

Office of the Comptroller of the Currency
Supporting Statement
Fiduciary Activities of National Banks – 12 CFR part 9
OMB Control Number 1557-0140

A. Justification.

1. Circumstances that make the collection necessary:

Pursuant to 12 U.S.C. 92a, the Office of the Comptroller of the Currency (OCC) regulates the fiduciary activities of national banks, including the administration of collective investment funds.

12 CFR part 9 requires national banks with fiduciary powers to retain all fiduciary records relating to an account for a period of three years after termination of the account or of related litigation. Part 9 also requires that national banks note results of fiduciary activities annually in the minutes of the board of directors. Both of these requirements are needed to ensure safety and soundness in bank fiduciary activities. Additionally, to ensure that the OCC has current information on which national banks have fiduciary powers, part 9 requires a national bank to file a certified copy of a board resolution in order to surrender its fiduciary powers.

To ensure adequate disclosure of operation aspects of collective investment funds, part 9 requires that a national bank operate a collective investment fund pursuant to a written plan. The written plan is the basic operating document of a collective investment fund, and serves as the primary disclosure document to fund participants. As such, it is analogous to the prospectus prepared by a registered investment company pursuant to SEC requirements. It contains provisions as to the manner in which a national bank will operate the fund and addresses such matters as investment powers and policies, terms, and conditions governing admissions and withdrawals of participants, the basis and method of valuation, and the basis upon which the fund may be terminated. The primary regulatory purpose of the plan is to define operational parameters of a collective investment fund, not to solicit information.

Finally, to ensure that information on the performance of a collective investment fund is available to current and prospective fund participants, part 9 requires a national bank to prepare an annual financial report on each fund and to notify participants of its availability. The annual financial report for a collective investment fund is a basic disclosure document for fund participants. The requirement is analogous to that of registered investment companies under SEC supervision. The annual financial report contains, among other things, a list of fund investments with cost and market values of each; a statement showing purchases and sales since the previous report, with any profit or loss; income and disbursements for the year; and investments in default.

2. Use of the information:

A national bank uses the plan to establish operational parameters of a collective investment fund and to disclose this information to fund participants. The OCC uses the plan and the annual

financial report to ensure bank compliance with provisions of the governing regulation (12 CFR 9.18) in its operation of a collective investment fund.

Participants and other members of the public use the plan and the annual financial report to obtain information about the fund, including its financial performance. The plan and the annual financial report inform and protect the investing public.

The OCC uses other information required by part 9 to ensure safe and sound banking practices of fiduciary operations.

3. Consideration of the use of improved information technology:

Banks may use any method of improved information technology that meets the requirements of the regulation.

4. Efforts to identify duplication:

The required information is not duplicative and is specific to a particular fund. The information disclosed is not available from any other source.

5. Methods used to minimize burden if the collection has a significant impact on a substantial number of small entities:

Not applicable. The collection does not have a significant impact on a substantial number of small entities.

6. Consequences to the Federal program if the collection were conducted less frequently:

The consequences of less frequent preparation or disclosure would be inadequate information for the needs of national banks, the OCC, and fund participants, since the information would be untimely. Less frequent preparation or disclosure could impair OCC supervision and inhibit market discipline and investor participation.

7. Special circumstances that would cause an information collection to be conducted in a manner inconsistent with 5 CFR Part 1320:

None. The information collection is conducted in accordance with the requirements of 5 CFR part 1320.

8. Efforts to consult with persons outside the agency:

On October 9, 2008, the OCC published a Notice in the Federal Register soliciting comments on the proposed extension of OMB approval of this information collection (73 FR 59707). The OCC received no public comments.

9. Payment or gift to respondents:

None.

10. Any assurance of confidentiality:

None.

11. Justification for questions of a sensitive nature:

There are no questions of a sensitive nature.

12. Burden estimate:

The OCC estimates that 492 national banks exercise fiduciary powers. The OCC estimates the combined annual reporting, recordkeeping, and disclosure burden at 126,403 hours.

Cite and Burden Type	PRA Requirements in 12 CFR Part 9	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
12 CFR 9.8 Recordkeeping	<p>Recordkeeping:</p> <p><i>Documentation of accounts</i> – A national bank shall document the establishment and termination of each fiduciary account and shall maintain adequate records.</p> <p><i>Retention of records</i> – A national bank shall retain records for a period of three years from the later of the termination of the account or the termination of any litigation.</p> <p><i>Separation of records</i> – A national bank shall ensure that the records are separate and distinct from other records of the bank.</p>	492 banks established an average of 891 fiduciary accounts	.25 hour	109,593 hours
12 CFR 9.9(a) and (b) Recordkeeping	<p>Audit of Fiduciary Activities:</p> <p><i>Annual audit</i> – A national bank shall note the results of an audit (including significant actions taken as a result of the audit) in the minutes of the board of directors.</p> <p><i>Continuous audit</i> – A bank that adopts a continuous audit system shall note the results of all discrete audits performed since the last audit report (including significant actions taken as a result of the audits) in the minutes of the board of directors at least once during each calendar year.</p>	492 banks	.25 hour	123 hours
12 CFR 9.17(a) Reporting	<p>Surrender or revocation of fiduciary powers:</p> <p><i>Surrender</i> – A national bank seeking to</p>	2 banks	1 hour	2 hours

Cite and Burden Type	PRA Requirements in 12 CFR Part 9	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	surrender its fiduciary powers shall file with the OCC a certified copy of the resolution of its board of directors evidencing that intent.			
12 CFR 9.18(b)(1) Recordkeeping	<p>Collective investment funds: <i>Written plan</i> – The bank shall establish and maintain each collective investment fund in accordance with a written plan. The plan must include provisions relating to:</p> <ul style="list-style-type: none"> • Investment powers and policies • Allocation of income, profits, and losses • Fees and expenses that will be charged to the fund and to participating accounts • Terms and conditions regarding admission and withdrawal of participating accounts • Audits of participating accounts • Basis and method of valuing assets • Expected frequency for income distribution • Minimum frequency for valuation of fund assets • Amount of time following a valuation date during which the valuation must be made • Bases upon which the bank may terminate the fund • Any other matters necessary to define clearly the rights of participating accounts 	<p>74 banks operate 1,815 Collective Investment Funds</p> <p>Establish Plan (15 funds)</p> <p>Maintain Plan (1,815 funds)</p>	<p>20 hours</p> <p>.75 hours</p>	<p>300 hours</p> <p>1,361.25 hours</p>
12 CFR 9.18(b)(1) Disclosure	<p>Collective investment funds: <i>Written plan</i> – A bank shall make a copy of the Plan available for public inspection at its main office and shall provide a copy of the Plan to any person who requests it.</p>	1,815 funds	.25 hours	453.75 hours
12 CFR 9.18(b)(6) (ii) Recordkeeping	<p>Collective investment funds: <i>Financial reports</i> – At least once during each 12-month period, a bank shall prepare a financial report of the fund based on the audit required by § (b)(6)(i). The report must disclose the fund’s fees and expenses in a manner consistent with applicable state law in which the bank maintains the fund. This report must contain:</p> <ul style="list-style-type: none"> • List of investments in the fund showing the cost and current market value of each investment • Statement showing the following 	1,815 funds	7.75 hours	14,066.25 hours

Cite and Burden Type	PRA Requirements in 12 CFR Part 9	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	(organized by type of investment): <ul style="list-style-type: none"> ■ A summary of purchases (with costs) ■ A summary of sales (with profit or loss and any investment change) ■ Income and disbursements ■ An appropriate notation of investments in default 			
12 CFR 9.18(b)(6) (iv) Disclosure	Collective investment funds: <i>Availability of the report</i> – A bank administering a collective investment fund shall provide a copy of the financial report, or shall provide notice that a copy of the report is available upon request without charge, to each person who ordinarily would receive a regular periodic accounting with respect to each participating account. The bank may provide a copy to prospective customers. In addition, the bank shall provide a copy of the report upon request for any person for a reasonable charge.	1,815 funds	.25 hours	453.75 hours
12 CFR 9.18(c)(5) Reporting	Collective investment funds: <i>Other collective investments: Special exemption funds</i> – A bank shall submit to the OCC a written plan that sets forth: <ul style="list-style-type: none"> • The reason the proposed fund requires a special exemption • The provisions of the fund that are inconsistent with § 9.18(a) and (b) • The provisions of § 9.18(b) for which the bank seeks an exemption • The manner in which the proposed fund addresses the rights and interests of participating accounts 	1 bank/1 fund	50	50 hours
TOTALS		492 respondents		126,403 hours

Cost of Hour Burden to Respondents:

The OCC estimates the cost of the hour burden to respondents (by wage rate categories) as follows:

Clerical (\$20/hour):	09% x 126,403 =	11,376 @ \$20 =	\$ 227,520
Managerial/Technical (\$40/hour):	43% x 126,403 =	54,353 @ \$40 =	\$ 2,174,120
Senior Management (\$80/hour):	48% x 126,403 =	60,673 @ \$80 =	\$ 4,853,840
Total Cost to Respondents:			\$ 7,255,480

13. Estimate of total annual costs to respondents (excluding cost of hour burden in Item #12):

No capital outlay is required. This is a renewal, without change, of an existing requirement.

14. Estimate of annualized costs to the Federal government:

None.

15. Change in burden:

Former burden:	580 respondents; 309,825 burden hours
New burden:	492 respondents; 126,403 burden hours
Difference:	- 88 respondents; -183,422 burden hours (adjustment)

16. Information regarding collections whose results are to be published for statistical use:

The OCC has no plans to publish the information for statistical purposes.

17. Reasons for not displaying OMB approval expiration date:

Not applicable. This submission involves a regulation.

18. Exceptions to the certification statement in Item 19 of OMB Form 83-I:

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.