

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with Securities Transactions
Pursuant to Sections 208.34(c), (d), and (g) of Regulation H
(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 Securities Transactions Pursuant to Sections 208.34(c), (d), and (g) of Regulation H¹ (FR H-3; OMB No. 7100-0196).² Section 15C of the Securities Exchange Act of 1934 (the Act), 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.³ These requirements are implemented for state member banks by sections 208.34(c), (d), and (g) of the Board's Regulation H, which require that non-exempt state member banks⁴ 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.

The estimated total annual burden for FR H-3 is 105,827 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), the Board, and the other federal banking regulatory agencies in promulgating these regulations. Regulations promulgated by the Treasury exempt

¹ This collection of information was formerly titled "Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Section 208.9(k)(2, 3, & 5) of Regulation H." The Board has updated this title to accurately reflect the current location of the relevant provisions in the Code of Federal Regulations.

² There is no formal reporting form for this collection of information (the FR H-3 designation is for internal purposes only.)

³ 12 U.S.C. § 78o-5(a), (d).

⁴ 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).

state member banks from recordkeeping requirements imposed on government securities brokers and dealers, if they are subject to the requirements of Regulation H.⁵ The recordkeeping and disclosure requirements in Regulation H for state member banks are similar to requirements imposed upon broker-dealers by the SEC and also have been adopted by the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency. 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

Each state member bank is required by section 208.34(c) of Regulation H to maintain the following records for a securities transaction in any manner, provided that the information required to be shown is clearly and accurately reflected and provides an adequate basis for the audit of such information. Records may be maintained in hard copy, automated, or electronic form provided the records are easily retrievable, readily available for inspection, and capable of being reproduced in a hard copy.

- (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 cancelled), which shall include:
 - i. the account(s) for which the transaction was effected,
 - ii. whether the transaction was a market order, limit order, or subject to special instructions,
 - iii. the time the order was received by the trader or other bank employee responsible for effecting the transaction,
 - iv. the time the order was placed with the broker-dealer, or if there was no broker-dealer, the time the order was executed or cancelled,

⁵ See 17 CFR 404.4(a)(1).

- v. the price at which the order was executed, and
 - vi. 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 and maintain written policies and procedures providing:

- (1) Assignment of responsibility for supervision of persons who:
- i. transmit or place orders with broker-dealers, or
 - ii. execute transactions in securities for customers, or
 - iii. process orders for notification and settlement purposes; or perform other back office functions,
- (2) For the fair and equitable allocation of securities and prices to accounts under listed circumstances,
- (3) For the crossing of buy and sell orders where applicable and permissible under law, and
- (4) That bank officers and employees 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, must report to the bank, within 10 days after the end of the calendar quarter, all transactions in securities made by them or on their behalf, either at the bank or elsewhere, in which they have a beneficial interest. The report shall identify the securities purchased or sold and indicate the dates of the transactions and whether the transactions were purchases or sales. Excluded from this requirement are transactions for the benefit of the officer or employee over which the officer or employee has no direct or indirect influence or control, transactions in mutual fund shares, and all transactions involving in the aggregate \$10,000 or less during the calendar quarter. For purposes of this paragraph, the term "securities" does not include government securities.

Reporting Requirements

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 reporting requirements sponsored by the Board.

Disclosure Requirements

For each securities transaction, the state member bank is required, under section 208.34(d), to furnish its customers with certain information.⁶

⁶ Specifically, the bank must furnish its customers with either:

- (1) A copy of the broker-dealer confirmation relating to the securities transaction; and if the bank is to receive remuneration from the customer or any other source in connection with the transaction, and the remuneration is not determined pursuant to a prior written agreement between the bank and the customer, a statement of the source and the amount of any remuneration to be received, or
- (2) A written notification disclosing:
 - i. the name of the bank,
 - ii. the name of the customer,
 - iii. 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,
 - iv. 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 by the customer,
 - v. the amount of any remuneration received or to be received, directly or indirectly, by any broker/dealer from such customer in connection with the transaction,
 - vi. the amount of any remuneration received or to be received by the bank from the customer and the source and amount of any other remuneration to be received by the bank in connection with the transaction, unless remuneration is determined pursuant to a written agreement between the bank and the customer, provided, however, in the case of government securities and municipal securities, this paragraph shall apply only with respect to remuneration received by the bank in an agency transaction. If the bank elects not to disclose the source and amount of remuneration it has or will receive from a party other than the customer pursuant to this paragraph, the written notification must disclose whether the bank has received or will receive remuneration from a party other than the customer, and that the bank will furnish within a reasonable time the source and amount of this remuneration upon written request of the customer. This election is not available, however, if, with respect to a purchase, the bank was participating in a distribution of that security, or with respect to a sale, the bank was participating in a tender offer for that security,
 - vii. the name of the broker-dealer utilized or, where there is no broker/dealer, the name of the person from whom the security was purchased or to whom it was sold, or the fact that such information will be furnished within a reasonable time upon written request,
 - viii. In the case of a transaction in a debt security subject to redemption before maturity, a statement to the effect that the debt security may be redeemed in whole or in part before maturity, that the redemption could affect the yield represented and that additional information is available on request;
 - ix. In the case of a transaction in a debt security effected exclusively on the basis of a dollar price:
 - (A) The dollar price at which the transaction was effected;
 - (B) The yield to maturity calculated from the dollar price; provided, however, that this paragraph (c)(2)(ix)(B) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;
 - x. In the case of a transaction in a debt security effected on the basis of yield:
 - (A) The yield at which the transaction was effected, including the percentage amount and its characterization (e.g., current yield, yield to maturity, or yield to call) and if effected at yield to call, the type of call, the call date, and the call price; and
 - (B) The dollar price calculated from the yield at which the transaction was effected; and
 - (C) If effected on a basis other than yield to maturity and the yield to maturity is lower than the represented yield, the yield to maturity as well as the represented yield; provided, however,

The regulation also provides alternative notification procedures for certain investment arrangements.⁷

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.

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. None of this information is submitted to the Federal Reserve, or published or made available to the public by the Federal Reserve.

Public Availability of Data

No data collected pursuant to this information collection is made available to the public by the Board.

Legal Status

FR H-3 is authorized pursuant to Section 23 of the Act⁸, which empowers the Board to make rules and regulations implementing those portions of the Act for which it is responsible.

that this paragraph (c)(2)(x)(C) shall not apply to a transaction in a debt security that either has a maturity date that may be extended by the issuer with a variable interest rate payable thereon, or is an asset-backed security that represents an interest in or is secured by a pool of receivables or other financial assets that are subject to continuous prepayment;

- xi. In the case of a transaction in a debt security that is 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, a statement indicating that the actual yield of such asset-backed security may vary according to the rate at which the underlying receivables or other financial assets are prepaid and a statement of the fact that information concerning the factors that affect yield (including at a minimum, the estimated yield, weighted average life, and the prepayment assumptions underlying yield) will be furnished upon written request of such customer; and
- xii. In the case of a transaction in a debt security, other than a government security, that the security is unrated by a nationally recognized statistical rating organization, if that is the case.

⁷ 12 CFR 208.34(e).

⁸ 15 U.S.C. § 78w. The Board also has the authority to require reports from state member banks (12 U.S.C. §§ 248(a) and 324).

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 may be 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.⁹ 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.¹⁰

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On October 14, 2020, the Board published an initial notice in the *Federal Register* (85 FR 65047) requesting public comment for 60 days on the extension, without revision, of FR H-3. The comment period for this notice expires on December 14, 2020.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for FR H-3 is 105,827 hours. The number of respondents is based on the number of state member banks as of December 31, 2019. These recordkeeping, disclosure, and reporting requirements represent 1 percent of the Board’s total paperwork burden. State member bank totals are as of 2019, and do not include state chartered nondepository trust companies that are members 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. 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.

⁹ 5 U.S.C. § 552(b)(8).

¹⁰ 5 U.S.C. § 552(b)(4).

FR H-3	<i>Estimated number of respondents</i> 11	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Recordkeeping				
<i>State member banks (de novo)</i>				
<i>Section 208.34(g)</i>				
Establish policies and procedures	1	1	40	40
<i>State member banks with trust departments</i>				
<i>Section 208.34(c)</i>				
Securities transactions	209	12	2	5,016
<i>Section 208.34(g)</i>				
Policies and procedures	209	12	2	5,016
<i>State member banks without trust departments</i>				
<i>Section 208.34(c)</i>				
Securities transactions	545	12	0.25	1,635
<i>Section 208.34(g)</i>				
Policies and procedures	545	12	0.25	1,635
<i>Section 208.34(g)</i>				
Employee quarterly report	545	4	0.25	<u>545</u> 13,887
Disclosure				
<i>State member banks with trust departments</i>				
<i>Section 208.34(d)</i>				
Securities transactions	209	12	16	40,128
<i>State member banks without trust departments</i>				
<i>Section 208.34(d)</i>				
Securities transactions	545	12	5	<u>32,700</u> 72,828
Reporting				

¹¹ Of these respondents, 603 (96 state member banks with trust departments and 507 state member banks without trust departments) are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 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.

<i>Officers/employees of state member banks with trust departments</i>				
Section 208.34(g)				
Employee quarterly report	2,389	4	2	<u>19,112</u>
<i>Total</i>				<u>105,827</u>

The estimated total annual cost to the public is \$6,111,509.¹²

Sensitive Questions

These recordkeeping, disclosure, and reporting requirements 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 associated with these requirements 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 \$20, 45% Financial Managers at \$71, 15% Lawyers at \$70, and 10% Chief Executives at \$93). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2019*, published March 30, 2020, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.