

**Supporting Statement for the  
Recordkeeping and Disclosure Requirements Associated with Securities  
Transactions Pursuant to Regulation H  
(Reg H-3; OMB No. 7100-0196)**

**Summary**

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the mandatory Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H (OMB No. 7100-0196). Sections 208.34(c), (d), and (g) of Regulation H apply to all state-chartered member banks and trust companies. These entities must not engage in practices that are unsafe or unsound, result in a violation of law, rule, or regulation, or violate any condition imposed by, or agreements entered into with, the Board of Governors. State-chartered member banks and trust companies effecting securities transactions for customers must establish and maintain a system of records, furnish confirmations to customers, and establish written policies and procedures relating to securities trading. They are required to maintain records for three years following the transaction. There is no reporting form. These requirements are necessary: to protect the customer, to avoid or settle customer disputes, and to protect the bank against potential liability arising under the anti-fraud and insider trading provisions of the Securities Exchange Act of 1934. The annual burden for these event generated requirements is estimated to be 158,327 hours.

**Background and Justification**

The recordkeeping and disclosure requirements in Regulation H for state-chartered member banks and trust companies (collectively referred to as "state member banks" ) are similar to requirements imposed upon broker-dealers by the Security Exchange Commission (SEC) and also have been adopted by the Federal Deposit Insurance Corporation (FDIC) and the Office of the Comptroller for Currency (OCC). The Government Securities Act of 1986, implemented by the U.S. Department of the Treasury, exempts state member banks from recordkeeping requirements imposed on government security brokers and dealers (17 CFR 404.4(a)(1)) if they are subject to the requirements of Regulation H.

**Description of Information Collection**

The requirements of Section 208.34 of Regulation H apply to all state member banks. They do not apply to activities of foreign branches of state member banks, activities of nonmember, non-insured trust company subsidiaries of bank holding companies, or activities that are subject to regulations promulgated by the Municipal Securities Rulemaking Board. State member banks are exempted from the Regulation H requirements if they have an annual average of less than 200 securities transactions for customers over the prior three calendar years (exclusive of transactions in U.S. government and agency obligations).

Each state member bank effecting securities transactions for customers must maintain records and copies of disclosures as described below for three years following the transaction. Records may be maintained in hard copy, automated, or electronic form.

**Recordkeeping requirements.** Each state member bank is required by Section 208.34(c) to maintain the following records for a securities transaction:

- (1) chronological records of original entry containing an itemized daily record of all purchases and sales of securities. The records of original entry shall show the account or customer for which each such transaction was effected, the description of the securities, the unit and aggregate purchase or sale price (if any), the trade date and the name or other designation of the broker-dealer or other person from whom purchased or to whom sold;
- (2) account records for each customer which shall reflect all purchases and sales of securities, all receipts and deliveries of securities, and all receipts and disbursements of cash with respect to transactions in securities for such account and all other debits and credits pertaining to transactions in securities;
- (3) a separate memorandum (order ticket) of each order to purchase or sell securities (whether executed or canceled), which shall include:
  - (a) the account(s) for which the transaction was effected;
  - (b) whether the transaction was a market order, limit order, or subject to special instructions;
  - (c) the time the order was received by the trader or other bank employee responsible for effecting the transaction;
  - (d) the time the order was placed with the broker-dealer, or if there was no broker-dealer, the time the order was executed or canceled;
  - (e) the price at which the order was executed; and
  - (f) the broker-dealer utilized;
- (4) a record of all broker-dealers selected by the bank to effect securities transactions and the amount of commissions paid or allocated to each such broker during the calendar year; and
- (5) a copy of the notifications described in the disclosure section below.

Each state member bank is also required, under Section 208.34(g), to establish written policies and procedures providing:

- (1) assignment of responsibility for supervision of persons who:
  - (a) transmit or place orders with broker-dealers, or
  - (b) execute transactions in securities for customers, or
  - (c) process orders for notification and settlement purposes; or perform other back office functions;

- (2) for fair and equitable allocation of securities and prices to accounts under listed circumstances;
- (3) for crossing of buy and sell orders where applicable and permissible under local law; and
- (4) that employees who make investment recommendations or decisions for accounts of customers and other personnel with certain related duties report to the bank, within ten days after the end of the calendar quarter, all transactions in securities (over \$10,000 during a quarter and excluding purchases or sales of government securities or mutual funds) made by them or on their behalf. Such reports shall identify the securities purchased or sold, the date of the transaction, and whether the transaction were purchases or sales.

The regulation also provides alternative procedures for certain investment arrangements.

**Disclosure requirements.** For each securities transaction, the state member bank is required, under Section 208.34(d), to furnish customers *either* of the following types of notification:

- (1) (a) a copy of the broker-dealer confirmation relating to the securities transaction; and  
(b) certain statements associated with any remuneration received by the bank, *or*
- (2) a written notification disclosing:
  - (a) the name of the bank;
  - (b) the name of the customer;
  - (c) whether the bank is acting as agent for the customer, as agent for both the customer and some other person, as principal for its own account, or in any other capacity;
  - (d) the date of execution and a statement that the time of execution is available upon written request specifying the identity, price and number of shares or units (or principal amount in the case of debt securities) of such security purchased or sold;
  - (e) the amount of remuneration received from the customer by any broker-dealer associated with the transaction;
  - (f) the amount of remuneration received by the bank from the customer and associated information;
  - (g) the name of the broker-dealer utilized;
  - (h) additional information on yield when a transaction in a debt security meets any of the following conditions:
    - (i) is subject to redemption before maturity;
    - (ii) is effected exclusively on the basis of a dollar price;
    - (iii) is effected on the basis of yield;
    - (iv) is in an asset-backed security which represents an interest in or is secured by a pool of receivables or other financial assets that are subject continuously to prepayment; or

- (v) is in a debt security, other than a government security, that is unrated by a nationally recognized statistical rating organization.

### **Time Schedule for Information Collection**

Maintenance of records of securities transactions is event generated and must occur when securities are purchased or sold. State member banks collect the internal report of bank personnel regarding their own securities transactions quarterly. The information is not submitted to the Federal Reserve, is not available to the public, and is not published.

### **Legal Status**

The Federal Reserve's Legal Division has determined that 12 U.S.C. §325 authorizes the Federal Reserve to require recordkeeping and disclosure requirements associated with 12 CFR §208.34(c), (d), and (g). If the records maintained by state member banks come into the possession of the Federal Reserve, such information would be protected from disclosure by exemptions 4 and 6 of the Freedom of Information Act (5 U.S.C. §§552(b)(4) and (b)(6)). If such information is included in the work papers of Federal Reserve examiners or extracted in Federal Reserve reports of examination, the information is protected by exemption 8 of the Freedom on Information Act (5 U.S.C. §552 (b) (8)).

### **Consultation Outside the Agency**

There has been no consultation outside the Federal Reserve System.

### **Estimate of Respondent Burden**

The total annual burden of 158,327 hours comprises recordkeeping and disclosure burden for banks and for trust companies. The number of respondents reflects the number of state-chartered member banks and trust companies subject to these requirements, based on April, 2004, data. The total number of state-chartered member banks is 933. The number of trust respondents is the total of free-standing member bank trust companies (3), plus approximately 343 subsidiary trust departments at state-chartered member banks.

Trust companies incur more burden than banks because they have additional responsibilities related to their investment discretion over customers' accounts.<sup>1</sup> Trust companies must provide disclosures upon request for discretionary accounts in addition to their responsibility for providing disclosures on all nondiscretionary accounts. Further, each trust company employee with investment discretion must file a quarterly disclosure with the trust company showing activity for the employee's own account.

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<sup>1</sup> Investment discretion is the authority to determine or make decisions as to what securities or other property shall be purchased or sold by or for an account.

## **Recordkeeping requirements**

Recordkeeping requirements for banks include the record of the details of customer transactions and the creation of a policy statement. Each state-chartered member bank keeps, on average, twenty-five transactions records (five transactions per account with an average of five accounts at each bank). Each year, all new state-chartered member banks that have securities activities establish policy statements.

Recordkeeping requirements for trust companies include the record of the details of customer transactions and the quarterly reports filed by employees. Each trust company keeps, on average, six thousand transactions records (five transactions per account with an estimated twelve hundred accounts at each company). Each trust company retains, on average, twenty quarterly reports (five employees reporting their transactions four times a year).

## **Disclosure requirements**

Disclosure requirements for banks include notifications to customers for transactions on their accounts. These accounts are nondiscretionary; that is, bank employees do not have investment discretion over them. Each state-chartered member bank discloses, on average, twenty-five records (five transactions per account with an average of five accounts at each bank).

Disclosure requirements for trust companies include notifications to an estimated 1 percent of customers who request notification for transactions on discretionary accounts and to customers for all transactions on nondiscretionary accounts. Of the estimated 1,200 accounts at each trust company, approximately 55 percent (660 accounts) are discretionary and the remaining 45 percent (540 accounts) are nondiscretionary. Each trust company discloses, on average, 33 records for discretionary accounts (1 percent of 660 accounts with 5 transactions per account) and 2,700 records for nondiscretionary accounts (540 accounts with 5 transactions per account).

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	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated total annual burden hours</i>
Banks				
Transactions	933	25	.05	1,166
Policy statement	185	1	.50	93
Trust companies				
Transactions	353	6,000	.05	105,900
Quarterly report	353	20	.25	<u>1,765</u>
<i>Total recordkeeping burden</i>				108,924
Banks	933	25	.05	1,166
Trust companies				
Discretionary accounts	353	33	.05	582
Nondiscretionary accounts	353	2,700	.05	<u>47,655</u>
<i>Total disclosure burden</i>				49,403
<i>Total burden</i>				<u>158,327</u>

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Based on a rate of \$20 per hour, the annual cost to the public is estimated to be \$3,166,540.

### **Sensitive Questions**

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

### **Estimate of Cost to the Federal Reserve System**

The cost to the Federal Reserve System associated with these requirements is negligible.