

Supporting Statement for the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN (FR NN; OMB No. 7100-0353)

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, without revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN (FR NN; OMB No. 7100-0353).¹ The Board's Regulation NN - Retail Foreign Exchange Transactions (12 CFR part 240) establishes rules applicable to retail foreign currency transactions engaged in by state member banks, uninsured state-licensed branches of foreign banks, financial holding companies, bank holding companies, savings and loan holding companies, agreement corporations, and Edge Act corporations (collectively, banking institutions). Regulation NN includes certain reporting, recordkeeping, and disclosure requirements for banking institutions that elect to provide foreign currency exchange services to retail consumers.

The estimated total annual burden for FR NN is 1,956 hours.

Background and Justification

Section 742(c)(2) of the Dodd-Frank Wall Street Reform and Consumer Protection Act amended section 2(c)(2) of the Commodity Exchange Act (CEA) to prohibit persons supervised by certain Federal regulatory agencies, including the Board, from entering into, or offering to enter into, certain types of foreign exchange transactions,² except pursuant to a rule or regulation promulgated by the relevant supervising agency. Regulation NN authorizes banking institutions supervised by the Board to conduct retail foreign exchange transactions and establishes certain reporting, recordkeeping, and disclosure requirements for banking institutions that choose to conduct such transactions.

This information is not available from other sources.

Description of Information Collection

The reporting requirement associated with Regulation NN is found in section 240.4; the recordkeeping requirements are found in sections 240.7, 240.9(b)(2), and 240.13(a); and the disclosure requirements are found in sections 240.5(a), 240.6, 240.10, 240.13(c)-(d), 240.15, and 240.16(a)-(b). The information collected pursuant to Regulation NN is not available from other sources.

¹ There is no formal reporting form for this collection of information (the FR NN designation is for internal purposes only).

² Section 2(c)(2)(B)(i)(I) of the CEA provides that an applicable foreign exchange transaction includes "an agreement, contract, or transaction in foreign currency that ... is a contract of sale of a commodity for future delivery (or an option on such a contract) or an option (other than an option executed or traded on a national securities exchange registered pursuant to section 6(a) of the Securities Exchange Act of 1934)." 7 U.S.C. § 2(c)(2)(B)(i)(I).

Reporting Requirements

Section 240.4 requires that a banking institution provide the Board with written notice 60 days prior to initiating a retail foreign exchange business. The notice must include a resolution by the banking institution's board of directors indicating that the institution has established and implemented written policies, procedures, and risk measurement and management systems and controls meant to ensure that its retail foreign exchange transactions are conducted in a safe and sound manner and in compliance with Regulation NN. The banking institution must also provide information concerning customer due diligence, new product approvals, and haircuts applied to noncash margin, as well as information on addressing conflicts of interest.

Recordkeeping Requirements

Sections 240.7 requires a banking institution that engages in retail foreign exchange transactions to keep full, complete, and systematic records, together with all pertinent data and memoranda, of all transactions relating to its retail foreign exchange business, including account, financial ledger, transaction, and daily records, as well as records related to: any method or algorithm used to determine the bid or asked price; price changes on a trading platform, if used; post-execution allocation of bunched orders; the ratio of profitable accounts; possible violations of law; noncash margin; order tickets;³ and monthly statements and confirmations. The banking institution also must maintain audio recordings of oral orders and oral offset instructions. A banking institution must keep each record required by this section for at least five years from the date the record is created.⁴

Section 240.9(b)(2) requires banking institutions engaging in retail foreign exchange to establish written policies and procedures that include haircuts for noncash margin collected under that section's margin requirements and provide for annual evaluations and, if appropriate, modifications of the haircuts.

Section 240.13(a) requires a banking institution that engages in retail foreign exchange transactions to establish and implement internal rules, procedures, and controls designed to (1) ensure, to the extent reasonable, that each order received from a retail foreign exchange customer that is executable at or near the price that the banking institution has quoted to the customer is entered for execution before any order in any retail foreign exchange transaction for proprietary accounts and certain accounts that raise conflict of interest concerns (conflict of interest controls), (2) prevent banking institution related persons from placing orders, directly or indirectly, with another person in a manner designed to circumvent the conflict of interest controls, and (3) fairly and objectively establish settlement prices for retail foreign exchange transactions.

³ See also 12 CFR 240.13(c)(2) (further specifying certain circumstances in which an order ticket must be produced and kept as a record).

⁴ The Bank Secrecy Act requires that "every person engaging in any transaction subject to the provisions of this chapter shall keep a full and accurate record of each such transaction engaged in, regardless of whether such transaction is effected pursuant to license or otherwise, and such record shall be available for examination for at least 5 years after the date of such transaction." (31 USC sec. 501.60)

Disclosure Requirements

Section 240.5(a) requires a banking institution that sells a put or call option involving foreign currency for the account of any retail foreign exchange customer when the account of such retail foreign exchange customer at the time of such sale has a long put or call option position with the same underlying currency, strike price, and expiration date as that sold to promptly provide the customer with a statement reflecting the financial result of the transactions and the name of any introducing broker to the account.

Section 240.6 requires that a banking institution furnish a retail foreign exchange customer with a written disclosure before opening an account that will engage in retail foreign exchange transactions and receive an acknowledgment from the customer that it was received and understood. The disclosure statement must contain certain language prescribed by the regulation,⁵ as well as certain other firm-specific information required by section 240.6(e)-(g). The required firm-specific information includes information about the banking institution's fees and other charges, its profitable accounts ratio, the lack of relationship between past and future performance, and information about the banking institution's set-off practices. In addition, the firm must provide certain information about its profitable accounts ratio upon request to any retail foreign exchange customer or prospective retail foreign exchange customer and must provide information to its foreign exchange customers regarding changes to the banking institution's foreign exchange fees, charges, or commissions at least 15 days prior to the effective date of the change.

Section 240.10 requires a banking institution to issue monthly statements to each retail foreign exchange customer and to send confirmation statements following transactions. Each statement provided must, if applicable, show that the account for which the banking institution was introduced by an introducing broker and the name of the introducing broker.

Section 240.13(c) prohibits a banking institution engaging in retail foreign exchange transactions from knowingly handling the account of any related person of another retail foreign exchange counterparty unless it transmits to the counterparty copies of all statements and written records related to the account. Section 240.13(d) prohibits a related person of a banking institution working in the banking institution's retail foreign exchange business from having an account with another retail foreign exchange counterparty unless a person designated by the banking institution (of which it is a related person with responsibility for the surveillance over the account) sends to the other retail foreign exchange counterparty proper written authorization to open and maintain the account.

Section 240.15 requires a banking institution to provide a retail foreign exchange customer with 30 days' prior notice of any assignment of any position or transfer of any account of the retail foreign exchange customer. It also requires that a banking institution to which retail foreign exchange accounts or positions are assigned or transferred provide the affected customers

⁵ 12 CFR 240.6(d). The public disclosure of information originally supplied by the Board is not considered a collection of information for purposes of the Paperwork Reduction Act. 5 CFR 1320.3(c)(2).

with risk disclosure statements and forms of acknowledgment and receive the signed acknowledgments within 60 days of such assignments or transfers.

Sections 240.16(a) and (b) set forth certain requirements regarding the resolution of disputes with retail foreign exchange customers. These provisions require that, within 10 days after receipt of notice from a customer that they intend to submit a claim to arbitration, the banking institution provide the customer with a list of persons qualified in the dispute resolution.

Respondent Panel

The FR NN panel comprises state member banks, uninsured state-licensed branches of foreign banks, financial holding companies, bank holding companies, savings and loan holding companies, agreement corporations, and Edge Act corporations that engage in retail foreign exchange transactions.

Time Schedule for Information Collection

The reporting, recordkeeping, and disclosure requirements in Regulation NN are event-generated.

Public Availability of Data

No data collected by this information collection is published.

Legal Status

The reporting, recordkeeping, and disclosure requirements in Regulation NN are authorized pursuant to section 2(c)(2)(E) of the CEA,⁶ which prohibits a United States financial institution and its related persons under the supervision of a Federal regulatory agency, such as the Board, from offering or entering into certain types of foreign exchange transactions with retail customers except pursuant to a rule or regulation prescribed by the appropriate Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe.⁷ Regulation NN's reporting, recordkeeping, and disclosure requirements are mandatory for banking institutions that engage in retail foreign exchange transactions.

⁶ 7 U.S.C. § 2(c)(2)(E).

⁷ Additionally, the Board also has the authority to require reports from state member banks under section 11 of the Federal Reserve Act (FRA), 12 U.S.C. section 248; from branches of foreign banks under sections 9 and 13 of the International Banking Act of 1978, 12 U.S.C. sections 3106a and 3108; from bank holding companies under section 5(b) and (c) of the Bank Holding Company Act of 1956, 12 U.S.C. section 1844(b) and (c); from savings and loan holding companies under section 10 of the Home Owners' Loan Act, 12 U.S.C. sections 1467a(b) and (g); from Edge Act corporations under section 25A(17) of the FRA, 12 U.S.C. section 625; and from agreement corporations under section 25 of the FRA, 12 U.S.C. sections 601-604a.

The reporting requirement under section 240.4 of Regulation NN requires a banking institution to provide a prior written notice to the Board that includes information concerning customer due diligence; the policies and procedures for haircuts to be applied to noncash margin; information concerning new product approvals; and information on addressing conflicts of interest. This information is likely to constitute nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, and thus may be kept confidential by the Board pursuant to exemption 4 of the Freedom of Information Act (FOIA).⁸ In addition, the prior written notice must also include a resolution of the banking institution's board of directors certifying that the institution has written policies, procedures, and risk measurement and management systems and controls in place to ensure retail foreign exchange transactions are conducted in a safe and sound manner and in compliance with Regulation NN. Generally, this resolution by the board of directors would not be accorded confidential treatment. If confidential treatment is requested by a banking institution, the Board will review the request to determine if confidential treatment is appropriate.

The records and disclosures required by Regulation NN generally are not submitted to the Federal Reserve. Accordingly, confidentiality issues generally do not arise under the FOIA. In the event such records or disclosures are obtained by the Federal Reserve through the examination or enforcement process, such information may be kept confidential under exemption 8 of the FOIA,⁹ which protects information contained in or related to an examination of a financial institution.

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On November 23, 2021, the Board published an initial notice in the *Federal Register* (86 FR 66561) requesting public comment for 60 days on the extension, without revision, of the FR NN. The comment period for this notice will expire on January 24, 2022.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR NN is 1,956 hours. There are very few, often no, banking institutions that initiate this activity in a given year. With regard to the reporting requirement, which applies only to banking institutions that initiate retail foreign exchange operations, the Board therefore estimates one respondent per year. With regard to the ongoing recordkeeping and disclosure requirements, the Board estimates two respondents per year. These reporting, recordkeeping, and disclosure requirements represent less than 1 percent of the Board's total paperwork burden.

⁸ 5 U.S.C. § 552(b)(4).

⁹ 5 U.S.C. § 552(b)(8).

FR NN	<i>Estimated number of respondents¹⁰</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Reporting Section 240.4	1	1	16	16
Recordkeeping Sections 240.7, 240.9(b)(2), and 240.13(a)	2	1	183	366
Disclosure Sections 240.5(a), 240.6, 240.10, 240.13(c)-(d), 240.15, and 240.16(a) and (b)	2	1	787	<u>1,574</u>
<i>Total</i>				1,956

The estimated total annual cost to the public for this information collection is \$115,697.¹¹

Sensitive Questions

This collection of information contains 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 is negligible.

¹⁰ Of these respondents, none 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>.

¹¹ 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 \$73, 15% Lawyers at \$72, and 10% Chief Executives at \$95). 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 2020, published March 31, 2021 <https://www.bls.gov/news.release/ocwage.t01.htm#>. Occupations are defined using the BLS Standard Occupational Classification System, www.bls.gov/soc/.