

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with Regulation R (FR R¹; OMB
No. 7100-0316)**

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 R (FR R; OMB No. 7100-0316).² The Board's Regulation R, 12 CFR part 218, implements certain of the exceptions for banks from the definition of "broker" under section 3(a)(4) of the Securities Exchange Act of 1934 (Exchange Act).³ The Exchange Act defines "banks" to include banking institutions organized in the United States, including members of the Federal Reserve System, Federal savings associations, and other commercial banks, savings associations, and nondepository trust companies that are organized under the laws of a state or the United States and subject to supervision and examination by state or federal authorities having supervision over banks and savings associations.⁴ Sections 701, 723, and 741 of Regulation R contain certain customer and counterparty disclosure requirements and certain transactional recordkeeping provisions for banks that utilize these exceptions.

The estimated total annual burden for the FR R is 75,563 hours.

Background and Justification

Under section 15 of the Exchange Act, securities "brokers" generally must register with the Securities and Exchange Commission (SEC) and join a self-regulatory organization.⁵ However, section 3(a)(4)(B) of the Exchange Act provides conditional exceptions from the definition of broker for banks that engage in securities activities only in connection with third-party brokerage or networking arrangements; trust and fiduciary activities; permissible securities transactions; affiliate transactions; private securities offerings; transactions related to certain stock purchase plans, sweep accounts, identified banking products, or municipal securities; or safekeeping and custody activities, or that engage in a de minimis number of other securities transactions.

The Exchange Act requires the SEC and Board to jointly adopt rules or regulations to implement these exceptions for banks. The Board's Regulation R implements the broker exceptions for banks relating to third-party networking arrangements, trust and fiduciary activities, sweep activities, and custody and safekeeping activities, as well as exemptions related to foreign securities transactions, securities lending transactions conducted in an agency capacity, and the execution of transactions other than through a broker-dealer.⁶ As described below, Regulation R includes a number of disclosure and recordkeeping requirements for banks that utilize these exceptions. This information is not available from other sources.

¹ The internal Agency Tracking Number previously assigned by the Board to this information collection was "FR 4025." The Board is changing the internal Agency Tracking Number to "FR R" for the purpose of consistency.

² There is no formal reporting form for this collection of information. The FR R designation is for internal purposes only.

³ 15 U.S.C. § 78c(a)(4).

⁴ 15 U.S.C. § 78c(a)(6).

⁵ 15 U.S.C. § 78o.

⁶ The Board's Regulation R was issued jointly with the SEC's identical Regulation R, found at 17 CFR part 247.

Description of Information Collection

Section 701. Section 701 of Regulation R implements banks' exception from the Exchange Act definition of "broker" with respect to referral fees received in connection with third-party brokerage or networking arrangements. Sections 701(a)(2)(i) and 701(b) require banks (or their broker-dealer partners) that utilize this exemption to make certain disclosures to high net worth or institutional customers. Specifically, these banks must clearly and conspicuously disclose (i) the name of the broker-dealer and (ii) that the bank employee participates in an incentive compensation program under which the bank employee may receive a fee of more than a nominal amount for referring the customer to the broker-dealer and payment of this fee may be contingent on whether the referral results in a transaction with the broker-dealer.

Section 701(a)(2)(iii) of Regulation R requires that, before a referral fee is paid to a bank employee under section 701, the bank must provide the broker or dealer the name of the employee and such other identifying information that may be necessary for the broker or dealer to determine whether the bank employee is registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization or is subject to statutory disqualification. Additionally, section 701(a)(3)(iv) requires that a broker or dealer inform the customer if it determines that the customer or the securities transaction(s) to be conducted by the customer does not meet certain standards, and section 701(a)(3)(v) requires that the written agreement between the bank and the broker or dealer shall require that the broker or dealer inform the bank if it determines that a customer is not a high net worth customer or institutional customer, as applicable, or that a bank employee is subject to statutory disqualification.

Section 723. A bank is exempt from the Exchange Act definition of "broker" with respect to its trustee or fiduciary activities if, among other requirements, the bank is chiefly compensated for such transactions on the basis of an administration or annual fee, a percentage of assets under management, or a flat or capped per order processing fee. Pursuant to section 723(e) of Regulation R, a bank that desires to exclude a trust or fiduciary account in determining its compliance with the chiefly compensated test pursuant to that section's de minimis exclusion must maintain for three years records demonstrating that the securities transactions conducted by or on behalf of the account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account.

Section 741. Section 741 of Regulation R implements the exemption from the Exchange Act definition of "broker" with respect to banks effecting transactions in money market funds. Section 741(a)(2)(ii)(A) requires a bank relying on this exemption to provide customers with a prospectus for the money market fund securities, not later than the time the customer authorizes the bank to effect the transaction in such securities, if the class or series of securities are not "no-load."⁷ In situations where a bank effects transactions under the exemption as part of a program for the investment or reinvestment of deposit funds of, or collected by, another bank, the section permits either bank to provide the customer with the prospectus.

Respondent Panel

⁷ A no-load security is one that is not subject to a sales load. 12 CFR 218.740.

The FR R panel comprises “banks,” as defined in the Exchange Act, that qualify for the exemptions from the Exchange Act definition of “broker” described above.

Time Schedule for Information Collection

This information collection contains both recordkeeping and disclosure requirements, as mentioned above. The recordkeeping and disclosures are required when specific types of transactions have occurred as described above. Records required to be kept must be retained for a minimum of three years.

Public Availability of Data

No data that is the subject of this information collection is made available to the public.

Legal Status

The FR R is authorized pursuant to sections 3(a)(4)(F) and 3(b) of the Exchange Act,⁸ which, among other things, require the Board and the SEC to jointly adopt rules to implement the bank exceptions to the definition of “broker” under the Exchange Act.⁹ Banks seeking the exception from the definition of “broker” under the Exchange Act must comply with the requirements of FR R. The obligation, therefore, is required to obtain a benefit.

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.¹⁰ 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.¹¹

Consultation Outside the Agency

There has been no consultation outside the agency with respect to the renewal of this information collection.

Public Comments

On December 16, 2019, the Board published an initial notice in the *Federal Register* (84 FR 68454) requesting public comment for 60 days on the extension, without revision, of the FR R. The comment period for this will notice expire on February 14, 2020.

⁸ 15 U.S.C. §§ 78c(a)(4)(F) and 78c(b).

⁹ Additionally, the Board has the authority to require reports from state member banks (12 U.S.C. §§ 248(a) and 324).

¹⁰ 5 U.S.C. § 552(b)(8).

¹¹ 5 U.S.C. § 552(b)(4).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR R is 75,563 hours. This information collection represents less than 1 percent of the Board's total burden.

	<i>Estimated Number of respondents¹²</i>	<i>Annual frequency</i>	<i>Estimated average hours per response¹³</i>	<i>Estimated annual burden hours</i>
Section 701				
Disclosures to customers	1,500	100	0.08333	12,500
Disclosures to brokers	1,500	1	0.25	375
Section 723				
Recordkeeping	75	10	0.25	188
Section 741				
Disclosures to customers	750	1,000	0.08333	<u>62,500</u>
	<i>Total</i>			75,563

The total cost to the public is estimated to be \$4,352,429.¹⁴

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 annual cost to the Federal Reserve System for collecting this information is negligible.

¹² Of these respondents, 500 are small entities as defined by the Small Business Administration (i.e., entities with less than \$600 million in total assets), www.sba.gov/content/table-small-business-size-standards. There are no special accommodations given to mitigate the burden on small institutions.

¹³ The time per response is shown in small decimals of hours, but the estimate is approximately five minutes per response (0.08333 hours) for the section 701 and section 741 disclosures to customers, and 15 minutes (0.25 hours) per response for the section 701 disclosures to brokers and section 723 recordkeeping.

¹⁴ 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 \$19, 45% Financial Managers at \$71, 15% Lawyers at \$69, and 10% Chief Executives at \$96). 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 2018, published March 29, 2019, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.