

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

A. Justification

1. Circumstances and need for the collection.

The OCC is seeking to amend its approved collection of information concerning fiduciary activities to include new burden contained in a notice of proposed rulemaking (NPRM) concerning short-term investment funds (STIFs) managed by national banks. As of December 31, 2011, no federal savings associations managed a STIF, thus, the NPRM does not increase burden for federal savings associations.

Current Rules

Pursuant to 12 U.S.C. 92a, the OCC regulates the fiduciary activities of national banks, including the administration of collective investment funds (CIFs). 12 CFR Part 9 contains the regulations that national banks must follow when conducting fiduciary activities.

12 CFR Part 9 requires 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. It also requires that 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 fiduciary activities. Additionally, to ensure that the OCC has current information on which banks have fiduciary powers, part 9 requires a bank to file a certified copy of a board resolution in order to surrender fiduciary powers.

To ensure adequate disclosure of operation aspects of CIFs, part 9 requires that banks operate a CIF pursuant to a written plan. The written plan is the basic operating document of a CIF 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 bank 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 CIF, not to solicit information.

To ensure that information on the performance of a CIF is available to current and prospective fund participants, part 9 requires a bank to prepare an annual financial report on each fund and to notify participants of its availability. The annual financial report for a CIF 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.

Part 9 provides a general rule for valuation of a CIF's assets that specifies that a CIF admitting or withdrawing the fiduciary account may only do so on the basis of a valuation of the CIF's assets, as of the admission or withdrawal date, based on the market value of the CIF's assets. This is to protect all participating accounts in the CIF from the risk that other accounts will be admitted or withdrawn at valuations that dilute the value of existing participating interests in the CIF. A STIF is a type of CIF that permits a bank to value the STIF's assets on an amortized cost basis, rather than at market value, for purposes of admissions and withdrawals, which is an exception to the general rule of market valuation. To qualify for this exception under the current rule, the STIF must: (1) maintain a dollar-weighted average portfolio maturity of 90 days or less; (2) accrue on a straight-line basis the difference between the cost and anticipated principal receipt on maturity; and (3) hold the fund's assets until maturity under usual circumstances. By limiting the CIF's investments to shorter-term assets and generally requiring those assets to be held to maturity, any differences between the amortized cost and market value of the assets will be rare, absent atypical market conditions or default on an asset.

NPRM

The NPRM proposes additional safeguards designed to address the risk to participating interest of loss of principal, including measures governing the nature of a STIF's investments, ongoing monitoring of its mark-to-market value and forecasting of potential changes in its mark-to-market value under adverse market conditions, greater transparency and regulatory reporting about the STIF's holdings, and procedures to protect fiduciary accounts from undue dilution of their participating interests in the event the STIF loses the ability to maintain a stable net asset value (NAV).

The NPRM would enhance protections provided to STIF participants and reduce risks to banks that manage STIFs. It would add new requirements or amend existing requirements that a CIF must meet to be considered a STIF and value assets on a cost basis. The OCC believes many banks that offer STIFs are already engaged in the risk mitigation efforts set forth in this proposed rule.

2. Use of information.

Current Rules

Banks use a written plan to establish operational parameters of a CIF and to disclose this information to fund participants. The OCC uses the plan and the annual financial report to ensure a bank's compliance with provisions of the governing regulations (12 CFR 9.18) in its operation of a CIF.

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.

Section-by-Section Description of Proposed Changes

§ 9.18(b)(4)(iii)(A)

STIFs typically maintain stable NAVs in order to meet the expectations of the fund's bank administrators and participating accounts. To the extent a bank fiduciary offers a STIF with a fund objective of maintaining a stable NAV, participating accounts and the OCC expect those STIFs to maintain a stable NAV if they use amortized cost to set the NAV. The NPRM would require a Plan to have as a primary objective that the STIF operate with a stable NAV of \$1.00 per participating interest.

§ 9.18(b)(4)(iii)(B)

Currently, the bank managing the STIF must maintain a dollar weighted average portfolio maturity of 90 days or less. It restricts the weighted average maturity of the STIF's portfolio, in order to limit the exposure of participating accounts to certain risks, including interest rate risk. The NPRM would change the maturity limits to further reduce such risks by reducing the maximum weighted average portfolio maturity permitted by the rule from 90 days or less to 60 days or less and establishing a new maturity test that would limit the portion of a STIF's portfolio that could be held in longer term variable- or floating-rate securities. The Securities that have shorter periods remaining until maturity generally exhibit a lower level of volatility in response to interest rate and credit spread fluctuations and, thus, provide a greater assurance that the STIF will continue to maintain a stable value.

The NPRM also would add a new maturity requirement for STIFs, which would limit the dollar-weighted average portfolio life maturity to 120 days or less. The dollar-weighted average portfolio life maturity would be measured without regard to a security's interest rate reset dates and, thus, would limit the extent to which a STIF could invest in longer term securities that may expose it to increased credit spread risk.

To determine compliance with the dollar-weighted average maturity requirement of the current STIF Rule, banks generally treat the maturity of a portfolio security as the period remaining until the date on which the principal must unconditionally be repaid according to its terms or, in the case of a security called for redemption, the date on which the redemption payment must be made. Because there are exceptions that allow a bank to treat certain floating or adjustable-rate securities as having shorter maturities equal to the time remaining to the next interest rate reset date, STIFs may treat longer term adjustable-rate securities as short-term securities. While adjustable-rate securities held in these funds do tend to protect a STIF against changes in interest rates, they do not fully protect against liquidity risk to the portfolio.

Because the traditional dollar-weighted average portfolio maturity measurement in the current STIF rule does not require a STIF to limit these risks, the NPRM would impose a new dollar-weighted average portfolio life maturity limitation on the structure of a STIF to capture credit and liquidity risk not encompassed by the dollar-weighted average portfolio maturity restriction. It would require that STIFs maintain a dollar-weighted average portfolio life maturity

of 120 days or less, which would provide a reasonable balance between strengthening the resilience of STIFs to credit and liquidity risk while not unduly restricting the bank's ability to invest the STIF's fiduciary assets in a diversified portfolio of short-term, high quality debt securities.

§ 9.18(b)(4)(iii)(E)

To ensure that banks managing STIFs include practices designed to limit the amount of credit and liquidity risk to which participating accounts in STIFs are exposed, the NPRM would require adoption of portfolio and issuer qualitative standards and concentration restrictions.

§ 9.18(b)(4)(iii)(F)

Many banks process STIF withdrawal requests within a short time frame, often on the same day that the withdrawal request is received, which necessitates sufficient liquidity to meet such requests. By holding illiquid securities, a STIF exposes itself to the risk that it will be unable to satisfy withdrawal requests promptly without selling illiquid securities at a loss that, in turn, could impair its ability to maintain a stable NAV. Moreover, illiquid securities are generally subject to greater price volatility, exposing the STIF to greater risk that its mark-to-market value will deviate from its amortized cost value. To address this concern, the NPRM would require adoption of standards and provisions that address contingency funding needs.

§ 9.18(b)(4)(iii)(G)

The NPRM would require a bank managing a STIF to adopt shadow pricing procedures. The procedures require the bank to calculate the extent of the difference, if any, between the mark-to-market NAV per participating interest using available market quotations (or an appropriate substitute that reflects current market conditions) from the STIF's amortized cost value per participating interest. In the event the difference exceeds \$0.005 per participating interest, the bank must take action to reduce dilution of participating interests or other unfair results to participating accounts in the STIF, such as ceasing fiduciary account withdrawals. The shadow pricing procedures must occur at least on a calendar week end basis and more frequently as determined by the bank when market conditions warrant.

§ 9.18(b)(4)(iii)(H)

The NPRM would require a bank managing a STIF to adopt procedures for stress testing the fund's ability to maintain a stable NAV for participating interests at least on a calendar month-end basis. The stress testing would be based upon hypothetical events (specified by the bank) that include, but are not limited to, a change in short-term interest rates; an increase in participating account withdrawals; a downgrade of or default on portfolio securities; and the widening or narrowing of spreads between yields on an appropriate benchmark the fund has selected for overnight interest rates and commercial paper and other types of securities held by the fund.

The NPRM provides flexibility with respect to specifying the scenarios or assumptions on which the stress tests should be based, as appropriate to the risk exposures of each STIF. The

NPRM also would require a stress test report be provided to the independent risk manager or the committee responsible for the STIF's oversight. The report would include: (1) the date(s) on which the testing was performed; (2) the magnitude of each hypothetical event that would cause the difference between the STIF's mark-to-market NAV calculated using available market quotations (or appropriate substitutes which reflect current market conditions) and its NAV per participating interest calculated using amortized cost to exceed \$0.005; and (3) an assessment by the bank of the STIF's ability to withstand the events (and concurrent occurrences of those events) that are reasonably likely to occur within the following year.

In addition, the proposal would require that adverse stress testing results are reported to a bank's senior risk management that is independent from the STIF's investment management.

§ 9.18(b)(4)(iii)(I)

The NPRM would require banks managing STIFs to disclose information about their portfolio holdings to STIF participants and to the OCC within five business days after each month end. Specifically, the bank would be required to disclose the STIF's total assets under management; the fund's mark-to-market and amortized cost NAVs, both with and without capital support agreements; dollar-weighted average portfolio maturity and dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month. Also, for each security held by the STIF as of the last business day of the prior calendar month, the bank would be required to disclose to STIF participants and the OCC within five business days after each calendar month-end at the security level: (1) the name of the issuer; (2) the category of investment; (3) the Committee on Uniform Securities Identification Procedures (CUSIP) number or other standard identifier; (4) the principal amount; (5) the maturity date for purposes of calculating dollar-weighted average portfolio maturity; (6) the final legal maturity date (taking into account any maturity date extensions that may be effected at the option of the issuer) if different from the maturity date for purposes of calculating dollar-weighted average portfolio maturity; (7) the coupon or yield; and (8) the amortized cost value.

§ 9.18(b)(4)(iii)(J)

The NPRM would require a bank that manages a STIF to notify the OCC prior to or within one business day after certain events. Those events are: (1) any difference exceeding \$0.0025 between the NAV and the mark-to-market value of a STIF participating interest based on current market factors; (2) when a STIF has re-priced its NAV below \$0.995 per participating interest; (3) any withdrawal distribution-in-kind of the STIF's participating interests or segregation of portfolio participants; (4) any delays or suspensions in honoring STIF participating interest withdrawal requests; (5) any decision to formally approve the liquidation, segregation of assets or portfolios, or some other liquidation of the STIF; and (6) when a national bank, its affiliate, or any other entity provides a STIF financial support, including a cash infusion, a credit extension, a purchase of a defaulted or illiquid asset, or any other form of financial support in order to maintain a stable NAV per participating interest. This proposed requirement to notify the OCC prior to or within one business day after these limited specific events would permit the OCC to more effectively supervise STIFs that are experiencing liquidity or valuation stress.

§ 9.18(b)(4)(iii)(K)

The NPRM would require banks managing a STIF to adopt procedures that in the event a STIF has re-priced its NAV below \$0.995 per participating interest, the bank managing the STIF shall calculate, redeem, and sell the STIF's participating interests at a price based on the mark-to-market NAV. Currently, the rule creates an incentive for withdrawal of participating interests if the mark-to-market NAV falls below the stable NAV because the earlier withdrawals are more likely to receive the full stable NAV payment. The NPRM removes this incentive, as once the NAV is priced below \$0.995, all withdrawals of participating interests will receive the mark-to-market NAV instead of the stable NAV.

§ 9.18(b)(4)(iii)(L)

The NPRM would require a bank managing a STIF to adopt procedures for suspending redemptions and initiating liquidation of a STIF as a result of redemptions. The intent of the proposal is to reduce the vulnerability of participating accounts to the harmful effects of extraordinary levels of withdrawals, which can be accomplished to some degree by suspending withdrawals. These suspensions would only be permitted in limited circumstances when, as a result of redemption, the bank has: (1) determined that the extent of the difference between the STIF's amortized cost per participating interest and its mark-to-market NAV per participating interest may result in material dilution or unfair results to participating accounts; (2) formally approved the liquidation of the STIF; and (3) facilitated the fair and orderly liquidation of the STIF to the benefit of all STIF participants. The proposed requirement is limited to permitting suspension in extraordinary circumstances when there is significant risk of extraordinary withdrawal activity to the detriment of other participating accounts.

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, 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.

The OCC issued an NPRM for sixty days of comment in the *Federal Register*. 77 FR _____ (_____, 2012).

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.

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Annual Frequency	Estimated Burden Hours
12 CFR 9.8 & 12 CFR 150.410 – 150.430 Recordkeeping	<p>Recordkeeping: <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</p>	498 Institutions Established and Terminated an Average of 920 Participating Accounts per Year	.15	1	68,724

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Annual Frequency	Estimated Burden Hours
	distinct from other records of the institution.				
12 CFR 9.9(a) and (b) & 12 CFR 150.480 Recordkeeping	Audit of Fiduciary Activities: <u>Annual audit</u> – An institution 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. <u>Continuous audit</u> – 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.	498 Institutions	.25	1	125
12 CFR 9.17(a) & 12 CFR 150.530 Reporting	Surrender or revocation of fiduciary powers: <u>Surrender</u> – 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.	2 Institutions	1	1	2
12 CFR 9.18(b)(1) & 12 CFR 150.260 Recordkeeping	Collective investment funds: <u>Written plan</u> – The institution shall establish and maintain each collective investment fund in accordance with a written plan. The plan must include provisions relating to: <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 	57 Institutions Managing 1,592 Collective Investment Funds Establish Plan (15 funds) Maintain Plan (1,592 funds)	 20 .75	 1 1	 300 1,194

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Annual Frequency	Estimated Burden Hours
	<ul style="list-style-type: none"> 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 				
12 CFR 9.18(b)(1) & 12 CFR 150.260 Disclosure	<p>Collective investment funds: <i>Written plan</i> – An institution 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>	1,592 Funds	.25	1	398
12 CFR 9.18(b)(4)(iii)(E) Recordkeeping	<p>Collective investment funds: Adopt portfolio and issuer qualitative standards and concentration restrictions.</p>	15 Respondents Managing 34 Funds	20	1	680
12 CFR 9.18(b)(4)(iii)(F) Recordkeeping	<p>Collective investment funds: Adopt liquidity standards and include provisions that address contingency funding needs.</p>	15 Respondents Managing 34 Funds	20	1	680
12 CFR 9.18(b)(4)(iii)(G) Recordkeeping	<p>Collective investment funds: Adopt shadow pricing procedures.</p>	15 Respondents Managing 34 Funds	20	1	680
12 CFR 9.18(b)(4)	Collective investment				

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Annual Frequency	Estimated Burden Hours
(iii)(H)	funds: Adopt procedures for stress testing of the STIF's ability to maintain a stable net asset value per participating interest; conduct tests				
Recordkeeping	Develop procedures	15 Respondents Managing 34 Funds	80	1	2,720
Recordkeeping	Conduct stress tests	15 Respondents Managing 34 Funds	25	12	10,200
Reporting	Draft report	15 Respondents Managing 34 Funds	12	12	4,896
Reporting	Review of report by Risk Manager	15 Respondents Managing 34 Funds	8	12	3,264
12 CFR 9.18(b)(4) (iii)(I)	Collective investment funds: Adopt procedures that require a bank to disclose the fund's: assets under management; mark-to-market NAV; dollar weighted average portfolio maturity; the dollar-weighted average portfolio life maturity and certain other information for each security held; make disclosures				
Recordkeeping	Initial burden	15 Respondents Managing 34 Funds	40	1	1,360
Disclosure	Ongoing burden	15 Respondents Managing 34 Funds	8	12	3,264
12 CFR 9.18(b)(4) (iii)(J) Recordkeeping	Collective investment funds: Adopt procedures that require a bank that manages a STIF to notify the OCC prior to or within one business day thereafter of certain events.	15 Respondents Managing 34 Funds	10	1	340
12 CFR 9.18(b)(4) (iii)(K) Recordkeeping	Collective investment funds: Adopt procedures regarding certain re-pricing events.	15 Respondents Managing 34 Funds	10	1	340
12 CFR 9.18(b)(4) (iii)(L) Recordkeeping	Collective investment funds: Adopt procedures for suspending redemptions and initiating liquidation of a	15 Respondents Managing 34 Funds	10	1	340

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Annual Frequency	Estimated Burden Hours
12 CFR 9.18(b)(6) (ii) & 12 CFR 150.260 Recordkeeping	STIF. Collective investment funds: <i>Financial reports</i> – 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: <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		12,338
12 CFR 9.18(b)(6) (iv) & 12 CFR 150.260 Disclosure	Collective investment funds: <i>Availability of the report</i> – An institution managing a collective investment fund shall provide a copy of the financial report, or shall provide notice that a copy of	1,592 Funds	.25		398

Cite and Burden Type	PRA Requirements in 12 CFR Parts 9 and 150	Number of Respondents	Average Hours Per Response	Annual Frequency	Estimated Burden Hours
	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.				
12 CFR 9.18(c)(5) & 12 CFR 150.260 Reporting	<p>Collective investment funds: <i>Other collective investments: Special exemption funds</i> – 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 which the institution seeks an exemption • The manner in which the proposed fund addresses the rights and interests of participating accounts 	1 Institution Managing 1 Fund	50		50
TOTALS		498 Respondents			112,293 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 113,985 = 10,258.65 @ \$20 = \$ 205,173

Managerial/Technical (\$40/hour):	43% x 113,985=	49,013.55 @ \$40 =	\$ 1,960,542
Senior Management (\$80/hour):	48% x 113,985=	54,712.80 @ \$80 =	\$ 4,377,024
Total Cost to Respondents:			\$ 6,542,739

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:

83,529 burden hours

Current Burden:

112,293 burden hours

Difference:

+ 28,764 burden hours

The increase is due to the burden imposed by the additional regulatory requirements found in the NPRM.

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.