

**Supporting Statement for the
Recordkeeping and Disclosure Requirements
Associated with Securities Transactions
Pursuant to Regulation H (Reg H-3; OMB No. 7100-0196)**

Summary

The Board of Governors of the Federal Reserve System (Board), proposes to extend for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Securities Transactions Pursuant to Regulation H (Reg H-3; OMB No. 7100-0196).¹ These requirements are pursuant to Sections 208.34(c), (d), and (g) of Regulation H, which require that state member banks 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. State member banks are required to maintain records created per these requirements for three years following a securities transaction. These requirements are necessary to protect the customer, to avoid or settle customer disputes, and to protect the institution against potential liability arising under the anti-fraud and insider trading provisions of the Securities Exchange Act of 1934 (“Securities Exchange Act”). The annual paperwork burden imposed on the 829 state member banks for these event-generated requirements is estimated to be 96,851 hours.²

Background and Justification

The Government Securities Act of 1986, as implemented by the U.S. Department of the Treasury, exempts state member banks from recordkeeping requirements imposed on government securities brokers and dealers, if they are subject to the requirements of Regulation H.³ The recordkeeping and disclosure requirements in Regulation H for state member banks are similar to requirements imposed upon broker-dealers by the Securities and Exchange Commission (SEC) and also have been adopted by the Federal Deposit Insurance Corporation (FDIC), the Office of the Comptroller of the Currency (OCC), and, formerly, the Office of Thrift Supervision (OTS) for state non-member and national banks and savings associations, respectively.

Description of Information Collection

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 Federal Reserve 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

¹ The Federal Reserve is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995 (PRA), which classifies reporting, recordkeeping, or disclosure requirements of a regulation as an information collection.

² State member bank totals are as of year-end 2016, 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.

³ 17 CFR 404.4(a)(1).

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.

Each state member bank effecting securities transactions for customers must maintain records and copies of disclosures as described below for three years following the transaction. Records may be maintained in hard copy, automated, or electronic format. There is no regulatory reporting form associated with these requirements.

Recordkeeping Requirements

Each state member bank is required by Section 208.34(c) to maintain the following records for a securities transaction in hard copy, automated or electronic form, provided that the records are easily retrievable, readily available for inspection and capable of being reproduced in a hard copy format:

- (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;
 - 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.

The regulation also provides alternative procedures for certain investment arrangements.

Disclosure Requirements

For each securities transaction, the state member bank is required, under Section 208.34(d), to furnish its customers with *either*:

- (1) A copy of the broker-dealer confirmation relating to the securities transaction; and certain statements associated with any remuneration received by the bank, *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; and
 - viii. additional information on yield when a transaction in a debt security meets any of the following conditions:
 - is subject to redemption before maturity;
 - is effected exclusively on the basis of a dollar price;
 - is effected on the basis of yield;
 - is in 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; or
 - is in a debt security, other than a government security, that is unrated by a nationally recognized statistical rating organization.

Time Schedule for Information Collection

Maintenance of records of securities transactions is event-generated and must occur when securities are purchased or sold. Section 208.34(c) requires that records be maintained for 3 years. State member banks also must collect a quarterly report on certain bank employees' securities transactions. None of this information is submitted to the Federal Reserve, available to the public, or published.

Regulation H also requires 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.

Legal Status

The Board has determined that the Regulation H requirements are authorized by Section 23 of the Securities Exchange Act, 15 U.S.C. § 78w, which empowers the Board to make rules and regulations implementing those portions of the Securities Exchange Act for which it is responsible. The requirements of 12 CFR 208.34(c), (d), & (g) also are impliedly authorized by Section 9 of the Federal Reserve Act (12 U.S.C. § 321-328a), which establishes the Board's supervisory authority with respect to the safety and soundness of state member banks. Accordingly, the Board is authorized to impose these recordkeeping, disclosure, and policy establishment requirements. The obligation of a state member bank to comply with the Regulation H requirements is mandatory, save for the limited exceptions set forth in 12 CFR 208.34(a).

Inasmuch as the Federal Reserve System does not collect or receive any information concerning securities transactions pursuant to these requirements, no issues of confidentiality normally will arise. If, however, these records were to come into the possession of the Board, they may be protected from disclosure pursuant to exemption 4 of the Freedom of Information Act (“FOIA”), 5 U.S.C. § 552(b)(4), under the standards set forth in National Parks & Conservation Ass’n v. Morton, 498 F.2d 765 (D.C. Cir. 1974), to the extent an institution can establish the potential for substantial competitive harm. They also may be subject to withholding under FOIA exemption 6, 5 U.S.C. § 552(b)(6), should disclosure constitute an unwarranted invasion of personal privacy. Additionally, if such information were included in the work papers of System examiners or abstracted in System reports of examination, the information also may be protected under exemption 8 of FOIA, 5 U.S.C. § 552(b)(8). Any withholding determination would be made on a case-by-case basis in response to a specific request for disclosure of the information.

Consultation Outside the Agency

On November 27, 2017, the Board published an initial notice in the *Federal Register* (82 FR 56022) requesting public comment for 60 days on the proposal to extend without revision the Reg H-3. The comment period for this notice expires on January 26, 2018.

Estimate of Respondent Burden

The total annual burden estimate of 96,851 hours comprises recordkeeping and disclosure burden for state member banks.⁴ The number of respondents reflects the number of state member banks subject to these requirements, based on data as of year-end 2016. The burden estimates presented in the following are based on three categories of respondents: (1) one new state member bank (de novo), (2) state member banks with trust departments of which there are 228, and (3) state member banks without trust departments of which there are 601.⁵ All 829 institutions are subject to these requirements.

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.⁶ 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.

Recordkeeping Requirements

As noted, the recordkeeping requirements include the documentation of the details of customer transactions, establishing and maintaining written policies and procedures, and the maintenance of quarterly reports filed by employees to the institution regarding the employees'

⁴ Estimate of respondent burden hours is calculated in the following manner: number of respondents, multiplied by annual frequency (for total annual responses), and multiplied by average hours per response.

⁵ Reports of Condition and Income (Call Reports) (FFIEC 031 & 041; OMB No. 7100-0036).

⁶ Investment discretion is the authority to determine or make decisions as to what securities or other property shall be purchased or sold by or for an account.

securities activities. The Federal Reserve estimates that, to comply with the recordkeeping requirements of securities transactions and policies and procedures, the 228 respondents with trust powers will take on average two hours per month and the 601 respondents without trust powers will take on average 15 minutes per month. The Federal Reserve estimates on average one new state member bank (de novo) will establish policies and procedures relating to securities transactions. In addition, the Federal Reserve estimates that, for the recordkeeping requirements of employee quarterly reports, respondents with trust powers will take on average two hours per quarter and respondents without trust powers will take on average 15 minutes per quarter. The total burden hours for recordkeeping are estimated to be 17,015 hours.

Disclosure Requirements

As noted, the disclosure requirements include notifications to customers for all securities transactions effected by the institution for its non-discretionary accounts. Additionally, upon the customer's request, the institution must provide notifications to customers for securities transactions effected by the institution for discretionary accounts. The Federal Reserve estimates that, to comply with the disclosure requirements of securities transactions, the 228 respondents with trust powers will take, on average, 16 hours per month, and the 601 respondents without trust powers will take on average 5 hours per month. The total burden hours for disclosure requirements is estimated to be 79,836 hours. These recordkeeping and disclosure requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

	<i>Estimated number of respondents⁷</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated total annual burden hours</i>
<i>Recordkeeping</i>				
State Member Banks (de novo)				
Establish				
Policies and Procedures 208.34(g)	1	1	40	40
State Member Banks w/ Trust Departments				
Securities transactions 208.34(c)	228	12	2.00	5,472
Policies and procedures 208.34(g)	228	12	2.00	5,472
Employee quarterly report 208.34(g)	228	4	2.00	<u>1,824</u>
<i>Subtotal</i>				12,768
State Member Banks w/o Trust Departments				
Securities transactions 208.34(c)	601	12	0.25	1,803
Policies and procedures 208.34(g)	601	12	0.25	1,803
Employee quarterly report 208.34(g)	601	4	0.25	<u>601</u>
<i>Subtotal</i>				4,207
<i>Total recordkeeping</i>				<u>17,015</u>
<i>Disclosure</i>				
State Member Banks w/ Trust Departments				
Securities transactions 208.34(d)	228	12	16.00	43,776
State Member Banks w/o Trust Departments				
Securities transactions 208.34(d)	601	12	5.00	36,060
<i>Total disclosure</i>				<u>79,836</u>
<i>Total</i>				<u>96,851</u>

The total cost to Federal Reserve respondents is estimated to be \$5,317,120.⁸

⁷ Of these respondents required to comply with this information collection, 508 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/content/table-small-business-size-standards.

⁸ 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 \$67, 15% Lawyers at \$67, and 10% Chief Executives at \$93). Hourly rate for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages May 2016, published March 31, 2017 www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

Sensitive Questions

This information collection contains no sensitive questions, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The cost to the Federal Reserve System associated with these recordkeeping and disclosure requirements is negligible.