

## **SUPPORTING STATEMENT for the Paperwork Reduction Act Information Collection Submission for Proposed Rules 303.1 to 303.13**

This submission is being made pursuant to the Paperwork Reduction Act of 1995, 44 U.S.C. Section 3501 et seq.

### **A. Justification**

#### **1. Necessity of Information Collection**

Section 956(e) of the Dodd- Frank Act<sup>1</sup> requires that the Commission, jointly with the Board of Governors of the Federal Reserve System, the Office of the Comptroller of the Currency, the Federal Deposit Insurance Corporation, the National Credit Union Administration, and the Federal Housing Finance Agency (together the “Agencies”), prescribe regulations or guidelines that prohibit any type of incentive-based payment arrangement, or any feature of such arrangement, that the Agencies determine encourages inappropriate risks by covered financial institutions (i) by providing an executive officer, employee, director or principal shareholder of the covered financial institution with excessive compensation, fees or benefits or (ii) that could lead to material financial loss to the covered financial institution. Under Section 956 of the Dodd-Frank Act, a covered financial institution also must disclose to its appropriate Federal regulator the structure of its incentive-based compensation arrangements sufficient to determine whether the structure provides excessive compensation, fees, or benefits or could lead to material financial loss to the institution. Section 956 of the Dodd-Frank Act does not require a covered financial institution to disclose compensation of individuals as part of this requirement.

The Agencies have jointly proposed rules to implement Section 956. The Commission proposed them as rules 303.1 through 303.13 (the “Proposed Rules”).<sup>2</sup>

Proposed Rule 303.4(f) would require broker-dealers registered under section 15 of the Securities Exchange Act of 1934 (15 U.S.C. 78o) and investment advisers as such term is defined in section 202(a)(11) of the Investment Advisers Act of 1940 (15 U.S.C. 80b-2(a)(11)), in each case, with assets of at least \$1 billion (“Covered Institutions”) to create annually and maintain for a period of at least seven years records that document the structure of all of their incentive-based compensation arrangements and that demonstrate compliance with the Proposed Rules. Covered Institutions must disclose the records to the Commission upon request. At a minimum, the records must include copies of all incentive-based compensation plans, a record of who is subject to each plan, and a description of how the incentive-based compensation program is compatible with effective risk management and controls. A Covered Institution would not be required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of this requirement.

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<sup>1</sup> Pub. L. 111-203, 124 Stat. 1376 (2010).

<sup>2</sup> See Securities Exchange Act Release No. 77776 (May 6, 2016), 81 FR 37669 (June 10, 2016).

Proposed Rule 303.5 would apply to a subset of Covered Institutions. Proposed Rule 303.5 would require broker-dealers and investment advisers with assets of at least \$50 billion (“Level 1 and Level 2 Covered Institutions”) to create annually and maintain for a period of at least seven years records that document: (1) their senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to their incentive-based compensation arrangements and policies. A Level 1 or Level 2 Covered Institution must create and maintain records in a manner that allows for an independent audit of incentive-based compensation arrangements, policies, and procedures, including, those required under Proposed Rule 303.11. A Level 1 or Level 2 Covered Institution must provide the records to the Commission in such form and with such frequency as requested by the Commission.

Proposed Rule 303.11 would apply to the same subset of Covered Institutions as Proposed Rule 303.5. Proposed Rule 303.11 would require a Level 1 or Level 2 Covered Institution to develop and implement policies and procedures for its incentive-based compensation program that meet certain minimum requirements.

The collection of information of Proposed Rules 303.4(f), 303.5, and 303.11 is necessary to carry out Section 956 of the Dodd-Frank Act and to allow Commission staff to determine compliance with Section 956 and the Proposed Rules.

## **2. Purpose and Use of the Information Collection**

Proposed Rules 303.4(f), 303.5, and 303.11 are part of the Commission’s proposed joint implementation of Section 956 of the Dodd-Frank Act. The Commission would use the information to administer Section 956 of the Dodd-Frank Act and to determine compliance with Section 956 and the Proposed Rules. The policies and procedures required by Proposed Rule 303.11 would improve the oversight of incentive-based compensation programs and promote compliance with the Proposed Rules.

## **3. Consideration Given to Information Technology**

Proposed Rules 303.4(f), 303.5, and 303.11 would not require any regular reporting to the Commission and would not involve the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology. Following adoption of the Proposed Rules, the Commission would consider whether technology may be used in other way to facilitate the collection of information of Proposed Rules 303.4(f), 303.5, and 303.11.

## **4. Duplication**

The Commission currently receives information about executive compensation from publicly traded companies, including many broker-dealers and investment advisers covered under the Proposed Rules. The staff of the Commission reviewed the relevant

SEC form, (Item 402 of Regulation S-K), in connection with the Proposed Rules to minimize duplication. Because Proposed Rules 303.4(f), 303.5, and 303.11 would not require any regular reporting, the Commission believes that duplication of information about executive compensation already reported to the Commission should be minimal, if any.

The records and policies and procedures that would be required by Proposed Rules 303.4(f), 303.5, and 303.11 would be the same records and policies and procedures required by the other Agencies. Some of the entities regulated by the other Agencies include bank holding companies, which often serve as the parent of broker-dealers and investment advisers covered by the Commission's Proposed Rules. The Commission staff anticipates that this situation may lead to certain economies in complying with the proposed rule as between broker-dealers/investment advisers and affiliated entities. To the extent that duplicative recordkeeping requirements and policies and procedures do result, however, Section 956 of the Act determined this result by requiring that the Agencies prescribe regulations or guidelines jointly.

#### **5. Effect on Small Entities**

The Commission solicited comment on whether small entities would be affected by the Proposed Rules. The Commission preliminarily does not believe that the Proposed Rules would impact small entities.

#### **6. Consequences of Not Conducting Collection**

If the Commission does not jointly prescribe rules under Section 956, which are currently being proposed in the form of Proposed Rules 303.4(f), 303.5, and 303.11, the Commission may not be in compliance with Section 956, which requires the Agencies to jointly prescribe regulations or guidelines that prohibit any types of incentive-based payment arrangement, or any feature of such arrangement, that the Agencies determine encourages inappropriate risks by covered financial institutions (i) by providing an executive officer, employee, director or principal shareholder of the covered financial institution with excessive compensation, fees or benefits or (ii) that could lead to material financial loss to the covered financial institution.

#### **7. Inconsistencies with Guidelines in 5 CFR 1320.5(d)(2)**

The Commission anticipates that it may receive some sensitive information as part of the records that would be required by Proposed Rules 303.4(f) and 303.5. For example, Proposed Rule 303.4(f) would require Covered Institutions to create annually and maintain for a period of at least seven years records that document the structure of all of their incentive-based compensation arrangements and demonstrate compliance with the Proposed Rules. Moreover, Proposed Rule 303.5 would require Level 1 and Level 2 Covered Institutions to create annually and maintain for a period of at least seven years records that document: (1) their senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback

reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to their incentive-based compensation arrangements and policies.

Information about compensation is sensitive in nature and could be used by a competitor or others to disadvantage a Covered Institution. To address these concerns, the Commission notes that Proposed Rule 303.4(g) provides that a Covered Institution would not be required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of the recordkeeping requirement of Proposed Rule 303.4(f) and that generally, Section 956 does not require a covered financial institution to disclose compensation of individuals. The information, though sensitive in nature, is necessary for the Commission to administer Section 956 of the Dodd-Frank Act and to determine compliance with Section 956 and the Proposed Rules.

Although Proposed Rules 303.4(f), 303.5, and 303.11 do not require any regular reporting to the Commission, the Commission may receive information in the course of examinations and reviewing the records that would be required by Proposed Rules 303.4(f) and 303.5. The Commission would keep any information collected as part of the recordkeeping requirements confidential, subject to the provisions of applicable law.

Proposed Rules 303.4(f) and 303.5 would each require that Covered Institutions and Level 1 and Level 2 Covered Institutions (in the case of Proposed Rule 303.5) maintain records for a period of at least seven years. The requirement to maintain records for at least seven years generally aligns with the clawback period described in Proposed Rule 303.7(c). This collection of information therefore would allow the Commission staff to examine Covered Institutions' compliance with Section 956 and the Proposed Rules and have access to information about Covered Institutions' use of clawback arrangements under Proposed Rule 303.7(c).

## **8. Consultations Outside the Agency**

The Commission has issued a release soliciting comment on the new collection of information requirements and associated paperwork burdens.<sup>3</sup> A copy of the release is attached. Comments on Commission releases are generally received from registrants, investors, and other market participants. In addition, the Commission and staff participate in ongoing dialogue with representatives of various market participants through public conferences, meetings and informal exchanges. Any comments received on this proposed rulemaking will be posted on the Commission's public website, and made available through <http://www.sec.gov/rules/proposed.shtml>. The Commission will consider all comments received prior to publishing the final rule, and will explain in any adopting release how the final rule responds to such comments, in accordance with 5 CFR 1320.11(f).

Section 956 requires the Commission to jointly prescribe rules under Section 956 with the other Agencies, which are currently being proposed in the form of Proposed Rules 303.4(f), 303.5, and 303.11. Commission staff consulted extensively with

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<sup>3</sup> Incentive-Based Compensation Arrangements, Release No. 34-77776 (May 6, 2016), 81 FR 37670 (June 10, 2016). Public comments on the release are available here: <https://www.sec.gov/comments/s7-07-16/s70716.htm>.

representatives from the other Agencies during the process of drafting the Proposed Rules.

## **9. Payment or Gift**

The Commission did not provide any payment or gift to respondents in connection with the proposed rulemaking.

## **10. Confidentiality**

The Commission would keep information collected confidential, subject to the provisions of applicable law.

## **11. Sensitive Questions**

The Commission anticipates that it may receive some sensitive information as part of the records required by Proposed Rules 303.4(f) and 303.5. For example, Proposed Rule 303.4(f) would require Covered Institutions to create annually and maintain for a period of at least seven years records that document the structure of all of their incentive-based compensation arrangements and demonstrate compliance with the Proposed Rules. Moreover, Proposed Rule 303.5 would require Level 1 and Level 2 Covered Institutions to create annually and maintain for a period of at least seven years records that document: (1) their senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to their incentive-based compensation arrangements and policies.

Information about compensation is sensitive in nature and could be used by a competitor or others to disadvantage a Covered Institution. To address these concerns, the Commission notes that Proposed Rule 303.4(g) provides that a Covered Institution would not be required to report the actual amount of compensation, fees, or benefits of individual covered persons as part of the recordkeeping requirement of Proposed Rule 303.4(f) and that generally, Section 956 does not require a covered financial institution to disclose compensation of individuals. The information, though sensitive in nature, is necessary for the Commission to administer Section 956 of the Dodd-Frank Act and to determine compliance with Section 956 and the Proposed Rules.

Although Proposed Rules 303.4(f), 303.5, and 303.11 do not require any regular reporting to the Commission, the Commission may receive information in the course of examinations and reviewing the records that would be required by Proposed Rules 303.4(f) and 303.5. The Commission would keep any information collected as part of the recordkeeping requirements confidential, subject to the provisions of applicable law.

The collection of information may include Personally Identifiable Information (“PII”).<sup>4</sup> For example, Proposed Rule 303.4(f) would require Covered Institutions to create annually and maintain for a period of at least seven years records that document the structure of all of their incentive-based compensation arrangements and demonstrate compliance with the Proposed Rules. Moreover, Proposed Rule 303.5 would require Level 1 and Level 2 Covered Institutions to create annually and maintain for a period of at least seven years records that document: (1) their senior executive officers and significant risk-takers, listed by legal entity, job function, organizational hierarchy, and line of business; (2) the incentive-based compensation arrangements for senior executive officers and significant risk-takers, including information on percentage of incentive-based compensation deferred and form of award; (3) any forfeiture and downward adjustment or clawback reviews and decisions for senior executive officers and significant risk-takers; and (4) any material changes to their incentive-based compensation arrangements and policies. Either of these two proposed recordkeeping requirements could lead to a Covered Institution creating and maintaining PII. Although Proposed Rules 303.4(f) and 303.5 do not require any regular reporting to the Commission, the Commission may receive information in the course of examinations and reviewing the records required by Proposed Rules 303.4(f) and 303.5 and therefore could receive PII created and maintained by a Covered Institution.

The Commission is considering whether an existing Systems of Records Notice and Privacy Impact Assessment would apply to the collection of information. The Commission will make a final determination upon adoption of the Proposed Rules.

## 12. Burden of Information Collection

The Commission estimates that Proposed Rule 303.4(f) would impose an initial recordkeeping burden of 40 hours and an ongoing recordkeeping burden of 20 hours per Covered Institution. The Commission estimates that 806 Covered Institutions would be subject to this recordkeeping burden, including 94 Level 1 and Level 2 Covered Institutions. Thus, per all Covered Institutions, the recordkeeping burden would be 32,240 hours initially<sup>5</sup> and 16,120 hours annually.<sup>6</sup> Over a three year period, per all Covered Institutions, the recordkeeping burden would be 80,600 hours<sup>7</sup>, or about 26,866.67 hours per year when annualized.<sup>8</sup> The Commission does not anticipate any external costs associated with Proposed Rule 303.4(f).

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<sup>4</sup> The term “Personally Identifiable Information” refers to information which can be used to distinguish or trace an individual’s identity, such as their name, social security number, biometric records, etc. alone, or when combined with other personal or identifying information that is linked or linkable to a specific individual, such as date and place of birth, mother’s maiden name, etc.

<sup>5</sup> 40 hour initial recordkeeping burden x 806 Covered Institutions = 32,240.

<sup>6</sup> 20 hour annual recordkeeping burden x 806 Covered Institutions = 16,120.

<sup>7</sup> 32,240 hour initial burden + 16,120 hour ongoing burden in year 1 + 16,120 hour ongoing burden in year 2 + 16,120 hour ongoing burden in year 3 = 80,600 hours.

<sup>8</sup> 80,600 hours / 3 years = 26,866.666666666667.

The Commission estimates that Proposed Rule 303.5 would impose an initial recordkeeping burden of 20 hours and an ongoing recordkeeping burden of 10 hours per Level 1 and Level 2 Covered Institution. The Commission estimates that 94 Level 1 and Level 2 Covered Institutions would be subject to this recordkeeping burden. Thus, per all Level 1 and Level 2 Covered Institutions, the recordkeeping burden would be 1,880 initially<sup>9</sup> and 940 annually.<sup>10</sup> Over a three year period, per all Covered Institutions, the recordkeeping burden would be 4,700 hours<sup>11</sup>, or about 1,566.67 hours per year when annualized.<sup>12</sup> The Commission does not anticipate any external costs associated with Proposed Rule 303.5.

The Commission estimates that Proposed Rule 303.11 would impose an initial recordkeeping burden of 20 hours and an ongoing recordkeeping burden of 10 hours per Level 1 and Level 2 Covered Institution. The Commission estimates that 94 Level 1 and Level 2 Covered Institutions would be subject to this recordkeeping burden. Thus, per all Level 1 and Level 2 Covered Institutions, the recordkeeping burden would be 1,880 initially<sup>13</sup> and 940 annually.<sup>14</sup> Over a three year period, per all Covered Institutions, the recordkeeping burden would be 4,700 hours<sup>15</sup>, or about 1,566.67 hours per year when annualized.<sup>16</sup> The Commission does not anticipate any external costs associated with Proposed Rule 303.11.

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<sup>9</sup> 20 hour initial recordkeeping burden x 94 Level 1 and Level 2 Covered Institutions = 1,880.

<sup>10</sup> 10 hour annual recordkeeping burden x 94 Level 1 and Level 2 Covered Institutions = 940.

<sup>11</sup> 1,880 hour initial burden + 940 hour ongoing burden in year 1 + 940 hour ongoing burden in year 2 + 940 hour ongoing burden in year 3 = 4,700 hours.

<sup>12</sup> 4,700 hours / 3 years = 1,566.6666666666667.

<sup>13</sup> 20 hour initial recordkeeping burden x 94 Level 1 and Level 2 Covered Institutions = 1,880.

<sup>14</sup> 10 hour annual recordkeeping burden x 94 Level 1 and Level 2 Covered Institutions = 940.

<sup>15</sup> 1,880 hour initial burden + 940 hour ongoing burden in year 1 + 940 hour ongoing burden in year 2 + 940 hour ongoing burden in year 3 = 4,700 hours.

<sup>16</sup> 4,700 hours / 3 years = 1,566.6666666666667.

These burdens are summarized below.

<b>Proposed Rule</b>	<b>Type of Burden</b>	<b>Initial Burden Per Respondent (Per All Respondents)</b>	<b>Ongoing Burden Per Respondents (Per All Respondents)</b>
Proposed Rule 303.4(f)	Recordkeeping	40 (32,240)	20 (16,120)
Proposed Rule 303.5	Recordkeeping	20 (1,880)	10 (940)
Proposed Rule 303.11	Recordkeeping	20 (1,880)	10 (940)
<b>Totals</b>		<b>80 (36,000)</b>	<b>40 (18,000)</b>

When annualized over a three-year period, the burdens associated with Proposed Rules 303.4(f), 303.5, and 303.11 are as follows.

<b>Summary of Hourly Burdens</b>										
<b>Name of Information Collection</b>	<b>Type of Burden</b>	<b>A.</b> Number of Entities Impacted	<b>B.</b> Annual Responses per Entity	<b>C.</b> Initial Burden per Entity per Response	<b>D.</b> Initial Burden Annualized per Entity per Response	<b>E.</b> Ongoing Burden per Entity per Response	<b>F.</b> Annual Burden Per Entity per Response	<b>G.</b> Total Annual Burden Per Entity	<b>Total Industry Burden</b>	<b>Small Business Entities Affected</b>
					[C ÷ 3 years]		[D + E]	[F * B]	[G * A]	[A * 0 %]
Proposed Rule 303.4(f)	Recordkeeping	806	1	40.00	13.33	20.00	33.33	33.33	26,866.67	0.00
Proposed Rule 303.5	Recordkeeping	94	1	20.00	6.67	10.00	16.67	16.67	1,566.67	0.00
Proposed Rule 303.11	Recordkeeping	94	1	20.00	6.67	10.00	16.67	16.67	1,566.67	0.00
<b>TOTAL HOURLY BURDEN FOR ALL RESPONDENTS</b>									<b>30,000.00</b>	

### **13. Costs to Respondents**

The Commission does not anticipate any external costs associated with Proposed Rules 303.4(f), 303.5, and 303.11.

### **14. Costs to Federal Government**

The Commission does not anticipate any costs to the Federal Government as a result of Proposed Rules 303.4(f), 303.5, and 303.11.

### **15. Changes in Burden**

Because this is an initial proposal, the Commission does not have any changes in burden to report.

### **16. Information Collection Planned for Statistical Purposes**



The Commission will not use the information collected for statistical purposes.

**17. Approval to Omit OMB Expiration Date**

The Commission is not seeking approval to not display the OMB approval expiration date.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions**

This collection complies with the requirements in 5 CFR 1320.9.

**B. Collection of Information Employing Statistical Methods.**

This collection does not involve statistical methods.