

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with Regulation R
(FR 4025; OMB No. 7100-0316)**

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 Recordkeeping and Disclosure Requirements Associated with Regulation R (FR 4025; OMB No. 7100-0316). The Paperwork Reduction Act (PRA) classifies reporting, recordkeeping, or disclosure requirements of a regulation as an “information collection.”¹ Regulation R implements certain exceptions for banks from the definition of broker under Section 3(a)(4) of the Securities Exchange Act of 1934 (Exchange Act), as amended by the Gramm-Leach-Bliley Act (GLBA). Sections 701, 723, and 741 of Regulation R contain information collection requirements.²

Section 701 requires banks that wish to utilize the exemption in that section to make certain disclosures to the high net worth customer or institutional customer. In addition, section 701 requires banks that wish to utilize the exemption in that section to provide a notice to its broker-dealer partner regarding names and other identifying information about bank employees. Section 723 requires a bank that chooses to rely on the exemption in that section to exclude certain trust or fiduciary accounts in determining its compliance with the chiefly compensated test in section 721 to maintain certain records relating to the excluded accounts. Section 741 requires a bank relying on the exemption provided by that section 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 of series of securities are not no-load.

The Federal Reserve’s total annual burden for this information collection is estimated to be 75,563 hours for the estimated 1,500 commercial banks and savings associations that likely would seek exemptions under the regulation. There are no required reporting forms associated with this information collection.

Background and Justification

In enacting the GLBA, Congress adopted functional regulation for bank securities activities, with certain exceptions from Securities and Exchange Commission (SEC) oversight for specified securities activities. With respect to the definition of broker, the Exchange Act, as amended by the GLBA, provides eleven specific exceptions for banks. Each of these exceptions permits a bank to act as a broker or agent with respect to specified securities transactions that meet specific statutory conditions.

In particular, Section 3(a)(4)(B) of the Exchange Act provides conditional exceptions from the definition of broker for banks that engage in certain securities activities in connection

¹ 44 U.S.C. § 3501 *et seq.*

² 12 CFR §§ 218.701, 218.723, and 218.741.

with third-party brokerage arrangements; trust and fiduciary activities; permissible securities transactions; certain stock purchase plans; sweep accounts; affiliate transactions; private securities offerings; safekeeping and custody activities; identified banking products; municipal securities; and a de minimis number of other securities transactions.

In October 2006, the Financial Services Regulatory Relief Act of 2006 (Regulatory Relief Act) became effective. Among other things, the Regulatory Relief Act requires that the SEC and the Federal Reserve (the agencies) jointly adopt a single set of rules to implement the bank broker exceptions in Section 3(a)(4) of the Exchange Act. It also required that not later than 180 days after the date of enactment of the Regulatory Relief Act, the agencies jointly issue a single set of proposed rules to implement these exceptions.³

In accordance with these statutory provisions, the agencies jointly adopted final rules to implement the broker exceptions for banks relating to third-party networking arrangements, trust and fiduciary activities, sweep activities, and safekeeping and custody activities.⁴ The final rules also include exemptions related to these activities, as well as exemptions related to foreign securities transactions, securities lending transactions conducted in an agency capacity, the execution of transactions involving certain investment company securities, the execution of certain transactions in a company's securities for its employee benefit plans, the potential liability of banks under section 29 of the Exchange Act, and the date on which the GLBA's broker exceptions for banks will go into effect. The final rules are designed to accommodate the current business practices of banks and protect investors.

Description of Information Collection

Sections 701, 723, and 741 contain information collection requirements. Details of the requirements for each section are provided below.

Section 701. Section 701(a)(2)(i) and (b) require banks (or their broker-dealer partners) that utilize the exemption provided in this section 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.

In addition, one of the conditions of the exemption is that the broker-dealer and the bank have a contractual or other written arrangement containing certain elements, including notification and information requirements. The bank must provide its broker-dealer partner with the name of the bank employee receiving a referral fee under the exemption and certain other identifying information relating to the bank employee.

³ Section 401 of the Regulatory Relief Act also amended the definition of bank in Section 3 (a)(6) of the Exchange Act to include any Federal savings association or other savings association the deposits of which are insured by the FDIC. Accordingly, as used in this proposal, the term bank includes any savings association that qualifies as a bank under Section 3(a)(6) of the Exchange Act, as amended.

⁴ See 72 FR 56514 (October 3, 2007).

Section 723. Section 723(e)(1) requires a bank that desires to exclude a trust or fiduciary account in determining its compliance with the chiefly compensated test in section 721, pursuant to a de minimis exclusion,⁵ to maintain 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(a)(2)(ii)(A) requires a bank relying on this exemption, which permits banks to effect transactions in the shares of a money market fund, 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. 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 the effecting bank or the deposit-taking bank to provide the customer a prospectus for the money market fund securities.

Time Schedule for Information Collection

This information collection contains both recordkeeping and disclosure requirements, as mentioned above. The disclosures are required on occasion.

Legal Status

The Board's Legal Division has determined that the FR 4025 recordkeeping and disclosure requirements are authorized by section 3(a)(4)(F) of the Exchange Act (15 U.S.C. § 78c(a)(4)(F)), which requires the Board and the SEC to jointly adopt rules or regulations to implement the bank broker exceptions in section 3(a)(4) of the Exchange Act. The FR 4025 recordkeeping and disclosure requirements are required to obtain a benefit because banks wishing to utilize exemptions provided by the rules 701, 723, and 741 are required to comply with the FR 4025 recordkeeping and disclosure requirements. Because the FR 4025 recordkeeping and disclosure requirements require banks to retain their own records and to make certain disclosures to customers, the Freedom of Information Act (FOIA) would only be implicated if the Board's examiners retained a copy of the record as part of an examination or supervision of a bank. However, records obtained as a part of an examination or supervision of a bank are exempt from disclosure under FOIA exemption (b)(8), for examination material. (5 U.S.C. § 552(b)(8)). In addition, the records may also be exempt under (b)(4), for privileged or confidential trade secrets and commercial or financial information if the disclosure is likely to cause substantial harm to the competitive position of the respondent. (5 U.S.C. § 552(b)(4)).

Consultation Outside the Agency

On April 3, 2017, the Board published a notice in the Federal Register (82 FR 16210) requesting public comment for 60 days on the proposal to extend without revision the FR 4025.

⁵ Rule 723(e)(2), which limits the total number of accounts a bank may exclude from the chiefly compensated test in Rule 721(a)(1) pursuant to the exemption in Rule 723(e)(2) to the lesser of 1 percent of the total number of trust or fiduciary accounts held by the bank (if the number so obtained is less than 1 then the amount would be rounded up to 1) or 500.

Estimate of Respondent Burden

Under section 701, the Federal Reserve estimates that 1,500 commercial banks and savings associations make the required referral fee disclosures to 100 customers annually and that 1,500 commercial banks and savings associations provide one notice annually to its broker-dealer partner regarding names and other identifying information about bank employees. The Federal Reserve estimates that each respondent spends approximately 5 minutes per customer to comply with the disclosure requirement and approximately 15 minutes per notice to a broker-dealer. The Federal Reserve estimates that approximately 75 commercial banks and savings associations annually use the de minimis exclusion in section 723 and on average maintain records with respect to 10 trust or fiduciary accounts annually conducted in the exercise of the banks' trust or fiduciary responsibilities. The Federal Reserve estimates that it takes each respondent 15 minutes to comply with recordkeeping requirements under section 723. Finally, the Federal Reserve estimates that approximately 750 commercial banks and savings associations annually use the exemption in section 741 and deliver the prospectus required by the section to approximately 1,000 customers annually. The Federal Reserve estimates that a respondent spends approximately 5 minutes per response to comply with the delivery requirement of section 741. The total respondent burden for the FR 4025 is estimated to be 75,563 hours, as presented in the following table. These recordkeeping and disclosure requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

	<i>Number of respondents⁶</i>	<i>Estimated annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Section 701				
Disclosures to customers	1,500	100	5 minutes	12,500
Disclosures to brokers	1,500	1	15 minutes	375
Section 723				
Recordkeeping	75	10	15 minutes	188
Section 741				
Disclosures to customers	750	1,000	5 minutes	<u>62,500</u>
<i>Total</i>				75,563

⁶ Of these respondents, 500 are small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/content/table-small-business-size-standards.

The total cost to the public is estimated to be \$3,846,157.⁷

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.

⁷ Total cost to the public was estimated using the following formula: Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate (30% Office & Administrative Support at \$18, 45% Financial Managers at \$61, 15% Lawyers at \$63, and 10% Chief Executives @ \$86. Hourly rate estimates for each occupational group are the mean hourly wages (rounded up) using data from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2013, www.bls.gov/news.release/ocwage.nr0.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.