

**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), will implement the Recordkeeping and Disclosure Requirements Associated with Regulation R. The Paperwork Reduction Act (PRA) classifies reporting, recordkeeping, or disclosure requirements of a regulation as an “information collection.”¹ The Board’s OMB control number will be 7100-0316.

On October, 3, 2007, the Securities and Exchange Commission (SEC) and the Board of Governors of the Federal Reserve System (Federal Reserve) (the Agencies) jointly issued a notice² of final rulemakings (NFR) to implement 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), as amended by the Gramm-Leach-Bliley Act (GLBA). The NFR defines terms used in these statutory exceptions and includes certain related exemptions. The sections of the NFR for Rules 701, 723, and 741 contain new information collection requirements.

Rule 701 requires banks that wish to utilize the exemption in that rule to make certain disclosures to the high net worth customer or institutional customer. In addition, Rule 701 requires banks that wish to utilize the exemption in that rule to provide a notice to its broker-dealer partner regarding names and other identifying information about bank employees. Rule 723 requires a bank that chooses to rely on the exemption in that rule to exclude certain trust or fiduciary accounts in determining its compliance with the chiefly compensated test in Rule 721 to maintain certain records relating to the excluded accounts. Rule 741 requires a bank relying on the exemption provided by Rule 741 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 50,375 hours for the estimated 1,000 banks that likely would seek exemptions under the NFR. There are no required reporting forms associated with this information collection.

Background and Justification

The GLBA amended several federal statutes governing the activities and supervision of banks, bank holding companies, and their affiliates. Among other things, it lowered barriers between the banking and securities industries erected by the Banking Act of 1933 (“Glass-Steagall Act”). It also altered the way in which the supervisory

¹ 44 U.S.C. § 3501 *et seq.*

² 72 FR 56514

responsibilities over the banking, securities, and insurance industries are allocated among financial regulators. Among other things, the GLBA repealed most of the separation of investment and commercial banking imposed by the Glass-Steagall Act. The GLBA also revised the provisions of the Exchange Act that had completely excluded banks from broker-dealer registration requirements.

In enacting the GLBA, Congress adopted functional regulation for bank securities activities, with certain exceptions from 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 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 Board 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 SEC and the Board jointly issue a single set of proposed rules to implement these exceptions.³

In accordance with these statutory provisions, the Agencies jointly issued, and requested public comment on, a single set of rules to implement certain broker exceptions for banks.⁴ The proposed rules also included exemptions related to the exceptions, as well as certain other additional exemptions. After carefully considering all the comments received on the proposed rules, the SEC and Board are jointly adopting 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. 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

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 71 FR 77522 (December 26, 2000)

go into effect. The final rules are designed to accommodate the current business practices of banks and protect investors.

Description of Information Collection

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

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

Rule 723. Rule 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 Rule 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.

Rule 741. Rule 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 rule 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

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 than the amount would be rounded up to 1) or 500.

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

Sensitive Questions

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

Consultation Outside the Agency

All of the Board's rulemaking activities are subject to the notice and comment requirements of the Administrative Procedure Act. On December 26, 2006, the agencies published a notice of proposed rulemaking in the *Federal Register* to seek public comment. The Agencies received comments from 58 organizations and individuals on the proposed rules, including banking organizations, trade associations, and supervisory authorities. In developing these rules, the Agencies consulted with, and sought the concurrence of, the Office of the Comptroller of the Currency ("OCC"), the Federal Deposit Insurance Corporation ("FDIC"), and the Office of Thrift Supervision ("OTS"), and have taken into consideration all comments received on the proposed rules.

Legal Status

The Board's Legal Division has determined that 15 U.S.C. 78c(a)(4)(F) authorizes the Board to require the information collection. If an institution considers the information to be trade secrets and/or privileged such information could be withheld from the public under the authority of the Freedom of Information Act, 5 U.S.C. 552(b)(4). Additionally, to the extent that such information may be contained in an examination report such information maybe also be withheld from the public, 5 U.S.C. 552 (b)(8).

Estimate of Respondent Burden

The total annual burden for the FR 4025 is estimated to be 50,375 hours, as shown in the table below. The total burden represents less than 1 percent of the total Federal Reserve System paperwork burden.

Under Rule 701, the Federal Reserve estimates that 1,000 banks will make the required referral fee disclosures to 100 customers annually. In addition, the Federal Reserve estimates that 1,000 banks will provide one notice annually to its broker-dealer partner regarding names and other identifying information about bank employees. The Federal Reserve further estimates that each bank will spend approximately 5 minutes per customer to comply with the disclosure requirement, and that a bank will spend approximately 15 minutes per notice to a broker-dealer.

The Federal Reserve estimates that approximately 50 banks annually will use the de minimis exclusion in Rule 723 and each such bank will, 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 will take each bank 15 minutes to comply with recordkeeping requirements under Rule 723.

Finally, the Federal Reserve estimates that approximately 500 banks annually will use the exemption in Rule 741 and each bank (or its partner bank) will deliver the prospectus required by the rule to approximately 1,000 customers annually. The Federal Reserve estimates further that a bank will spend approximately 5 minutes per response to comply with the delivery requirement of Rule 741.

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
Rule 701				
Disclosures to customers	1,000	100	5 minutes	8,333
Disclosures to brokers	1,000	1	15 minutes	250
Rule 723				
Recordkeeping	50	10	15 minutes	125
Rule 741				
Disclosures to customers	500	1,000	5 minutes	41,667
	<i>Total</i>			50,375

The total cost to Federal Reserve respondents is estimated to be \$3,105,619.⁶

Estimate of Cost to the Federal Reserve System

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

⁶ Total cost to Federal Reserve respondents was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% - Clerical @ \$25, 45% - Managerial or Technical @ \$55, 15% - Senior Management @ \$100, and 10% - Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.