

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with Regulation H (Securities
Transactions by State Member Banks)
(FR H-3; OMB No. 7100-0196)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation H (Securities Transactions by State Member Banks) (FR H-3; OMB No. 7100-0196).¹ Section 15C of the Securities Exchange Act of 1934 (the Act)² establishes federal regulation of brokers and dealers of government securities, including banks and other financial institutions, and directs those brokers and dealers to keep certain records. These requirements are implemented for state member banks in section 208.34 of the Board's Regulation H - Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208), which requires that non-exempt state member banks³ effecting securities transactions for customers establish and maintain a system of records of these transactions, furnish confirmations of transactions to customers that disclose certain information, and establish written policies and procedures relating to securities trading. Regulation H also indirectly imposes certain disclosure requirements on certain state member bank employees and officers.

The estimated total annual burden for the FR H-3 is 100,774 hours.

Background and Justification

The Act authorizes the Department of the Treasury (Treasury) to enact regulations concerning the protection of customer securities, as well as the financial responsibility, reporting, and recordkeeping of brokers and dealers in government securities. Treasury consults with the Securities and Exchange Commission (SEC), Board, and other federal banking regulatory agencies in promulgating these regulations. Regulations promulgated by the Treasury have exempted state member banks from recordkeeping requirements imposed on government securities brokers and dealers, because they are subject to the requirements of Regulation H.⁴ The recordkeeping and disclosure requirements in Regulation H for state member banks are

¹ There is no formal reporting form for this collection of information (the FR H-3 designation is for internal purposes only). The title of this collection previously was "Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H."

² 15 U.S.C. § 78o-5.

³ The requirements of section 208.34 of Regulation H apply to all state member banks that effect more than 500 government securities brokerage transactions per year, unless the institution has filed a written notice, or is required to file notice, with the Board that it acts as a government securities broker or a government securities dealer. These requirements also 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. In addition, state member banks with 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) are exempt from these Regulation H recordkeeping and disclosure requirements. See 12 CFR 208.34(a)(1)(i)-(iv).

⁴ See 17 CFR 404.4(a)(1).

similar to requirements imposed upon broker-dealers by the SEC and also have been adopted by the Federal Deposit Insurance Corporation and Office of the Comptroller of the Currency with respect to the banks those agencies supervise. These requirements are necessary to protect customers, to avoid or settle customer disputes, and to protect state member banks against potential liability arising under the anti-fraud and insider trading provisions of the Act. This information is not available from other sources.

Description of Information Collection

Each non-exempt state member bank effecting securities transactions for customers must maintain certain records for at least three years following transactions and make certain disclosures, as described below.

Recordkeeping Requirements

Section 208.34(c) of Regulation H requires any state member bank that transacts more than a minimal number of securities transactions for customers to maintain records of the transaction.

State member banks subject to section 208.34 must also maintain certain records for at least three years. These records include (1) chronological records of original entry containing an itemized daily record of all purchases and sales of securities; (2) account records for each customer reflecting all purchases and sales of securities, all receipts and deliveries of securities, all receipts and disbursements of cash in connection with transactions in securities for an 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 that discloses information generally disclosed in a confirmation; (4) a record of broker-dealers used for securities transactions and the amount of commissions paid or allocated to each; and (5) copies of required written notifications of securities transactions.

Section 208.34(g) requires that every state member bank effecting securities transactions for customers shall establish and maintain written policies and procedures regarding assignment of responsibility for supervision of officers or employees who perform the functions associated with those transactions and regarding the fair and equitable processing of orders.

The bank must retain quarterly reports provided to it by bank officers and employees who make investment recommendations or decisions or obtain information about securities being purchased or sold, or recommended to be purchased or sold, detailing all transactions in securities made by them or on their behalf, either at the bank or elsewhere. The officer or employee provides the report to the bank within 10 days of the end of the calendar quarter.

Disclosure Requirements

Section 208.34(d) requires any state member bank that transacts more than a minimal number of securities transactions for customers to issue confirmations at or before completion of the transaction, unless the bank provides a copy of a broker-dealer's confirmation, which must be

presented to the customer within one business day of the bank's receipt of the broker-dealer's confirmation.

The regulation also provides alternative notification procedures for certain investment arrangements.⁵

As discussed above, pursuant to section 208.34(g)(4) of Regulation H, the written policies and procedures adopted by state member banks must provide that certain bank officers and employees make quarterly reports to the bank regarding their compliance with those policies and procedures. The reports made pursuant to this provision are disclosure requirements sponsored by the Board.

Respondent Panel

The FR H-3 panel comprises state member banks, excluding those that qualify for an exemption pursuant to section 208.34(a)(1) of Regulation H, and officers or employees of such state member banks who make investment recommendations or decisions for the accounts of customers, who participate in the determination of such recommendations or decisions, or who, in connection with their duties, obtain information concerning which securities are being purchased or sold or recommended for such action.

Frequency

The FR H-3 is disclosed on a quarterly and event-generated basis.

Time Schedule for Information Collection

Maintenance of records of securities transactions and the disclosure requirements discussed above are event-generated and must occur when securities are purchased or sold. Section 208.34(c) requires that records be maintained for at least 3 years. Bank officers and employees reporting relevant securities transactions in which they have a beneficial interest must do so within ten days after the end of the calendar quarter.

Public Availability of Data

There are no data related to this information collection made available to the public by the Board.

⁵ 12 CFR 208.34(e).

Legal Status

The FR H-3 is authorized pursuant to Section 23 of the Act,⁶ which empowers the Board to make rules and regulations implementing those portions of the Act for which it is responsible.⁷ The obligation to comply with the Regulation H recordkeeping and disclosure requirements is mandatory.

Because these records and disclosures would be maintained at each banking organization, the Freedom of Information Act (FOIA) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information is considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process.⁸ In addition, the information may also be kept confidential under exemption 4 for the FOIA, which protects commercial or financial information obtained from a person that is privileged or confidential.⁹ Additionally, to the extent that records constituted personnel, medical, or similar information, and disclosure would constitute a clearly unwarranted invasion of personal privacy, they could be withheld pursuant to exemption 6 of the FOIA.¹⁰

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On September 11, 2023, the Board published an initial notice in the *Federal Register* (88 FR 62366) requesting public comment for 60 days on the extension, without revision, of the FR H-3. The comment period for this notice expires on November 13, 2023.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR H-3 is 100,774 hours. The estimated number of respondents is based on the number of state member banks as of December 31, 2022, excluding state chartered nondepository trust companies that are members

⁶ 15 U.S.C. § 78w. The Board also has the authority to require reports from state member banks pursuant to the sections 9 and 11 of the Federal Reserve Act (12 U.S.C. §§ 248(a) and 324).

⁷ Section 208.34(g)(4) of Regulation H requires that the written policies and procedures adopted by state member banks must provide that certain bank officers and employees make quarterly reports to the bank. 15 USC 78w(a)(1) grants the Board the authority to “make such rules and regulations as may be necessary or appropriate to implement the provisions of this chapter for which [it it] responsible” and to “classify persons, securities, transactions, statements, applications, reports, and other matters within [its jurisdiction], and prescribe greater, lesser, or different requirements for different classes thereof.” 15 USC 78c(a)(9) defines the term “person” to include a natural person.

⁸ 5 U.S.C. § 552(b)(8).

⁹ 5 U.S.C. § 552(b)(4).

¹⁰ 5 U.S.C. § 552(b)(6).

of the Federal Reserve, which typically do not conduct activities that would require recordkeeping pursuant to this regulation.

State member banks with trust departments incur more burden than state member banks without trust departments. The higher burden for the former respondents is attributed to the additional responsibilities related to their investment discretion over customers' managed accounts. State member banks with trust departments must provide disclosures upon request for discretionary accounts in addition to their responsibility for providing disclosures on all nondiscretionary accounts and typically must keep records for more covered securities transactions. Further, these institutions must maintain records of each employee's securities transactions for those employees involved in investment decision making processes. The estimated number of employee respondents reporting to their employers is based on an estimated percentage of the total full-time equivalent employees at state member banks with trust departments. These recordkeeping and disclosure requirements represent approximately 1.45 percent of the Board's total paperwork burden.

FR H-3	<i>Estimated number of respondents¹¹</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Current				
Recordkeeping				
<i>State member banks (de novo)</i>				
Section 208.34(g)				
Establish policies and procedures	1	1	30	30
<i>State member banks with trust departments</i>				
Section 208.34(c)				
Securities transactions	195	12	2	4,680
Section 208.34(g)				
Policies and procedures	195	12	2	4,680
Section 208.34(g)				
Employee quarterly report	195	4	2	1,560
<i>State member banks without trust departments</i>				
Section 208.34(c)				
Securities transactions	506	12	0.25	1,518
Section 208.34(g)				
Policies and procedures	506	12	0.25	1,518

¹¹ Of these respondents required to comply with this information collection, 472 (83 state member banks with trust departments and 389 state member banks without trust departments) are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets), <https://www.sba.gov/document/support--table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions.

Disclosure

State member banks with trust departments

Section 208.34(d)

Securities transactions	195	12	15	35,100
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State member banks without trust departments

Section 208.34(d)

Securities transactions	506	12	5	30,360
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Officers and employees of state member banks with trust departments

Section 208.34(g)

Employee quarterly report	2,666	4	2	<u>21,328</u>
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Total				100,774
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The estimated total annual cost to the public for these collections of information is \$6,676,278.¹²

Sensitive Questions

These collections of information contain no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System for collecting and processing this information collection is negligible.

¹² Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$22, 45% Financial Managers at \$80, 15% Lawyers at \$79, and 10% Chief Executives at \$118). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), Occupational Employment and Wages, May 2022, published April 25, 2023 <https://www.bls.gov/news.release/ocwage.t01.htm#>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.