

**Supporting Statement for the
Uniform Application for Municipal Securities Principal or Municipal Securities
Representative Associated with a Bank Municipal Securities Dealer
(Form MSD-4; OMB No. 7100-0100) and the
Uniform Termination Notice for Municipal Securities Principal or Municipal Securities
Representative Associated with a Bank Municipal Securities Dealer
(Form MSD-5; OMB No. 7100-0101)**

Summary

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Uniform Application for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer (Form MSD-4; OMB No. 7100-0100) and the Uniform Termination Notice for Municipal Securities Principal or Municipal Securities Representative Associated with a Bank Municipal Securities Dealer (Form MSD-5; OMB No. 7100-0101). These mandatory information collections are submitted on occasion by a municipal security dealer (MSD) that is, or is a subsidiary of, a state member bank (SMB), a bank holding company (BHC), a savings and loan holding company (SLHC), or a foreign dealer bank. Form MSD-4 collects information (such as personal history and professional qualifications) of an employee whom the MSD wishes to assume the duties of municipal securities principal or representative. Form MSD-5 collects the date of, and reason for, termination of such an employee.

The Board proposes to revise Form MSD-4 and Form MSD-5 to (1) remove the date of birth and place of birth items from the ‘Personal History of Applicant’ section on Form MSD-4 and instructions; (2) make minor revisions to the Privacy Act statements on Form MSD-4 and Form MSD-5; and (3) remove the Privacy Act notice from the respective instructions for Form MSD-4 and Form MSD-5 (but leave the Privacy Act notice on the forms). The proposed revisions would be effective June 1, 2019.

The total current annual burden for Form MSD-4 is estimated to be 18 hours, and the total current annual burden for Form MSD-5 is estimated to be five hours. The burden would remain unchanged for both reports with the proposed revisions.

Background and Justification

Pursuant to the Securities Acts Amendments of 1975 (Pub. L. 94-29), Congress imposed a comprehensive federal regulatory structure on the municipal securities industry. The Municipal Securities Rulemaking Board (MSRB) was created as a self-regulatory organization (SRO) to prescribe rules for the municipal securities industry. The MSRB’s rules take effect only after approval by the Securities and Exchange Commission (SEC). Although MSRB rules apply to all MSDs, the MSRB does not have enforcement powers. The Securities Exchange Act of 1934 (15 U.S.C. § 78a *et seq.*) (the Exchange Act) designates appropriate regulatory agencies (ARAs) to enforce the MSRB’s rules for specified municipal securities dealers. The Board is the ARA for an MSD that is an SMB, a BHC, or an SLHC and their subsidiaries. Although the Exchange Act

does not specify the ARA for municipal securities dealer activities of foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by foreign banks, or Edge Act corporations (collectively referred to as foreign dealer banks), the SEC has agreed that the Board should examine the municipal securities dealer activities of foreign dealer banks.¹

The Board, the Federal Deposit Insurance Corporation (FDIC), and the Office of the Comptroller of Currency (OCC), in consultation with the MSRB, jointly drafted and adopted Form MSD-4 and Form MSD-5 in 1977. Form MSD-4 is submitted by an MSD when an employee of the MSD assumes the duties of municipal securities principal or representative. Form MSD-5 is submitted by an MSD when such a person's employment is terminated for any reason. Information collected on Form MSD-4 and Form MSD-5 are routinely used by the Board to (1) identify a potential violation of law, (2) provide a basis for referral of potential violations to another government agency or SRO, (3) aid in the resolution of any proceeding in which the federal securities laws or banking laws are at issue, (4) obtain additional information from a government agency or SRO concerning the applicant's qualifications, and (5) respond to a government agency or SRO request for information needed to issue a license or for similar action affecting the employee. The information submitted by all Board-supervised municipal securities dealers on Form MSD-4 and Form MSD-5 is not available from other sources.

If an individual that is a principal or municipal securities representative of an MSD is also an associated person of a government securities broker dealer, as defined by 17 CFR 400.3, a Form MSD-4 filed on behalf of that individual is deemed to satisfy the notification requirements associated with the Department of the Treasury's Form G-FIN-4 report (Disclosure Form for Person Associated with a Financial Institution Government Securities Broker or Dealer; OMB No. 1530-0064). Similarly, Form MSD-4 filed on behalf of a terminated employee satisfies the notification requirements associated with the Department of the Treasury's Form G-FIN-5 report (Uniform Termination Notice for Person Associated with a Financial Institution Government Securities Broker or Dealer; OMB No. 1530-0064).

Description of Information Collection

MSRB rule G-7, Information Concerning Associated Persons, requires persons who are or seek to be associated with an MSD as a municipal securities principal (a person performing supervisory functions) or representative (a person engaged in underwriting, trading, or sales of municipal securities or furnishing financial advice to issuers in connection with the issuance of municipal securities) to provide certain background information to the MSD. The rule also requires MSDs to obtain and report this information. Board-regulated MSDs must report to the Board information required by MSRB rule G-7 using Form MSD-4. Generally, the information required by Form MSD-4 relates to employment history and professional background, including any disciplinary sanctions, as well as any claimed basis for exemption from MSRB examination requirements. Certain information reported on Form MSD-4 is provided to the MSD by the employee.

¹ Letter from Catherine McGuire, Chief Counsel, SEC's Division of Market Regulation, to Laura M. Homer, Assistant Director, Board's Division of Banking Supervision and Regulation, June 14, 1994.

Form MSD-5 is filed by a Board-regulated MSD when any employee previously registered as a municipal securities principal or representative is terminated for any reason. Form MSD-5 requires information such as the reason for termination and whether any investigations or actions by agencies or SROs involving the associated person occurred during the period of employment.

Any SMB, BHC, SLHC, or foreign dealer bank that is an MSD is required to file Forms MSD-4 and MSD-5 for its employees. Bank municipal securities dealers must retain copies of Form MSD-4 for each associated person during the entire term of employment, and retain both Form MSD-4 and Form MSD-5 for three years from the date of termination of employment.

Proposed Revisions

The Board proposes to revise Form MSD-4 and Form MSD-5 to (1) remove the date of birth and place of birth items from the 'Personal History of Applicant' section on Form MSD-4 and instructions; (2) make minor revisions to the Privacy Act statements on Form MSD-4 and Form MSD-5; and (3) remove the Privacy Act notice from the respective instructions for Form MSD-4 and Form MSD-5 (but leave the Privacy Act notice on the forms). The proposed revisions would be effective June 1, 2019.

The date of birth and place of birth data fields on Form MSD-4 report are considered personally identifiable information (PII), and the Board generally does not need these fields in order to perform its supervisory responsibilities regarding applications to become municipal securities principals or representatives but could obtain this information on a case-by-case basis when needed. The Board is making an effort to remove PII from its supervisory reports if that PII is not critical to fulfilling the Board's supervisory responsibilities.

The Board also proposes to update the Privacy Act notices that appear on Form MSD-4 and Form MSD-5, respectively. The Privacy Act governs the collection, maintenance, use, and dissemination of information about individuals that is maintained in systems of records by federal agencies. A system of records is a group of records under the control of the agency from which information about individuals is retrieved by name of the individual or some identifier assigned to the individual. Under the Privacy Act, an agency that maintains a system of records must provide notice to individuals, at the point of collection of information maintained in the system of records, of: (1) the authority which authorizes the collection and whether the collection is mandatory or voluntary; (2) the purpose of the collection; (3) the routine uses which may be made of the information; and (4) the effects of not disclosing the information.

The proposed revisions to the Privacy Act notice would include an updated website URL for the relevant system of records. The revisions to the notice also would reflect that Form MSD-4 and Form MSD-5 are interagency, and would add the applicable Privacy Act notices from the OCC and the Federal Deposit Insurance Corporation. Finally, the Board would remove the Privacy Act notice from the instructions to Form MSD-4 and Form MSD-5, respectively, as a Privacy Act notice on the form collecting the information is sufficient and the Privacy Act notice on the instructions is duplicative.

Respondent Panel

The Form MSD-4 and Form MSD-5 reporting panel comprises MSDs regulated by the Board that are an SMB, BHC, an SLHC and their subsidiaries, or a foreign dealer bank.

Time Schedule for Information Collection

This information collection is event generated. Under MSRB rule G-7, an MSD that is regulated by the Board is required to file Form MSD-4 within ten days of a municipal securities principal's or representative's association with that MSD. A MSD that is regulated by the Board is required to file Form MSD-5 within 30 calendar days after a principal or representative terminates association with that MSD. Completed reporting forms are sent as a Portable Document Format (PDF) directly to the Board via email.

Legal Status

Sections 15B(a)-(b) and 17 of the Act authorize the SEC and MSRB to promulgate rules requiring municipal security dealers to file reports about associated persons with the SEC and the ARA. 15 U.S.C. §§ 78o-4(a)-(b) and (q). In addition, section 15B(c) of the Act provides that ARAs may enforce compliance with the SEC's and MSRB's rules. 15 U.S.C. § 78o-4(c). Section 23(a) of the Act also authorizes the SEC, the Board, and the other ARAs to make rules and regulations in order to implement the provisions of the Act. 15 U.S.C. § 78w(a). Under the Act, the Board is the ARA for a bank municipal securities dealer that is, or is the subsidiary of, a savings and loan holding company, state member bank (including their divisions or departments), and a bank holding company (including a subsidiary bank of the bank holding company, if the subsidiary does not already report to another ARA or to the SEC, and any divisions, departments or subsidiaries of that subsidiary). 15 U.S.C. § 78c(a)(34)(A)(ii). Although the Act does not specify the ARA for municipal securities dealer activities of foreign banks, uninsured state branches or state agencies of foreign banks, commercial lending companies owned or controlled by a foreign bank, or Edge Act corporations (collectively referred to as "foreign dealer banks"), the Division of Market Regulation of the SEC has agreed that the Federal Reserve should examine the municipal securities dealer activities of foreign dealer banks². Accordingly, the Board's collection of Form MSD-4 and Form MSD-5 for these institutions is authorized pursuant to the Act³.

In addition, the Board is authorized to require that state member banks and their departments file reports with the Board pursuant to section 11(a)(1) of the Federal Reserve Act, 12 U.S.C. § 248(a)(1). Branches and agencies of foreign banks are subject to the reporting requirements of section 11(a)(1) of the Federal Reserve Act pursuant to Section 7(c)(2) of the International Banking Act, 12 U.S.C. § 3105(c)(2). Bank holding companies and their subsidiaries are required to submit reports to the Board to ensure compliance with "federal laws

2 See Letter from Catherine McGuire, Chief Counsel, SEC's Division of Market Regulation, to Laura M. Homer, Assistant Director of Board S&R, June 14, 1994.

3 15 U.S.C. §§ 78o-4, 78q, and 78w.

that the Board has specific jurisdiction to enforce.” 12 U.S.C. § 1844(c)(1)(ii)(II). Section 10(b)(2) of the Home Owners’ Loan Act authorizes the Board to require SLHCs to file “such reports as may be required by the Board” and instructs that such reports “shall contain such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require.” 12 U.S.C. § 1467a(b)(2).

The obligation to file the forms with the Board is mandatory for those financial institutions for which the Board serves as the ARA, and the filing of both forms is event generated.

Generally, information provided on Form MSD-4 and Form MSD-5 will be kept confidential from the public under exemption 6 of the Freedom of Information Act (“FOIA”), which protects information in “personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.” 5 U.S.C. § 552(b)(6). In addition, other information on Form MSD-4 and Form MSD-5, such as the name of the municipal securities dealer that filed the form, may be withheld under exemption 4 of the FOIA, if disclosure is reasonably likely to result in substantial competitive harm to the municipal securities dealer (e.g., if a municipal securities dealer recently hired or terminated a number of municipal securities employees, disclosing these forms could reveal competitively sensitive commercial information about that dealer) 5 U.S.C. § 552(b)(4).

The information collected on Form MSD-4 and Form MSD-5 is maintained in a “system of records” within the meaning of the Privacy Act, 5 U.S.C. § 552a(a)(5). As required under the Privacy Act, the Board formally designated a system of records notice (“SORN”) for this information collection, which is the “BGFRS-17, FRB—Municipal or Government Securities Principals and Representatives,” located here: <https://www.federalreserve.gov/files/BGFRS-17-municipal-or-government-securities-principals-and-representatives.pdf>. Pursuant to the Privacy Act, 5 U.S.C. § 552a(b)(2), disclosure of information that must be released under the FOIA does not violate the Privacy Act. However, disclosure of any confidential information that is considered exempt under the FOIA must be made in accordance with the Privacy Act, 5 U.S.C. § 552a(b). Thus, the Board may make disclosures of information collected on Form MSD-4 and Form MSD-5 in accordance with the Privacy Act’s “routine use” disclosure provision, 5 U.S.C. §§ 552a(a)(7) and (b)(3), which permits the disclosure of a record for a purpose that is compatible with the purpose for which the record was collected. The routine uses that apply to this information collection are listed in the SORN, which is available on the Board’s website at the above hyperlink. Both Form MSD-4 and Form MSD-5 are being revised to include updated Privacy Act notices.

Consultation outside the Agency

The Board has coordinated and consulted with the FDIC, OCC, and SEC in proposing these revisions.

On March 5, 2019, the Board published a notice in the *Federal Register* (84 FR 7902) requesting public comment for 60 days on the extension, with revision, of the the Form MSD-4 and Form MSD-5. The comment period for this notice expires on May 6, 2019.

Estimate of Respondent Burden

The estimated total annual burden is 18 hours for Form MSD-4 and 5 hours for Form MSD-5, and would remain unchanged with the proposed revisions. The estimated number of annual respondents is based on the total number of forms filed by banks in 2017. This information collection represents less than one percent of the total Federal Reserve System paperwork burden.

	<i>Estimated number of respondents⁴</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Form MSD-4	18	1	1.00	18
Form MSD-5	19	1	0.25	5
<i>Total</i>				23

The estimated annual cost to the public for these collections of information is \$1,289.⁵

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 the collections of information is negligible.

⁴ Of these respondents required to comply with this information collection, 17 respondents are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets), www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards.

⁵ 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 \$18, 45% Financial Managers at \$69, 15% Lawyers at \$68, and 10% Chief Executives at \$94). 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 2017, published March 30, 2018, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.