

**Supporting Statement for the
Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN
(Retail Foreign Exchange Transactions) (Reg NN; OMB No. to be obtained)**

***Retail Foreign Exchange Transactions (Regulation NN)
(Docket No. R-1428) (RIN 7100-AD79)***

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to implement the Reporting, Recordkeeping, and Disclosure Requirements Associated with Regulation NN (Retail Foreign Exchange Transactions) (Reg NN; OMB No. to be obtained). The Paperwork Reduction Act (PRA) classifies reporting, recordkeeping, or disclosure requirements of a regulation as an “information collection.”¹

The Federal Reserve has adopted a final rule to permit banking organizations under its supervision to engage in certain transactions in foreign currency with retail customers. The final rule also describes various requirements with which banking organizations must comply to conduct such transactions. On August 3, 2011, the Federal Reserve published a notice of proposed rulemaking in the *Federal Register* for public comment (76 FR 46652). The comment period expired on October 11, 2011. On April 9, 2013, the Federal Reserve published a notice of final rulemaking in the *Federal Register* (78 FR 21019). The final rule is effective on May 13, 2013.

The reporting requirements are found in section 240.4; the recordkeeping requirements are found in sections 240.7, 240.9, and 240.13(a); and the disclosure requirements are found in sections 240.5, 240.6, 240.10, 240.13b-d, 240.15, and 240.16. This information collection requirements will implement 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 6,870 hours for the 7 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

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).

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.

Description of Information Collection

The reporting requirements are found in section 240.4; the recordkeeping requirements are found in sections 240.7, 240.9, and 240.13(a); and the disclosure requirements are found in sections 240.5, 240.6, 240.10, 240.13b-d, 240.15, and 240.16. The Federal Reserve is adopting these requirements to permit banking organizations under its 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 in 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. A banking institution already engaging in a retail foreign exchange business may continue to do so, provided it submits the notification requirements information within 30 days of the effective date.

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.

⁴ See 7 U.S.C. § 2(c)(2)(B)(i)(I).

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, promptly prepares a written record of the order, and transmits to the counterparty copies all statements and written records. Section 240.13(d) prohibits a related person of a banking institution engaging in foreign exchange transactions from having an account with another retail foreign exchange counterparty unless it receives proper written authorization 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 has determined that these information collections are 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. § 240). 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 August 3, 2011, the Federal Reserve published the proposed rule in the *Federal Register* (76 FR 46652) requesting public comment on the proposed information collection. The comment period for this notice expired on October 11, 2011. The Federal Reserve did not receive any comments regarding the PRA implication of its retail foreign exchange regulation. On April 9, 2013, the Federal Reserve published the final rule in the *Federal Register* (78 FR 21019) and it is effective on May 13, 2013.

Estimate of Respondent Burden

The total annual burden for Reg NN is estimated to be 6,870 hours. The Reg NN reporting, recordkeeping, and disclosure requirements represent less than 1 percent of the total Federal Reserve System paperwork burden.

| | <i>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 | 5 | 1 | 16 | 80 |
| Recordkeeping | | | | |
| Sections 240.7, 240.9, and 240.13a | 7 | 1 | 183 | 1,281 |
| Disclosure | | | | |
| Sections 240.5, 240.6, 240.10, 240.13b-d, 240.15, and 240.16 | 7 | 1 | 787 | <u>5,509</u> |
| | <i>Total</i> | | | 6,870 |

The total cost to the public for this information collection is estimated to be \$308,120.⁶

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

The cost to the Federal Reserve System is negligible.

⁵ Of these respondents, none are small entities as defined by the Small Business Administration (i.e., entities with less than \$175 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 rate (30% Office & Administrative Support @ \$17, 45% Financial Managers @ \$52, 15% Legal Counsel @ \$55, and 10% Chief Executives @ \$81). Hourly rate for each occupational group are the median hourly wages (rounded up) from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages 2011*, www.bls.gov/news.release/ocwage.nr0.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.