

Office of the Comptroller of the Currency
Supporting Statement
Fiduciary Activities
12 CFR Parts 9 and 150
OMB Control No. 1557-0140

On July 21, 2010, the Dodd-Frank Wall Street Reform and Consumer Protection Act was signed into law, P.L. 111-203, 124 Stat. 1376 (2010) (Dodd-Frank Act). As part of the comprehensive package of financial regulatory reform measures enacted, Title III of the Dodd-Frank Act transferred the powers, authorities, rights and duties of the Office of Thrift Supervision (OTS) to other banking agencies, including the OCC, on July 21, 2011. The Dodd-Frank Act also abolishes the OTS ninety days after the transfer date. As part of that transfer process, the OCC made a non-substantive change to this collection of information to merge OTS's information collection regarding Fiduciary Activities (OMB Control Nos. 1550-0037; 1557-0262) with this collection of information. OCC is now renewing the merged collection.

A. Justification

1. Circumstances and need for the collection.

Pursuant to 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds. Under 12 U.S.C. 1464(n), the OTS regulated the fiduciary activities of federal savings associations. 12 CFR Parts 9 and 150 contain the regulations that national banks and federal savings associations (institutions), respectively must follow when conducting fiduciary activities.

12 CFR Parts 9 and 150 require institutions 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. They also require that institutions 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 fiduciary activities. Additionally, to ensure that the OCC has current information on which institutions have fiduciary powers, parts 9 and 150 require an institution to file a certified copy of a board resolution in order to surrender fiduciary powers.

To ensure adequate disclosure of operation aspects of collective investment funds, parts 9 and 150 require that institutions 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 an institution will operate the fund and addresses such matters as investment powers and policies, terms, and conditions governing the admission and withdrawal 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 the operational parameters of a collective investment fund, not to solicit information.

To ensure that information on the performance of a collective investment fund is available to current and prospective fund participants, parts 9 and 150 require an institution 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 information.

An institution 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 an institution's compliance with provisions of the governing regulation (12 CFR 9.18, 150.260) 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 parts 9 and 150 to ensure safe and sound banking practices of fiduciary operations.

3. Use of technology to reduce burden.

Institutions 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. Minimizing the burden on small entities.

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

6. Consequences of less frequent collection.

The consequences of less frequent preparation or disclosure would be inadequate information for the needs of national banks, federal savings associations, 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 necessitating collection inconsistent with 5 C.F.R. Part 1320.

These information collections are conducted in a manner consistent with the requirements of 5 C.F.R. Part 1320.

8. Consultation with persons outside the agency.

Notice of the intent to renew this information collection was published in the Federal Register, on April 18, 2011 (76 FR 21799). No comments were received.

9. Payment to respondents.

There are no payments to respondents.

10. Confidentiality.

There are no assurances of confidentiality.

11. Justification for questions of a sensitive nature.

There are no questions of a sensitive nature.

12. Burden estimate.

The OCC estimates that 428 national banks and 70 federal savings associations exercise fiduciary powers. The OCC estimates the combined annual reporting, recordkeeping, and disclosure burden at 83,529 hours.

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
12 CFR 9.8 & 12 CFR 150.410 – 150.430 Recordkeeping	<p>Recordkeeping:</p> <p><i>Documentation of accounts</i> – An institution shall document the establishment and termination of each fiduciary account and shall maintain adequate records.</p> <p><i>Retention of records</i> – An institution 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> – An institution shall ensure that the records are separate and distinct from other records of the institution.</p>	498 institutions established and terminated an average of 920 fiduciary accounts per year	.15 hour	68,724 hours
12 CFR 9.9(a) and (b) & 12 CFR 150.480 Recordkeeping	<p>Audit of Fiduciary Activities:</p> <p><i>Annual audit</i> – An institution shall note the results of an audit (including significant actions taken as a result of the audit) in the</p>	498 institutions	.25 hour	125 hours

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	<p>minutes of the board of directors.</p> <p><i>Continuous audit</i> – An institution 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>			
12 CFR 9.17(a) & 12 CFR 150.530 Reporting	<p>Surrender or revocation of fiduciary powers:</p> <p><i>Surrender</i> – An institution seeking to surrender its fiduciary powers shall file with the OCC a certified copy of the resolution of its board of directors evidencing that intent.</p>	2 institutions	1 hour	2 hours
12 CFR 9.18(b)(1) & 12 CFR 150.260 Recordkeeping	<p>Collective investment funds:</p> <p><i>Written plan</i> – The institution 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 institution may terminate the fund • Any other matters necessary to define clearly the rights of participating accounts 	<p>57 institutions operate 1,592 Collective Investment Funds</p> <p>Establish Plan (15 funds)</p> <p>Maintain Plan (1,592 funds)</p>	<p>20 hours</p> <p>.75 hours</p>	<p>300 hours</p> <p>1,194 hours</p>
12 CFR 9.18(b)(1) & 12 CFR 150.260 Disclosure	<p>Collective investment funds:</p> <p><i>Written plan</i> – An institution shall make a copy of the Plan available for public inspection at its main office and shall</p>	1,592 funds	.25 hours	398 hours

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	provide a copy of the Plan to any person who requests it.			
12 CFR 9.18(b)(6) (ii) & 12 CFR 150.260 Recordkeeping	<p>Collective investment funds: <u>Financial reports</u> – At least once during each 12-month period, an institution shall prepare a financial report of the fund based on the audit required by § 9.18(b)(6)(i). The report must disclose the fund’s fees and expenses in a manner consistent with applicable state law in which the institution 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 (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 	1,592 funds	7.75 hours	12,338 hours
12 CFR 9.18(b)(6) (iv) & 12 CFR 150.260 Disclosure	<p>Collective investment funds: <u>Availability of the report</u> – An institution 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 institution may provide a copy to prospective customers. In addition, the institution shall provide a copy of the report upon request for any person for a reasonable charge.</p>	1,592 funds	.25 hours	398 hours
12 CFR 9.18(c)(5) & 12 CFR 150.260 Reporting	<p>Collective investment funds: <u>Other collective investments: Special exemption funds</u> – An institution shall submit to the OCC a written plan that sets forth:</p> <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 	1 institution/ 1 fund	50	50 hours

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Estimated Burden Hours
	which the institution seeks an exemption <ul style="list-style-type: none"> The manner in which the proposed fund addresses the rights and interests of participating accounts 			
TOTALS		498 respondents		83,529 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 83,529 =	7,517 @ \$20 =	\$ 150,352
Managerial/Technical (\$40/hour):	43% x 83,529 =	35,917 @ \$40 =	\$ 1,436,698
Senior Management (\$80/hour):	48% x 83,529 =	40,093 @ \$80 =	\$ <u>3,207,513</u>
Total Cost to Respondents:			\$ 4,794,563

13. Estimate of annual cost. There is no annualized cost other than that specified in item #12.

14. Estimates of annualized cost to government.

The total annualized cost to the government will be minimal.

15. Changes in burden.

Prior Burden:

605 respondents; 155,435 burden hours

Current Burden:

498 respondents; 83,529 burden hours

Difference:

- 107 respondents; - 71,906 burden hours

The decrease is due to the reduction in the number of regulated institutions.

16. Publication for statistical use.

The information will not be used for statistical purposes.

17. Display of expiration date.

Not applicable.

18. Exceptions to the certification statement.

Not applicable.

B. Collection of information employing statistical methods.

Not applicable.