

Supporting Statement for the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN (Retail Foreign Exchange Transactions) (Reg NN; OMB No. 7100-0353)

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend, without revision, the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN (Retail Foreign Exchange Transactions) (Reg NN; OMB No. 7100-0353). The Paperwork Reduction Act (PRA) classifies reporting, recordkeeping, or disclosure requirements of a regulation as an “information collection.”¹

This information collection implements section 742(c)(2) of the Dodd-Frank Act (codified at 7 U.S.C. § 2(c)(2)(E)) for “banking institutions,” defined as 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. The total annual burden for this information collection is estimated to be 1,972 hours for the two institutions that are deemed respondents for purposes of the PRA. There are no required reporting forms associated with this information collection.

Background and Justification

On July 21, 2010, President Obama signed into law the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act).² As amended by section 742(c)(2) of the Dodd-Frank Act,³ the Commodity Exchange Act (CEA) provides that a United States financial institution for which there is a Federal regulatory agency shall not enter into, or offer to enter into, certain types of foreign exchange transactions described in section 2(c)(2)(B)(i)(I) of the CEA with a retail customer except pursuant to a rule or regulation of a Federal regulatory agency allowing the transaction under such terms and conditions as the Federal regulatory agency shall prescribe. Section 2(c)(2)(B)(i)(I) 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).”⁴ A Federal regulatory agency’s retail foreign exchange rule must treat all such futures and options and all agreements, contracts, or transactions that are functionally or economically similar to such futures and options similarly. This information collection implements section 742(c)(2).

Description of Information Collection

The reporting requirements associated with Regulation NN are found in section 240.4; the recordkeeping requirements are found in sections 240.7, 240.9, and 240.13(a); and the

¹ See 44 U.S.C. § 3501 *et seq.*

² Dodd-Frank Wall Street Reform and Consumer Protection Act, Public Law 111-203, 124 Stat. 1376 (2010).

³ Dodd-Frank Act § 742(c)(2) (codified at 7 U.S.C. § 2(c)(2)(E)) (2011).

⁴ See 7 U.S.C. § 2(c)(2)(B)(i)(I).

disclosure requirements are found in sections 240.5, 240.6, 240.10, 240.13b-d, 240.15, and 240.16. These requirements permit banking organizations under the Federal Reserve's supervision to engage in off-exchange transactions in foreign currency with retail customers and to describe various requirements with which banking organizations must comply to conduct such transactions. Compliance with the information collection is mandatory. No other federal law mandates these reporting, recordkeeping, and disclosure requirements.

Reporting Requirements

Section 240.4 requires that, prior to initiating a retail foreign exchange business, a banking institution provide the Board with notice. The notice must certify that the banking institution has written policies and procedures, and risk measurement and management systems controls in place to ensure that retail foreign exchange transactions are conducted in a safe and sound manner. The banking institution must also provide other information required by the Board, such as documentation of customer due diligence, new product approvals, and haircuts applied to noncash margin. The notice will be effective 60 days after a complete notice is received by the Board, which commences on the day the Board acknowledges the receipt of the complete notice in writing to the banking institution, unless the Board objects in writing.

Recordkeeping Requirements

Sections 240.7 and 240.13(a) require that a banking institution engaging in retail foreign exchange transactions keep full, complete, and systematic records and establish and implement internal rules, procedures, and controls. Section 240.7 also requires that a banking institution keep account, financial ledger, transaction and daily records, as well as memorandum orders, post-execution allocation of bunched orders, records regarding its ratio of profitable accounts, possible violations of law, records for noncash margin, and monthly statements and confirmations.

Section 240.9 requires policies and procedures for haircuts for noncash margin collected under the rule's margin requirements, and annual evaluations and modifications of the haircuts.

Disclosure Requirements

Section 240.5, regarding the application and closing out of offsetting long and short positions, requires a banking institution to promptly provide the customer with a statement reflecting the financial result of the transactions and the name of the introducing broker to the account. The customer may provide specific written instructions on how the offsetting transaction should be applied.

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. It also requires the disclosure by a banking institution of its fees and other charges and its profitable accounts ratio.

Section 240.10 requires a banking institution to issue monthly statements to each retail foreign exchange customer and to send confirmation statements following transactions.

Section 240.13(b) allows disclosure by a banking institution that an order of another person is being held by them only when necessary to the effective execution of the order or when the disclosure is requested by the Board. 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 receives proper written authorization from a person designated by such other retail foreign exchange counterparty with the responsibility for the surveillance over such account, promptly prepares a written record of the order, and transmits to the counterparty copies of all statements and written records. 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 the other retail foreign exchange counterparty receives proper written authorization to open and maintain the account from a person designated by the banking institution of which it is a related person with responsibility for the surveillance over the account and copies of all statements and written records for such accounts are transmitted to the counterparty.

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 a banking institution to which retail foreign exchange accounts or positions are assigned or transferred to provide the affected customers with risk disclosure statements and forms of acknowledgment and receive the signed acknowledgments within 60 days.

The customer dispute resolution provisions in section 240.16 require certain endorsements, acknowledgments, and signature language. It also requires that within 10 days after receipt of notice from the retail foreign exchange customer that they intend to submit a claim to arbitration, the banking institution will provide them with a list of persons qualified in the dispute resolution and that the customer must notify the banking institution of the person selected within 45 days of receipt of such list.

Time Schedule for Information Collection

The information collection pursuant to the reporting, recordkeeping, and disclosure requirements is event-generated.

Legal Status

The Board's Legal Division determined that this information collection is required by the Commodity Exchange Act (7 U.S.C. § 2(c)(2)(E)), the Federal Reserve Act (12 U.S.C. §§ 248 and 321–338), the Federal Deposit Insurance Act (12 U.S.C. § 1818), the International Banking Act (12 U.S.C. § 3108), and Regulation NN (12 C.F.R. Part 240). The information collection is mandatory. The reported data are regarded as confidential under the Freedom of Information Act (5 U.S.C. § 552(b)(4)).

Consultation Outside the Agency

On March 17, 2016, the Federal Reserve published a notice in the *Federal Register* (81 FR 14444) requesting public comment for 60 days on the extension, without revision, of this information collection. The comment period for this notice expired on May 16, 2016.

Estimate of Respondent Burden

The total annual burden for the information collection is estimated to be 1,972 hours. The reporting, recordkeeping, and disclosure requirements associated with Regulation NN represent less than 1 percent of the total Federal Reserve System paperwork burden.

	<i>Estimated number of respondents⁵</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Reporting				
Section 240.4	2	1	16	32
Recordkeeping				
Sections 240.7, 240.9, and 240.13a	2	1	183	366
Disclosure				
Sections 240.5, 240.6, 240.10, 240.13b-d, 240.15, and 240.16	2	1	787	<u>1,574</u>
<i>Total</i>				1,972

The total cost to the public for this information collection is estimated to be \$102,051.⁶

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

⁵ Of these respondents, none 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.

⁶ 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 \$17, 45% Financial Managers at \$63, 15% Lawyers at \$64, and 10% Chief Executives at \$87). 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 2014, published March 25, 2015, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

The cost to the Federal Reserve System is negligible.