate stresses elsewhere in the financial system. Such trends might be reflected in indicators of the volume or price of funding in the repo market at different tenors, differentiated by the type or credit quality of participants or the quality of underlying collateral. Further, analyzing the collateral data from this collection together with other data available to the Office, the Council, and Council member agencies will enable a clearer understanding of collateral flows in securities markets and potential financial stability risks.

As noted in the NPRM and consistent with the Dodd-Frank Act, the Office expects to share collected data and information with the Council and its member agencies, and such data and information must be maintained with at least the same level of security as used by the Office and may not be shared with any individual or entity without the permission of the Council.¹⁵ On October 16, 2018, the Council voted unanimously to authorize the OFR to share with the FRBNY the data the OFR will collect under the Final Rules.¹⁶ Accordingly, the Office will make available the data from this collection to the FRBNY for purposes of meeting the above monitoring and alternative reference rate objectives as well as other market analysis and research. The Office will also make data collected and maintained under this collection available to the Council and Council member agencies, as necessary to support their regulatory responsibilities.¹⁷

¹⁵ 12 U.S.C. 5343(b).

¹⁶ See FSOC, Minutes of the Financial Stability Council dated October 16, 2018, https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/October162018_minutes.pdf

¹⁷ 12 U.S.C. 5344(b)(5).

The sharing of any data from this collection will be subject to the confidentiality and security requirements of applicable laws, including the Dodd-Frank Act.¹⁸ Pursuant to the Dodd-Frank Act, the submission of any non-publicly available data to the Office under this collection will not constitute a waiver of, or otherwise affect, any privilege arising under federal or state law to which the data or information is otherwise subject.¹⁹

Aggregate or summary data from the collection might be provided to the public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, confidential business information is properly protected, and the sharing of such information poses no significant threats to the U.S. financial system.²⁰ The potential sharing of aggregate or summary data collected under the Final Rules would help fulfill a recommendation of the Council to make appropriately aggregated securities financing data available to the public.²¹

The Office may also use the data to sponsor and conduct additional research.²² This research may include the use of these data to help fulfill the duties and purposes under the Dodd-Frank Act relating to the responsibility of the Office's Research and Analysis Center to develop and maintain independent analytical capabilities to support the Council and relating to the programmatic functions of the Office's Data Center.²³ For example, access to data on centrally

¹⁸ *E.g.*, 12 U.S.C. 5343(b), 5344(b)(3).

¹⁹ 12 U.S.C. 5322(d)(5).

²⁰ 12 U.S.C. 5344(b)(6).

²¹ *See* Financial Stability Oversight Council, Council's 2017 Annual Report, p. 16, <https://www.treasury.gov/initiatives/fsoc/studies-reports/Documents/FSOC%202016%20Annual%20Report.pdf>.

²² 12 U.S.C. 5343(b)(2).

²³ 12 U.S.C. 5344(b) discusses the Office's Data Center, and 12 U.S.C. 5344(c) discusses the various uses of data by the Office's Research and Analysis Center to support the Council.

cleared repos will allow the Office to conduct research related to the Council's analysis of potential risks arising from securities financing activities.

Two commenters requested that the Office provide more clarity regarding information security. One focused on the standard of care and the particular measures the Office will take to secure and protect the data collected in order to provide greater transparency and enable a constructive dialogue regarding the adequacy of such measures in the face of future technological developments.²⁴ The other stated its concern in light of the number of agencies and individuals within such agencies that may have access to the data.²⁵

As noted above, the Office will, consistent with the Dodd-Frank Act, share data and information with the Council and its member agencies. As required by the Dodd-Frank Act, such data and information must be maintained with at least the same level of security as used by the Office and may not be shared with any individual or entity other than those specified in 12 U.S.C. 5343(b) without the permission of the Council.²⁶ For purposes of preventing unauthorized access to data, or loss of data, the Office is also subject to the Federal Information Security Modernization Act of 2014,²⁷ which requires that federal agencies, including the OFR and independent regulatory agencies, provide information security protections commensurate with the risk and magnitude of harm resulting from unauthorized access, use, or disclosure of information collected by or on behalf of an agency.

²⁴ DTCC letter, pp. 2-3.

²⁵ SIFMA letter, p. 4.

²⁶ 12 U.S.C. 5343(b).

²⁷ Pub. L. No. 113-283.

Additionally, U.S. federal employees are subject to government-wide regulations that prohibit the use of public office for private gain and impose other restrictions related to the use of nonpublic information.²⁸ Unauthorized disclosure of trade secrets and insider trading can result in criminal prosecution.²⁹ The information collected pursuant to the Final Rules will be handled in accordance with the OFR's data access, security, and control policies and procedures, and the Office will further comply with all applicable privacy and data protection laws and regulations that are now or that may in the future become applicable to it.

One commenter requested that specific data-handling procedures be delineated, depending on whether the data was to be used for risk monitoring and supervision, or academic research. This commenter suggested that certain enhanced protections could include anonymization or embargo of the data when it is to be used for academic research. It also recommended that the Office amend the Proposed Rules to set forth a standard with respect to the publication of any information that includes or is derived from the data to be collected, including in aggregate or summary form, that would prevent the disclosure of proprietary or confidential financial, operational, or trading data. In connection with such a standard, the commenter also suggested that the Office clarify a process by which a covered reporter (as defined in the regulation) would be permitted to review research prior to publication in order to confirm that the research does not reveal confidential information.³⁰

Upon consideration, the Office declines to delineate between different data handling procedures in this manner. In light of the fact that the same personnel who take part in risk

²⁸ See 5 CFR 2635.702 (use of public office for private gain), 5 CFR 2635.703 (use of nonpublic information), and 18 U.S.C. 1905 (disclosure of confidential information generally).

²⁹ See 18 U.S.C. 1832 (theft of trade secrets) and 15 U.S.C. 78j (manipulative and deceptive devices).

³⁰ DTCC letter, pp. 3-4.

monitoring and supervision often additionally engage in academic research, with cross-functional benefits to each, the Office considers a demarcation between the two to be unworkable. Moreover, as noted above, 12 U.S.C. 5344(b)(6) provides that the Office shall, after consultation with Council member agencies, provide certain data to financial industry participants and the general public to increase market transparency and facilitate research on the financial system, to the extent that intellectual property rights are not violated, confidential business information is properly protected, and the sharing of such information poses no significant threats to the financial system of the United States.

Furthermore, the Office employs a number of targeted mechanisms to protect confidential business information. With respect to the data to be collected pursuant to the Final Rules, such mechanisms may include, at the discretion of the Office, providing data in an anonymized format; providing data on an embargoed basis; performing statistical analysis to verify that confidential business information cannot be reverse-engineered; and allowing covered reporters to review research prior to publication for purposes of confirming that such research does not reveal the confidential information of their members.

The same commenter recommended that the Office consider clarifying in the regulatory text how a Freedom of Information Act (“FOIA”)³¹ request for confidential business information collected pursuant to a final rule would be treated, including the process for requesting confidential treatment of data submitted on a continuous basis via an automated process and by expressly identifying the exemptions that would be applicable to such data.³²

In general, the FOIA provides for access to records maintained by a Federal agency. The provisions of the FOIA are intended to assure the right of the public to information, subject to the

³¹ 5 U.S.C. 552.

³² DTCC letter, p. 3.

exemptions and exclusions set forth in the FOIA. The disclosure requirements of 5 U.S.C. 552(a) do not apply to records that are exempt under 5 U.S.C. 552(b), or to records that are excluded under 5 U.S.C. 552(c).

As an office within the Department of the Treasury, the Office considers the data to be collected pursuant to the Final Rules as records maintained by the Department of the Treasury pursuant to its FOIA regulations.³³ Upon receipt of a request for Treasury records, those records must be disclosed unless they are exempt or excluded under the FOIA. The Office expects that data collected under the Final Rules will likely contain or consist of “trade secrets and commercial or financial information obtained from a person and privileged or confidential.” This type of information is subject to withholding under exemption 4 of the FOIA.³⁴ To the extent that data collected under the Final Rules contains or consists of data or information not subject to an applicable FOIA exemption, that data or information would be releasable under the FOIA.

c. Collection Design

i. Scope of Application

The Final Rules establish the scope of entities subject to the Final Rules. The Final Rules require reporting by any CCP whose average daily total open commitments in repos across all services over all business days during the prior calendar quarter is at least \$50 billion. “Open commitments” is defined as the CCP’s gross cash positions, prior to netting. Further, “CCP” is defined as a clearing agency that interposes itself between the counterparties to transactions,

³³ See 31 CFR Part 1, Subpart A

³⁴ 5 U.S.C. 552(b)(4)

acting functionally as the buyer to every seller and the seller to every buyer. Finally, consistent with the NPRM, “clearing agency” is defined by reference to the Securities Exchange Act of 1934, as amended, which defines this term as “any person who acts as an intermediary in making payments or deliveries or both in connection with transactions in securities or who provides facilities for comparison of data respecting the terms of settlement of securities transactions, to reduce the number of settlements of securities transactions, or for the allocation of securities settlement responsibilities.”³⁵

The NPRM proposed that a CCP that becomes a covered reporter after the effective date of the Final Rules would be required to begin reporting on the first business day of the third calendar quarter after the calendar quarter in which the CCP meets the \$50 billion activity-based materiality threshold. For example, if a CCP were to surpass the threshold beginning with the quarter ending on March 31 of a given year, that CCP would become subject to the reporting requirements of the Final Rules on the first business day of the calendar quarter that begins after two intervening calendar quarters – in this case, October 1. Conversely, the NPRM provided that a covered reporter whose volume falls below the \$50 billion threshold for at least four consecutive calendar quarters would have its reporting obligations cease. For example, if a covered reporter ceases to meet the \$50 billion threshold beginning with the quarter ending June 30 of a given year, and remains below the \$50 billion threshold in each of the following three quarters (in this example, through the quarter ending March 31 of the following year), its reporting obligations would cease as of April 1.

³⁵ 15 U.S.C. 78c(a)(23).

As stated in the NPRM, the Office established a \$50 billion volume threshold for determining whether a CCP is a covered reporter, and therefore required to report, with the objective of collecting data only from CCPs with sufficient transaction volume to be considered material CCPs in the repo market. Specifically noting that the proposed definition of covered reporter sought to include only current or future material repo CCPs within the scope of the Final Rules, the Office requested comment on whether the proposed definition met the objective and whether the \$50 billion activity-based volume threshold for identifying covered reporters was clear and appropriate for ensuring the inclusion only of current or future material repo CCPs.

One commenter stated that the NPRM's focus on CCPs meeting the \$50 billion threshold was appropriate (while noting that FICC was the only currently expected covered reporter), as such collection would "gather information from the largest and most systemically important participants in the repo market."³⁶ Another commenter, however, though not directly addressing the questions posed relating to materiality, suggested that the benefits to be gained from a collection of centrally cleared repo transactions were dependent not on the potential size of a covered reporter but, rather, on the collection of comprehensive data on repos. In support of increased transparency, the commenter suggested that the proposed materiality threshold would create a blind spot, and it encouraged the Office to remove it "so that all central counterparties that clear repos must submit the required repo data to the Office."³⁷

The Office has considered the comments received and declines to change the activity-based volume threshold for identifying covered reporters. The \$50 billion threshold serves to ensure that the collection does not apply to CCPs that are not material participants in relevant

³⁶ SIFMA letter, p. 2.

³⁷ DTCC letter, p. 8.

markets. The minimal additional market transparency that would be provided by collecting centrally cleared repo data from CCPs that do not meet the \$50 billion threshold would not justify the burdens such a collection would impose on smaller market participants.

As stated in the NPRM, the Office understands that the full scope of transaction information on the centrally cleared repo market, which is required to fulfill the stated purposes of the collection, has not been available to the Council or Council member agencies, including the primary financial regulatory agency for clearing agencies. The Office believes that the lack of comprehensive data on repos has already created material blind spots with regard to the most active short-term funding market in the U.S. financial system, and that this collection will contribute significantly to eliminating these blind spots. The Final Rules require reporting on a market that comprises approximately one-quarter of all U.S. repo market transactions and, when combined with information collected about other types of repos by regulators, will enable access to transaction data on approximately half of U.S. repo market activity. The collection of data on the centrally cleared segments of the repo market also marks an important step in carrying out the Council's recommendation to expand and make permanent the collection of data on the U.S. repo market.

In executing both of these aims, however, the Office believes it reasonable to focus on those entities considered to be material in the relevant market, and it is mindful that establishing a lower threshold, or none at all, could place an inordinate burden on smaller entities. If the OFR finds in the future that a significant blind spot is created by a firm that remains just below the \$50 billion threshold, it can consider expanding the collection of centrally cleared repo data at that time.

The same commenter that requested removing the \$50 billion activities-based materiality threshold also suggested that tri-party custodian banks should be subject to the reporting requirements covered by the NPRM. As noted in the NPRM, certain custodian banks are already required to report certain tri-party repo data to the Federal Reserve Board, through the FRBNY, pursuant to its supervisory authority. The commenter stated that, even though “it appears clear that the tri-party custodian banks provide the data the FRBNY needs to calculate the SOFR on a mandatory basis,”³⁸ incomplete or asymmetrical data sets could arise and affect the Council’s and the Office’s ability to identify and monitor risks to financial stability because it is not clear to what degree the scope and format of the tri-party custodian collection is identical to the collection proposed by the NPRM.

Upon consideration of this comment and after consultation with the Federal Reserve, the Office does not seek to include tri-party custodian banks within the definition of covered reporter in the Final Rules. Setting aside any potential impact that inclusion of custodian banks within the Final Rules could present on the already-existing collection pursuant to the Federal Reserve Board’s supervisory authority, which is different than the Office’s authority to collect data, the Office seeks to mitigate the reporting burden placed on financial companies. The Office is familiar with the data made available by the custodian banks, having used it for financial stability research, and believes that the relevant data elements are sufficiently aligned between the supervisory data and the data to be collected under the Final Rules to meet the monitoring and analysis needs of the Office.

³⁸ DTCC letter, p. 8.

The same commenter suggested that clarifying the definition of “financial company” and the scope of the Proposed Rules was necessary in order for a covered reporter to report data in a manner that complies with the Office’s authority. Certain provisions of the Dodd-Frank Act authorize the Office to collect data from financial companies.³⁹ The commenter stated that, because the Office did not specifically limit the Proposed Rules’ scope to the collection of data on repo activity of financial companies, it recommended amending the Proposed Rules to describe the process by which the Office would determine and identify to a covered reporter which of its members are deemed to be financial companies, so that a covered reporter could report the data for such entities.⁴⁰

While repo activity is not necessarily limited to financial companies as defined in the Dodd-Frank Act, the Final Rules require reporting only by CCPs that are clearing agencies and that perform the central clearing function for repo transactions at or above the activities-based volume threshold. Moreover, the preamble of the NPRM noted that the definition of “financial company”⁴¹ has the same meaning as in Title II of the Dodd-Frank Act and discussed why the Office believes the one expected covered reporter appears to meet such definition.⁴² The Office also noted that we would expect future covered reporters to meet the financial company definition because they would be expected to be incorporated or organized under federal or state law and to be companies that are “predominantly engaged” in activities that the Federal Reserve

³⁹ See, e.g., 12 U.S.C. 5344(b)(1)(B).

⁴⁰ DTCC letter, p. 9.

⁴¹ 12 U.S.C 5341(2).

⁴² See 83 FR 31896 at 31903-04.

Board has determined are financial in nature or incidental thereto for purposes of section 4(k) of the Bank Holding Company Act of 1956⁴³ (or a subsidiary thereof).⁴⁴

The NPRM described the importance of centrally cleared repo data from CCPs for monitoring financial stability risks and the calculating reference rates.⁴⁵ Accordingly, because the Proposed Rules' reporting requirements were directed at CCPs within the Office's data-collection authority and provided reasons for the importance of gathering transaction information from such entities, the Office declines to amend the Proposed Rules in the manner requested.

ii. Information Required

A. Legal Entity Identifier

Unchanged from the Proposed Rules, the Final Rules require a covered reporter to submit the Legal Entity Identifier (the "LEI") of each covered reporter, direct clearing member, counterparty, and broker involved in a repo transaction. The NPRM noted the submission of LEIs would enhance the ability of the Council, Council member agencies, and the Office to identify potential risks to U.S. financial stability by facilitating an understanding of repo market participants' exposures, concentrations, and network structures. Precise identification of transaction counterparties is also important for rate calculation, as it allows the calculation agent to identify and, as appropriate, exclude transactions that may not be representative of market

⁴³ 12 U.S.C. 1843(k).

⁴⁴ A "financial company" also includes a bank holding company or a nonbank financial company supervised by the Federal Reserve Board. 12 U.S.C. 5381(a)(11).

⁴⁵ See 83 FR 31896, 31901-02.

activity (e.g., certain affiliate transactions). Under the Final Rules, the LEI reported must satisfy the standards implemented by the Global LEI Foundation. The proposed inclusion of the LEI as a mandatory data field for such purposes and according to the defined standards was widely supported and received no negative public comments.

However, one commenter (the only currently expected covered reporter) recommended a phased implementation process in order to allow a covered reporter sufficient time to take necessary measures to avoid compromising the integrity of the data covered by the proposed collection. This commenter recommended that the data elements requiring an LEI should be reported within 420 days after the effective date of the Final Rules. It suggested in part that a phase-in process was necessary to allow a covered reporter sufficient time to provide for any required rule filings with the Securities and Exchange Commission (the “SEC”) that might be necessary to require market participants to obtain LEIs and then provide them to the covered reporter. The same commenter stated, however, that, while it did not anticipate being able to provide LEI information on the same schedule as the other data elements, it would “work with the Office to provide sufficiently detailed identifying information (such as the alpha descriptor of the relevant market participants together with additional identifying information) ... until LEI information is added to the relevant reports.”⁴⁶

The Office has considered this comment. The Office expects that covered reporters will take all feasible and appropriate steps to require that their platform participants obtain LEIs so that the covered reporters are in compliance with the LEI requirements of the Final Rules. As discussed in section II.c.iii.b below, the Final Rules adopt the commenter’s requested phase-in

⁴⁶ DTCC letter, pp. 6-7.

period for data elements requiring an LEI; if a covered reporter is able to effect a rulemaking requiring each direct clearing member, counterparty, and broker associated with a repo transaction to obtain an LEI and provide it to that covered reporter, the covered reporter is required to begin reporting those LEIs within 420 days after the effective date of the Final Rules. In addition, in order to retain the benefits that entity identification provides for enhancing risk monitoring and reference rate creation, the Office has added basic entity identifier information for those fields applicable to each direct clearing member, counterparty, and broker involved in a repo transaction. The fields added will require reporting of each such entity's legal name and the internal identifier assigned to it by the covered reporter, which the Office understands to be readily available to the only currently expected covered reporter. To support an orderly transition for monitoring and rate calculation, these additional fields will be required to be reported either: (1) until 365 days after the deadline for the covered reporter to begin reporting LEIs, if the covered reporter is able to effect a rulemaking requiring market participants to obtain LEIs and provide them to the covered reporter; or, (2) indefinitely, if a covered reporter is unable to effect such a rulemaking.

The NPRM requested comment on the manner by which the LEI should be included in the specific data fields for which it was required. Stating that it had no preference between the two options presented, the Office asked whether it would be preferable to include LEIs in messages regarding transactions, or to add LEIs of reporting entities and counterparties after the transactions take place but prior to submission of data to the Office.⁴⁷ Two comments were received on this issue, and both supported the position that LEIs should be added after the transactions take place, prior to submission of data to the Office. One commenter stated its

⁴⁷ See 83 FR 31896, 31906.

belief that this option was preferable because it would require fewer parties to update their systems and that the centralization of the LEI reporting function would be not only more efficient but less complicated to implement by requiring fewer technology build-outs across the industry.⁴⁸ The other commenter recommended that the Office leave the methodology and timing of the collection and addition of LEIs to the discretion of the covered reporter because it believed such an approach would provide the necessary flexibility to the industry in both meeting the short-term challenges of implementing the changes to existing reporting and messaging systems, as well as allowing for evolution of services between covered reporters and their clients.⁴⁹ Because both comments favored allowing covered reporters to add LEIs of reporting entities and counterparties after the transactions take place but prior to submission of data to the Office, the Final Rules give covered reporters discretion and do not specify the manner by which the covered reporter will receive these LEIs.

One commenter recommended that the Final Rules include an explicit requirement that relevant market participants obtain and maintain LEIs in order to ensure that the requested data could be properly reported, pointing out that a covered reporter could not report LEI data for a market participant if such market participant has not obtained an LEI and supplied it to the covered reporter. Alternatively, the commenter maintained, the Final Rules should clarify that an LEI would only need be reported if and when available.⁵⁰ In another section of its letter, however, the same commenter recognized that a covered reporter could require its own members or market participants to provide LEIs through a rule filing with the SEC and noted the need to

⁴⁸ SIFMA letter, p. 4.

⁴⁹ DTCC letter, p. 6.

⁵⁰ DTCC letter, pp. 5-6.

allow for evolution in services between covered reporters and their clients.⁵¹ The Office believes that imposing the LEI requirement on covered reporters, rather than directly on a broader group of market participants, is a targeted approach that will better avoid undue burdens on market participants and ensure compliance with the scope of OFR's statutory data-collection authority.

As noted above, the Final Rules require reporting only from CCPs that meet the definition of "financial company." They are not directed at non-financial companies or CCPs executing transactions below the \$50 billion activity-based materiality threshold.

The NPRM discussed the importance of identifying the entities involved in repo transactions subject to the Final Rules to monitoring financial stability risks and calculating reference rates. For example, with respect to analysis of potential risks to U.S. financial stability, mandatory LEI reporting will benefit firms and regulators by improving the ability to combine repo information with other information, such as derivatives and other qualified financial contracts, to monitor financial firms and markets. For creation of reference rates, the LEIs of the various entities required under the Final Rules will facilitate evaluation of repo transactions and whether a repo transaction was conducted on an arm's-length basis or between affiliates.

The NPRM also stated the Office's belief that, while requiring the LEI may result in some additional compliance costs, doing so is reasonable and appropriate due to the added clarity and substantial benefit it provides for risk monitoring and rate production. Another commenter noted its belief that the relative sophistication of repo market participants, along with the requirements imposed by U.S. and foreign regulators (such as the recent Markets in Financial Instruments Directive 2 transaction reporting requirements), make it unlikely that obtaining and

⁵¹ DTCC letter, p. 7.

maintaining an LEI would be a burden for such participants. It agreed with the views expressed by the Office in the NPRM that the marginal burden of the obligation for some repo market participants to obtain and maintain an LEI is outweighed by the benefit associated with the collection under the Final Rules.⁵² Moreover, as noted above, the Office is adopting the only currently expected covered reporter's requested LEI implementation timeline of 420 days⁵³ after the effective date of the Final Rules and believes that this timeframe will be sufficient to adopt any member rule changes necessary to effectuate the Final Rules.

The Office has considered the commenter's recommendation to directly require the relevant market participants to obtain and maintain LEIs and, for the reasons stated above, believes the better approach is to place requirements on covered reporters that meet the definition of "financial companies."

B. Price of Collateral/Security

One commenter recommended providing greater clarity with respect to the meanings of, and differences between, the terms "Substitution Collateral Identifier" and "Substitution Collateral Identifier Type."⁵⁴ Upon consideration of this comment, the OFR has modified the Final Rules to make clear that "Substitution Collateral Identifier" refers to the actual value of the

⁵² SIFMA letter, p. 3.

⁵³ DTCC letter, p. 7. We note that this commenter also suggested that delays may occur. We believe such delays to be speculative, rather than concrete time constraints.

⁵⁴ DTCC letter, p. 9.

identifier, which refers to a specific financial instrument. The field “Substitution Collateral Identifier Type” refers to the numbering system to which the identifier belongs, such as CUSIP.

iii. Submission Process and Implementation

A. Submission Process

Consistent with its intent noted in the NPRM, the Office will require submission through a collection agent, as it believes this approach will decrease the costs of compliance for covered reporters and allow data reporting to commence sooner than would otherwise be possible. As also specifically contemplated in the NPRM, the Federal Reserve Board will act as the Office’s collection agent, with required data to be submitted directly by covered reporters to the FRBNY. The FRBNY will transmit collected data to the Office.

As noted in Section II.b. above, the Council has authorized the OFR to share with the FRBNY the data the OFR will collect under the Final Rules. As a result, the FRBNY will have access to the reported data, in part, to produce the SOFR and BGCR. To produce these reference rate calculations, data on repo transactions must be submitted by covered reporters to the FRBNY no later than 6:00 a.m. Eastern time on the business day following the transaction. The submission process will allow for the secure, automated transmission of files. As contemplated in the NPRM, the Office is publishing concurrently with the Final Rules specific reporting instructions and technical guidance on the Office’s website at <https://www.financialresearch.gov/data/cleared-repo-data> regarding matters such as data submission mechanics and formatting. As necessary, we will update these documents and publish any updates in the same location.

One commenter, a standards advisory group, recommended that its own standard, ISO 20022, could be of use in collecting data pursuant to the Final Rules.⁵⁵ Suggesting that ISO 20022 has comprehensive coverage of information related to repo processing, including definitions and messaging for both financings and the movement of collateral and cash, it also invited a dialogue with respect to ISO standards within its field of competence.

The Office has considered the comment received and studied the use of ISO 20022. The ISO 20022 standard is for transaction messaging, while the reporting required under the Final Rules is based not on transaction flow, but rather on a single readout of all transactions within a particular period. As a result, the Office has determined not to directly reference the ISO 20022 standard for use in collecting data pursuant to the Final Rules.

B. Implementation

The NPRM proposed that the Final Rules would go into effect 60 days after their publication in the Federal Register and that covered reporters would begin to comply with the Final Rules 60 days after their effective date. The Office believed that this implementation period would provide adequate time for covered reporters to comply with the proposed requirements. However, the Office requested comment on whether the proposed 60-day compliance period for a CCP that is a covered reporter on the effective date of the rule provided sufficient time to comply with the data-reporting requirements and whether increasing the period between the effective date of a final rule and the subsequent compliance date would substantially reduce burdens for covered reporters or repo market participants, or improve the quality of the

⁵⁵ ISO/TC 68 letter, p. 2.

data reported. It also specifically asked whether there were any aspects of the proposed collection for which a phased-in reporting requirement would be particularly useful.⁵⁶

In response to these requests, the one currently expected covered reporter recommended that the proposed implementation timeframe be reconsidered. Specifically, it suggested, operational complexities related to the scale of the data-field builds required, along with necessary testing, militated in favor of a longer implementation timeframe. The commenter also stated that while it did not believe all of the information requested in the NPRM could be collected in the timeframe proposed, certain elements could be provided sooner than others.

As a result, the commenter recommended a phased implementation process, with all specified data elements, other than those requiring an LEI, to be reported within 240 days of the Final Rules' effective date. Data elements requiring LEI data would then be reported within 180 days after the compliance date for the other data elements. Such a phase-in process was necessary, it suggested, to allow a covered reporter sufficient time to take necessary measures to avoid compromising the integrity of the data to be collected. The implementation schedule suggested by the commenter was as follows:

Phase 1: FICC would transmit all of the data needed to calculate the SOFR and the BGCR in the same format that it currently supplies to the FRBNY 60 days after the effective date of a final rule.

Phase 2: FICC would begin reporting DVP Service repo transaction data (excluding the LEI) within 120 days after the Phase 1 compliance date (180 days after the effective date of a final rule).

Phase 3: FICC would begin reporting transaction data from the GCF Repo Service (excluding the LEI) within 60 days after the Phase 2 compliance date (240 days after the effective date of a final rule).

⁵⁶ 83 FR 31896, 31907

Phase 4: FICC would begin reporting LEI data associated with the DVP Service and GCF Repo Service transactions within 180 days after the phase 3 compliance date (420 days after the effective date of a final rule).

The Office has considered the comments received on this issue and has decided to adopt in the Final Rules a phased implementation schedule similar to that recommended by the only currently expected covered reporter. Specifically, the Office is adopting a three-phase implementation schedule for a CCP that is a covered reporter on the effective date of the Final Rules that corresponds to the latter three stages proposed by the commenter. Because the data elements currently needed to calculate the SOFR are a subset of those included in the proposed delivery-versus-payment and general collateral collections, and the FRBNY currently obtains that data through its voluntary agreement with DTCC, the Office does not believe that adopting a three-phase implementation schedule will create a gap in access to the data needed to calculate the SOFR.

As a result, the office is adopting a three-phase implementation schedule as follows:

Phase 1. With respect to all data elements listed in 12 CFR 1610.10(c)(5), other than those data elements requiring an LEI of an entity other than the covered reporter, a covered reporter shall begin reporting within 180 days after the Final Rules' effective date.

Phase 2. With respect to all data elements listed in 12 CFR 1610.10(c)(3) and (4), other than those data elements requiring an LEI of an entity other than the covered reporter, a covered reporter shall begin reporting within 240 days after the Final Rules' effective date.

Phase 3. With respect to all data elements listed in 12 CFR 1610.10(c)(3), (4), and (5) that require reporting an LEI of an entity other than the covered reporter, a covered reporter is required to begin reporting these elements within 420 days after the Final Rules' effective date, if the covered reporter is able to effect any rulemaking through the SEC that is necessary to require market participants to obtain LEIs and provide them to the covered reporter. If a covered reporter is unable to effect such a rulemaking through the SEC, the covered reporter would not be required to report an LEI for any market participant that does not have an LEI, but would be required to continue to report market participants' legal names or internal identifiers.

In order to provide a similar phased implementation schedule for any CCPs that become covered reporters after the effective date of the Final Rules, the Final Rules require such entities to comply with the reporting requirements beginning on the later of (i) the schedule applicable to CCPs that are covered reporters on the Final Rules' effective date or (ii) the first business day of the third calendar quarter following the calendar quarter in which such CCP meets the \$50 billion activity-based materiality threshold.

The reporting obligations under the Final Rules would cease for any covered reporter that ceases to meet the \$50 billion activity-based materiality threshold for at least four consecutive calendar quarters.

III. Administrative Law Matters

a. Paperwork Reduction Act

The information collections contained in the Final Rules have been reviewed and approved by the Office of Management and Budget ("OMB") under OMB Control No. 1505-0259. In accordance with the requirements of the Paperwork Reduction Act (the "PRA"), the Office may not conduct or sponsor, and a covered reporter is not required to respond to, an information collection unless it displays a currently valid OMB control number.

Commenters on the Proposed Rules generally acknowledged the need for the Office to collect certain information on repo transactions in support of the work of the Council, its member agencies, and the Office for identifying and monitoring risks to financial stability, and to support the calculation of certain reference rates.

Commenters also requested various modifications to or relief from aspects of the Proposed Rules that they stated would entail burdens that outweighed the benefits to the Office. This included a recommendation from the only currently expected covered reporter for a phased

implementation process, over a longer period of time than the Office had proposed. However, none of the commenters provided comments, empirical data, estimates of costs or benefits, or other analyses directly addressing matters pertaining to the PRA discussion.

The Office's ability to collect centrally cleared repo data in this collection derives in part from the authority to promulgate regulations regarding the type and scope of financial transaction and position data from financial companies on a schedule determined by the Director of the Office in consultation with the Council.⁵⁷ The Office consulted with the Council on the proposed permanent collection of repo data at the Council's September 22, 2016, meeting.⁵⁸ The Office also provided a public update to the Council on November 16, 2017.⁵⁹ The Office provided a further update to the Council on October 16, 2018, and the Council voted to authorize the Office to share with the FRBNY the data the Office will collect under the Final Rules.⁶⁰

The Office also has authority to promulgate regulations pursuant to the Office's general rulemaking authority under Dodd-Frank Act section 153, which authorizes the Office to issue rules, regulations, and orders to the extent necessary to carry out certain purposes and duties of the Office.⁶¹ In particular, the purposes and duties of the Office include supporting the Council in fulfilling its purposes and duties, and supporting Council member agencies, by collecting data on behalf of the Council and providing such data to the Council and Council member agencies,

⁵⁷ 12 U.S.C. 5344(b)(1)(B)(iii).

⁵⁸ See Financial Stability Oversight Council, meeting minutes (September 22, 2016), https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/September222016_minutes.pdf.

⁵⁹ See Financial Stability Oversight Council, meeting minutes (November 16, 2017), https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/November162017_minutes.pdf, and Office, OFR Update on Bilateral Repo Collection (November 22, 2017), <https://www.financialresearch.gov/from-the-management-team/2017/11/22/ofr-update-on-bilateral-repo-collection/>.

⁶⁰ See FSOC, Minutes of the Financial Stability Council dated October 16, 2018, https://www.treasury.gov/initiatives/fsoc/council-meetings/Documents/October162018_minutes.pdf

⁶¹ 12 U.S.C. 5343(a), (c)(1).

and standardizing the types and formats of data reported and collected.⁶² The Office must consult with the Chairperson of the Council prior to the promulgation of any rules under section 153⁶³ — these consultations occurred both before and after the publication of the NPRM.

As noted above, commenters generally did not provide comments, empirical data, or other analyses directly addressing the Office's estimates in the PRA discussion. As discussed in detail in section II above, the Final Rules incorporate changes from the Proposed Rules to provide for a phased implementation process, over a longer period of time than the Office had proposed. However, this change does not impact the scope of financial companies subject to the requirements of the Final Rules, nor the estimated annual burden on a covered reporter once the Final Rules are fully implemented.

As a result, the Office's estimate of an annual burden of 1,512 hours per covered reporter remains unchanged. This figure is arrived at by estimating the daily reporting time to be approximately 3 hours for each general collateral and specific-security submission, multiplied by 2 to reflect both types of submissions by the covered reporter, and multiplying that figure by an average of 252 business days in a year, the typical number of days per year that do not fall either on weekends or on holidays widely observed by the market.

To estimate hourly wages, the Office used data from the May 2016 Bureau of Labor Statistics Occupational Employment Statistics for credit intermediation and related activities (NAICS 522000). For hourly compensation, a figure of \$75 per hour was used, which is an

⁶² 12 U.S.C. 5343(a). The Council's purposes and duties include identifying risks to U.S. financial stability; responding to emerging threats to the stability of the U.S. financial system; monitoring the financial services marketplace in order to identify potential threats to U.S. financial stability; making recommendations in such areas that will enhance the integrity, efficiency, competitiveness, and stability of the U.S. financial markets; and identifying gaps in regulation that could pose risks to the financial stability of the United States. 12 U.S.C. § 5322(a).

⁶³ 12 U.S.C. 5343(c)(1).

average of the 90th percentile wages in seven different categories of employment (compliance officers, accountants and auditors, lawyers, management occupations, financial analysts, software developers, and statisticians), plus an additional 32 percent to cover subsequent wage gains and non-wage benefits, which yields an estimate of \$99 per hour.⁶⁴ Using these assumptions, the Office estimates the recurring operational costs for general collateral and specific-security submissions to be \$74,844 annually, for a total estimated annual cost to the covered reporter of \$149,688.

b. Regulatory Flexibility Act

Congress enacted the Regulatory Flexibility Act (the “RFA”) to address concerns related to the effects of agency rules on small entities.⁶⁵ The Office is sensitive to the impact its rules may impose on small entities. The RFA requires agencies either to provide an initial regulatory flexibility analysis with a proposed rule for which general notice of proposed rulemaking is required, or to certify that the proposed rule will not have a significant economic impact on a substantial number of small entities.⁶⁶ In accordance with section 3(a) of the RFA, the Office is certifying that the Final Rules will not have a significant economic impact on a substantial number of small entities.

As discussed above, this rule will only apply to CCPs for repos whose average daily total open commitments in repos across all services over the prior calendar quarter is at least \$50

⁶⁴ The estimate includes an assumed additional 2 percent for subsequent wage gains from 2016 to 2017, and 30 percent for non-wage employee benefits, according to the Bureau of Labor Statistics’ June 2017 Employer Costs for Employee Compensation, https://www.bls.gov/news.release/archives/ecec_09082017.htm.

⁶⁵ 5 U.S.C. 601 *et seq.*

⁶⁶ 5 U.S.C. 603(a).

billion. Currently, under this scope, this rule will apply only to one entity, whose corporate parent's total consolidated assets were \$39 billion as of March 31, 2018.⁶⁷ Reporting will be required of additional CCPs beginning on the later of (i) the schedule outlined in 12 CFR 1610.10(e)(1)(A), (B), and (C) or (ii) the first business day of the third calendar quarter after the calendar quarter in which such CCPs meet the \$50 billion activity-based materiality threshold. If a covered reporter ceases to meet this threshold for at least four consecutive calendar quarters, its reporting obligations under this rule would cease.

Under regulations issued by the Small Business Administration, a "small entity" includes those firms within the "Finance and Insurance" sector with asset sizes that vary from \$7.5 million in assets to \$550 million or less in assets.⁶⁸ For purposes of the RFA, entities that are banks are considered small entities if their assets are less than or equal to \$550 million. The level of the activity-based threshold under the Final Rules ensures that any respondent will be well beyond these small entity definitions.

Pursuant to the Regulatory Flexibility Act, 5 U.S.C. 605(b), it is hereby certified that this final rule will not have a significant economic impact on a substantial number of small entities.

c. Congressional Review Act (CRA)

This rule is not a major rule pursuant to the CRA, 5 U.S.C. 801 et seq.

List of Subjects in 12 CFR Part 1610

⁶⁷ See DTCC, "DTCC Condensed Consolidated Financial Statements as of March 31, 2018 and December 31, 2017 and for the three months ended March 31, 2018 and 2017," <http://www.dtcc.com/~media/Files/Downloads/legal/financials/2018/DTCC-Condensed-Consolidated-Financial-Statements-Q1-2018.pdf>.

⁶⁸ 13 CFR 121.201.

Confidential business information, Economic statistics, Reference rates, Repurchase agreements, Clearing, Central counterparty, Data collection.

For the reasons stated in the preamble, the Office of Financial Research adds part 1610 to 12 CFR chapter 16 to read as follows:

PART 1610—REGULATORY DATA COLLECTIONS

Subpart A— Collections Generally

Sec.

1610.1 General authority

1610.2 General definitions

1610.3 Treatment of collected information

1610.4-1610.9 [Reserved]

Subpart B— Specific Collections

1610.10 Centrally cleared repurchase agreement data

Authority: 12 U.S.C. 5343 and 5344

Subpart A— Collections Generally

§ 1610.1 General authority.

The collections under this part are made pursuant to the authority contained in 12 U.S.C. 5343(a) and (c)(1) and 5344(b).

§ 1610.2 General definitions.

Council means the Financial Stability Oversight Council.

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 that satisfies the standards implemented by the Global LEI Foundation. 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.

Office means the U.S. Department of the Treasury's Office of Financial Research.

§ 1610.3 Treatment of collected information.

The Office will treat any financial transaction data or position data submitted to the Data Center under this part in accordance with the relevant provisions of law, including 12 U.S.C. 5343(b) and 5344(b).

§§ 1610.4-1610.9 [Reserved]

Subpart B— Specific Collections

§ 1610.10 Centrally cleared repurchase agreement data.

(a) *Definitions.*

Central counterparty means a clearing agency that interposes itself between the counterparties to transactions, acting functionally as the buyer to every seller and the seller to every buyer.

Clearing agency has the same meaning as set forth in 15 U.S.C. 78c(a)(23).

Covered reporter means any central counterparty for repurchase agreement transactions that meets the criteria set forth in paragraph (b)(2) of this section; provided, however, that any covered reporter shall cease to be a covered reporter only if it does not meet the dollar threshold specified in paragraph (b)(2) for at least four consecutive calendar quarters.

General collateral trade means a repurchase agreement transaction in which the trade reported to the central counterparty is for a category of securities as opposed to a specific security.

Repurchase agreement transaction or transaction means an agreement of a counterparty to transfer securities to another counterparty in exchange for the receipt of cash, and the simultaneous agreement of the former counterparty to later reacquire the same securities (or any subsequently substituted securities) from that same counterparty in exchange for the payment of cash; or an agreement of a counterparty to acquire securities from another counterparty in exchange for the payment of cash, and the simultaneous agreement of the former party to later transfer back the same securities (or any subsequently substituted securities) to the latter counterparty in exchange for the receipt of cash.

Specific-security trade means a repurchase agreement transaction where the trade as reported to the central counterparty is for a mutually agreed upon specific security.

(b) *Purpose and scope*—(1) *Purpose*. The purpose of this data collection is to require the reporting of certain information to the Office about repurchase agreement transactions cleared

through a central counterparty. The information will be used by the Office to support the Council and Council member agencies by facilitating financial stability monitoring including research consistent with support of the Council and its member agencies, and to support the calculation of certain reference rates.

(2) *Scope of application.* Reporting under this Section is required by any central counterparty for repurchase agreement transactions that meets the definition of financial company set forth in 12 U.S.C. 5341(2) and whose average daily total open commitments in repurchase agreement contracts (gross cash positions prior to netting) across all services over all business days during the prior calendar quarter is at least \$50 billion.

(c) *Data required.* (1) Covered reporters shall report trade and collateral information on all repurchase agreement transactions cleared through any of its services, subject to paragraph (c)(2) of this section, in accordance with the prescribed reporting format in this section.

(2) Covered reporters shall only report trade and collateral information with respect to any repurchase agreement transaction for which there is a current or future delivery obligation as of the file observation date, including forward-starting transactions.

(3) Covered reporters shall submit the following data elements for all general collateral trades:

Table 1 to § 1610.10(c): General Collateral Trades	
Data Element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted)
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter

Transaction ID	Respondent-generated unique transaction identifier
Submission Timestamp	Time that trade is first submitted to clearing service
Match Timestamp	Time that trade is matched by clearing service
Securities Asset Class Identifier Value	Asset class identifier
Securities Asset Class Identifier Type	Type of securities identifier used (the numbering system to which the identifier belongs)
Cash Provider LEI	The Legal Entity Identifier of the cash provider
Cash Provider Name	The legal name of the cash provider
Cash Provider Internal Identifier	The internal identifier assigned by the covered reporter to the cash provider
Cash Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the cash provider accessed the clearing service
Cash Provider Direct Clearing Member Name	The legal name of the of the direct clearing member through which the cash provider accessed the clearing service
Cash Provider Direct Clearing Member Internal Identifier	The internal identifier assigned by the covered reporter to the direct clearing member through which the cash provider accessed the clearing service
Securities Provider LEI	The Legal Entity Identifier of the securities provider

Securities Provider Name	The legal name of the securities provider
Securities Provider Internal Identifier	The internal identifier assigned by the covered reporter to the securities provider
Securities Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the securities provider accessed the clearing service
Securities Provider Direct Clearing Member Name	The legal name of the direct clearing member through which the securities provider accessed the clearing service
Securities Provider Direct Clearing Member Internal Identifier	The internal identifier assigned by the covered reporter to the direct clearing member through which the securities provider accessed the clearing service
Broker LEI	The Legal Entity Identifier of the broker
Broker Name	The legal name of the broker
Broker Internal Identifier	The internal identifier assigned by the covered reporter to the broker
Start Date	The start date of the repurchase agreement
End Date	The date the repurchase agreement matures
Rate	The repurchase agreement rate, expressed as an annual percentage rate on an actual/360-day basis
Principal	The amount of cash borrowed or lent
Optionality	The type of optionality, if any, in the repurchase

	agreement
Minimum Maturity	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality)

(4) Covered reporters shall submit the following data elements on the collateral delivered against net general collateral exposures for all general collateral trades:

Table 2 to § 1610.10(c): General Collateral Net Exposure	
Data Element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted)
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter
Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member of the clearing service
Direct Clearing Member Name	The legal name of the direct clearing member
Direct Clearing Member Internal Identifier	The internal identifier assigned by the covered reporter to the direct clearing member
Transaction Side	Indicates the side of the transaction: collateral was received by or delivered from the covered reporter
Securities Identifier Value	Identifier of securities transferred
Securities Identifier Type	Type of securities identifier used (the numbering

	system to which the identifier belongs).
Securities Quantity	Par value or quantity (as applicable) of securities transferred
Securities Value	The market value as of most recent valuation of securities transferred, including accrued interest

(5) Covered reporters shall submit the following data elements for all specific-security trades:

Table 3 to § 1610.10(c): Specific-Security Trades	
Data Element	Explanation
File Observation Date	The observation date of the file (typically one business day before the day the file is submitted)
Covered Reporter LEI	The Legal Entity Identifier of the covered reporter
Transaction ID	Respondent-generated unique transaction identifier
Cash Provider LEI	The Legal Entity Identifier of the cash provider
Cash Provider Name	The legal name of the cash provider
Cash Provider Internal Identifier	The internal identifier assigned by the covered reporter to the cash provider
Cash Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the cash provider accessed the clearing service
Cash Provider Direct	The legal name of the of the direct clearing member

Clearing Member Name	through which the cash provider accessed the clearing service
Cash Provider Direct Clearing Member Internal Identifier	The internal identifier assigned by the covered reporter to the direct clearing member through which the cash provider accessed the clearing service
Securities Provider LEI	The Legal Entity Identifier of the securities provider
Securities Provider Name	The legal name of the securities provider
Securities Provider Internal Identifier	The internal identifier assigned by the covered reporter to the securities provider
Securities Provider Direct Clearing Member LEI	The Legal Entity Identifier of the direct clearing member through which the securities provider accessed the clearing service
Securities Provider Direct Clearing Member Name	The legal name of the direct clearing member through which the securities provider accessed the clearing service
Securities Provider Direct Clearing Member Internal Identifier	The internal identifier assigned by the covered reporter to the direct clearing member through which the securities provider accessed the clearing service
Broker LEI	The Legal Entity Identifier of the broker
Broker Name	The legal name of the broker
Broker Internal Identifier	The internal identifier assigned by the covered

	reporter to the broker
Submission Timestamp	Time that trade is first submitted to clearing service
Match Timestamp	Time that trade is matched by clearing service
Start Date	The start date of the repurchase agreement
End Date	The date when the repurchase agreement matures; the close leg settlement date
Optionality	The type of optionality, if any
Minimum Maturity	The earliest possible date on which the transaction could end in accordance with its contractual terms (taking into account optionality)
Security Identifier Value	Identifier of pledged security
Securities Identifier Type	Type of securities identifier used (the numbering system to which the identifier belongs).
Securities Quantity	Par value or quantity (as applicable) of securities transferred
Substitution Collateral Identifier Value	Asset class identifier or no substitution
Substitution Collateral Identifier Type	Type of securities identifier used (the numbering system to which the identifier belongs).
Cash Provider Start Leg Amount	The amount of cash transferred by the cash provider on the open leg of the transaction

Securities Provider Start Leg Amount	The amount of cash received by the securities provider on the open leg of the transaction
Cash Provider Rate	The rate of interest received by the cash provider, expressed as an annual percentage rate on an actual/360-day basis
Securities Provider Rate	The rate of interest paid by the securities provider, expressed as an annual percentage rate on an actual/360-day basis
Cash Provider Close Leg Settlement Amount	The amount of cash received by the cash provider on the close leg of the transaction
Securities Provider Close Leg Settlement Amount	The amount of cash paid by the securities provider on the close leg of the transaction

(d) *Reporting process and collection agent.* The Office may designate a collection agent for the data reporting. Covered reporters shall submit the required data for each business day by 6:00 a.m. Eastern time on the following business day.

(e) *Compliance.* (1) Any central counterparty that is a covered reporter as of the effective date of this Section shall comply with the reporting requirements pursuant to this Section in the following manner:

(i) Subject to paragraph (e)(1)(iii) of this section, a covered reporter shall begin reporting all data elements required to be submitted pursuant to paragraph (c)(5) of this section within 180 days after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

(ii) Subject to paragraph (e)(1)(iii) of this section, a covered reporter shall begin reporting all data elements required to be submitted pursuant to paragraphs (c)(3) and (4) of this section within 240 days after [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

(iii) If a covered reporter is able to effect a rulemaking through the Securities and Exchange Commission requiring each direct clearing member, counterparty, and broker associated with a repurchase agreement transaction to obtain an LEI and provide it to the covered reporter, the covered reporter shall begin reporting all data elements requiring an LEI other than its own pursuant to paragraphs (c)(3) through (5) of this section by the later of the effective date of its rulemaking, or 420 days [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*], and continue to report all data elements requiring a legal name or internal identifier until 365 days after the date the covered reporter begins reporting all data elements requiring an LEI pursuant to this section. If a covered reporter is unable to effect such a rulemaking, the covered reporter is not required to report any data elements requiring an LEI other than its own pursuant to paragraphs (c)(3) through (5) of this section, except, if available, the LEI for any direct clearing member, counterparty, or broker associated with a repurchase agreement transaction that has an LEI, and shall report all data elements requiring a legal name or internal identifier in any report submitted under this section regardless of whether the relevant entity has an LEI. A covered

reporter shall report its own LEI in accordance with the schedules set forth in paragraphs (e)(1)(i) and (ii) of this section.

(2) The first submission by any central counterparty that is a covered reporter as of the effective date of this Section shall be submitted on the first business day after the applicable compliance date under paragraph (e)(1) of this section.

Note 1 to paragraph (e)(2): For example, if this section became effective on March 20, 2019, a central counterparty that meets the dollar threshold specified in paragraph (b)(2) of this section for the calendar quarter ending December 31, 2018, would be required to submit its first report under paragraph (e)(1)(i) of this section on the first business day after September 16, 2019, its first report under paragraph (e)(1)(ii) of this section on November 15, 2019, and its first report with data elements requiring an LEI (other than that of the covered reporter) on May 13, 2020 (if the covered reporter effected the rulemaking described in paragraph (e)(1)(iii) of this section).

(3) Any central counterparty that becomes a covered reporter after the effective date of this Section shall comply with the reporting requirements pursuant to this Section beginning on the later of the schedule set forth in paragraphs (e)(1)(i) through (iii) of this section or the first business day of the third calendar quarter following the calendar quarter in which such central counterparty meets the dollar threshold specified in paragraph (b)(2) of this section.

Note 2 to paragraph (e)(3): For example, if this section became effective on March 20, 2019, a central counterparty that first meets the dollar threshold specified in paragraph (b)(2) of this section for the calendar quarter ending June 30, 2019, would be required to submit its first report under paragraphs (e)(1)(i) and (ii) of this section on January 2, 2020, and its first report with data elements requiring an LEI (other than that of the covered reporter) on May 13, 2020 (if

the covered reporter effected the rulemaking described in paragraph (e)(1)(iii) of this section by May 13, 2020).

Note 3 to paragraph (e)(3): For example, if this section became effective on March 20, 2019, a central counterparty that first met the dollar threshold specified in paragraph (b)(2) for the calendar quarter ending June 30, 2020, would be required to comply with all of the reporting requirements under this section on January 2, 2021 (and would continue to be required to report all data elements requiring a legal name or internal identifier for at least 365 days after the effective date of the covered reporter's rulemaking described in paragraph (e)(1)(iii) if such effective date occurred after January 2, 2021).

Ryan D. Brady

Executive Secretary, Department of the Treasury

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