



**Federal Deposit Insurance Corporation**  
550 17th Street NW, Washington, D.C. 20429-9990

**Financial Institution Letter**  
**FIL-146-2008**  
**December 18, 2008**

## **RECORDKEEPING REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS**

### **Final Rule**

**Summary:** The FDIC has issued the attached final rule (Final Rule) to improve the FDIC's ability to monitor and evaluate risks in certain insured depository institutions with qualified financial contracts (QFCs), as well as assure preparedness if such institutions fail. The Final Rule and Appendix require an institution in a troubled condition to produce position level and counterparty level data and other information that is relevant to the resolution and disposition of QFCs.

This rule is effective 30 days after publication in the *Federal Register*. Institutions are expected to comply with the requirements set forth in this rule within 60 days after being notified that they are in a troubled condition.

For institutions subject to the rule with immaterial amounts of QFCs, defined as fewer than 20 open QFC positions, the data required in the Appendix to the Final Rule may be recorded and maintained in a written format so long as the data are capable of being updated on a daily basis.

#### **Distribution:**

All insured depository institutions

#### **Suggested Routing:**

Chief Executive Officer  
Chief Financial Officer  
Board of Directors

#### **Related Topics:**

Administrative practice and procedure  
Bank deposit insurance  
Reporting and recordkeeping requirements  
Securities

#### **Attachment:**

Recordkeeping Requirements for Qualified Financial Contracts; Final Rule

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#### **Note:**

FDIC financial institution letters (FILs) may be accessed from the FDIC's Web site at [www.fdic.gov/news/news/financial/2008/index.html](http://www.fdic.gov/news/news/financial/2008/index.html). To receive FILs electronically, please visit <http://www.fdic.gov/about/subscriptions/fil.html>.

Paper copies of FDIC financial institution letters may be obtained through the FDIC's Public Information Center, 1-877-275-3342 or 703-562-2200).

#### **Highlights:**

- "QFCs" include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements and any other contract determined by the FDIC to be a QFC as defined in that section.
- Appendix A sets forth the specific QFC recordkeeping requirements. These QFC recordkeeping requirements are organized under three categories as provided in Appendix A: (1) position level data, (2) counterparty level data, and (3) certain contracts and lists of counterparty affiliates and identifiers, affiliates of the institution that are counterparties to QFC transactions, organizational charts involving the institution and its affiliates, and supporting vendors.
- Position level data and counterparty data must be maintained in electronic files. Institutions would be required to demonstrate the ability to produce this information immediately at the close of processing of the institution's business day.

## **RECORDKEEPING REQUIREMENTS FOR QUALIFIED FINANCIAL CONTRACTS**

### **Final Rule**

The Federal Deposit Insurance Corporation (FDIC) has issued the attached Final Rule to establish recordkeeping requirements for qualified financial contracts (QFCs) held by insured depository institutions (IDIs) in a troubled condition, as defined in the rule. “QFCs” are defined as those qualified financial contracts that are defined in 12 U.S.C. 1821(e)(8)(D) to include securities contracts, commodity contracts, forward contracts, repurchase agreements, and swap agreements and any other contract determined by the FDIC to be a QFC as defined in that section.

The Notice of Proposed Rulemaking (NPR) was published in the *Federal Register* of July 28, 2008 (73 Fed. Reg. 43636), and the FDIC received four comment letters on the NPR, which were from financial services industry associations. This Final Rule responds to various concerns presented in those comment letters.

This Final Rule implements rulemaking authority provided to the FDIC by Congress in 2005 to establish QFC recordkeeping requirements, in consultation with the other federal banking agencies, for QFCs held by institutions determined by the FDIC to be in a “troubled condition.” These statutory amendments were enacted by Congress to support the FDIC’s meeting its statutory obligations regarding the treatment of QFCs in the event of its appointment as receiver of a failed insured depository institution.

The Final Rule and appendix require an institution in a troubled condition, upon written notification by the institution’s appropriate federal banking agency or the FDIC, to produce immediately at the close of processing of the institution’s business day for a period provided in that notification:

- 1) electronic files for certain position level and counterparty level data;
- 2) electronic or written lists of (i) QFC counterparty and portfolio identifiers, (ii) certain affiliates of the institution and the institution’s counterparties to QFC transactions, (iii) contact information and organizational charts for key personnel involved in QFC activities, and (iv) contact information for vendors for such activities; and
- 3) copies of key agreements and related documents for each QFC.

For institutions in a troubled condition with less than 20 open QFC positions upon receipt of the written notification from the FDIC under part 371 and the Appendix, the data required in Tables A1 and A2 may be recorded and maintained in a written format so long as the data are capable of being updated on a daily basis.

For purposes of the Final Rule, “troubled condition” means any IDI that:

- 1) has a composite supervisory rating, as determined by its appropriate federal banking agency in its most recent examination, of 3 (if the IDI has 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 that requires action to improve the financial condition of the IDI, or is subject to a proceeding initiated by the appropriate federal banking agency that contemplates the issuance of an order requiring 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 the rule 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.

Appendix A sets forth the specific QFC recordkeeping requirements, which are organized under three categories: (1) position level data; (2) counterparty level data; and (3) certain contracts and lists of counterparty affiliates and identifiers, affiliates of the institution that are counterparties to QFC transactions, organizational charts involving the institution and its affiliates, and supporting vendors.

For purposes of the implementation of this Final Rule, the FDIC has provided an initial 60 day compliance deadline. The FDIC will permit institutions to request additional extensions of this deadline, which the FDIC may grant after review on a case-by-case basis. Institutions should submit a request for an extension to the FDIC at least 15 days prior to the deadline for its compliance with the requirements of this rule, and the institution’s request should contain the reasons why the extension is needed.

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