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 that make the collection necessary:

The OCC regulates the fiduciary activities of national banks and federal savings associations (FSAs), including the administration of collective investment funds (CIFs), pursuant to 12 U.S.C. 92a and 12 U.S.C. 1464(n), respectively. Twelve CFR part 9 contains the regulations that national banks must follow when conducting fiduciary activities and 12 CFR part 150 contains the regulations that FSAs must follow when conducting fiduciary activities. Regulations adopted by the Office of Thrift Supervision, now recodified as OCC rules pursuant to title III of the Dodd-Frank Wall Street Reform and Consumer Protection Act,[1] have long required FSAs to comply with the requirements of the OCC's CIF regulation.[2] Thus, the OCC's CIF regulation in 12 CFR 9.18 governs CIFs managed by both national banks and FSAs.

Twelve CFR parts 9 and §§ 150.410 - 150.430 require national banks and FSAs 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. These regulations also require that national banks and FSAs note the 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 national banks and FSAs have fiduciary powers, parts 9 and 150 require a bank or FSA to file a certified copy of a board resolution in order to surrender fiduciary powers.

To ensure the adequate disclosure of operational aspects of CIFs, part 9 requires that national banks and FSAs operate a CIF pursuant to a written plan (Plan). The 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 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 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 an institution to prepare an annual financial report on each fund and to either provide a copy of the report to participants or 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

[1] 76 FR 48950 (2011).
[2] *See* 12 CFR 150.260(b)(3).

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 includes 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 short-term investment fund (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: (A) operate with a stable net asset value of $1.00 per participating interest as a primary fund objective; (B) maintain a dollar-weighted average portfolio maturity of 60 days or less and a dollar-weighted average portfolio life maturity of 120 days or less as determined in the same manner as is required by the Securities and Exchange Commission pursuant to Rule 2a-7 for money market mutual funds; (C) accrue on a straight-line basis the difference between the cost and anticipated principal receipt on maturity; (D) hold the fund's assets until maturity under usual circumstances; (E) adopt portfolio and issuer qualitative standards and concentration restrictions; (F) adopt liquidity standards that include provisions to address contingency funding needs; (G) adopt certain shadow pricing procedures; (H) adopt certain procedures for stress testing the STIF's ability to maintain a stable net asset value per participating interest; (I) adopt procedures that require a national bank or FSA to make certain disclosures to STIF participants and the OCC within five business days after each calendar month-end; (J) adopt procedures that require a national bank or FSA to notify the OCC prior to or within one business day thereafter of certain events; (K) adopt certain procedures in the event that a STIF re-prices its net asset value below $ 0.995 per participating interest; and (L) adopt certain procedures in the event a national bank or FSA suspends or limits withdrawals and initiates liquidation of the STIF as a result of redemptions. 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.

Part 9 also provides additional safeguards designed to address the risk to participating interests in STIFs 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, 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).

2. Use of the information:

National banks and FSAs use a written plan (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 the compliance of national banks and FSAs with provisions of the governing regulations (12 CFR 9.18) in their operations 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 Analysis

Twelve CFR 9.8 and 12 CFR 150.410-150.430 require that national banks and FSAs document the establishment and termination of each fiduciary account and maintain adequate records. Records must be retained for a period of three years from the later of the termination of the account or the termination of any litigation. The records must be separate and distinct from other records of the institution.

12 CFR 9.9 and 12 CFR 150.480 require national banks and FSAs to note the results of any audit conducted (including significant actions taken as a result of the audit) in the minutes of the board of directors. National banks and FSAs that adopt a continuous audit system must 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.

Twelve CFR 9.17(a) and 12 CFR 150.530 require that an institution seeking to surrender its fiduciary powers file with the OCC a certified copy of the resolution of its board of directors evidencing that intent.

Twelve CFR 9.18(b)(1) (and 12 CFR 150.260 by cross-reference) require national banks and FSAs to establish and maintain each CIF in accordance with a Plan. The Plan must include provisions relating to:

- 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 in the fund;
- Expected frequency for income distribution to participating accounts;
- 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; and
- Any other matters necessary to define clearly the rights of participating accounts.

Twelve CFR 9.18(b)(1) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs make a copy of any CIF plan available for public inspection at their main offices and provide a copy of the plan to any person who requests it.

Twelve CFR 9.18(b)(4)(iii)(E) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt portfolio and issuer qualitative standards and concentration restrictions for STIFs.

Twelve CFR 9.18(b)(4)(iii)(F) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt liquidity standards and include provisions that address contingency funding needs for STIFs.

Twelve CFR 9.18(b)(4)(iii)(G) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt shadow pricing procedures for STIFs that calculate the extent of difference, if any, of the mark-to-market net asset value per participating interest from the STIF's amortized cost per participating interest, and to take certain actions if that difference exceeds $0.005 per participating interest.

Twelve CFR 9.18(b)(4)(iii)(H) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures for stress testing of the STIF's ability to maintain a stable net asset value per participating interest and provide for reporting the results.

Twelve CFR 9.18(b)(4)(iii)(I) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures that require an institution to disclose to the OCC and to STIF participants within five business days after each calendar month-end the following information about the fund: total assets under management; mark-to-market and amortized cost net asset values; dollar-weighted average portfolio maturity; dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month; and certain other security-level information for each security held.

Twelve CFR 9.18(b)(4)(iii)(J) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures that require a national bank or FSA that manages a STIF to notify the OCC prior to or within one business day thereafter of certain events.

Twelve CFR 9.18(b)(4)(iii)(K) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, certain procedures in the event that the STIF has repriced its net asset value below $0.995 per participating interest.

Twelve CFR 9.18(b)(4)(iii)(L) (and 12 CFR 150.260 by cross-reference) require that national banks and FSAs adopt, for STIFs, procedures for initiating liquidation of a STIF upon the suspension or limitation of withdrawals as a result of redemptions.

Twelve CFR 9.18(b)(6)(ii) (and 12 CFR 150.260 by cross-reference) require, for CIFs, that national banks and FSAs, at least once during each 12-month period, 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 the state which the institution maintains the fund and must contain:

- A list of investments in the fund showing the cost and current market value of each investment;
- A statement covering the period after the previous report showing the following (organized by type of investment):
    - A summary of purchases (with costs);
    - A summary of sales (with profit or loss and any investment change);
    - Income and disbursements; and
    - An appropriate notation of investments.

Twelve CFR 9.18(b)(6)(iv) (and 12 CFR 150.260 by cross-reference) require that an institution managing a CIF provide a copy of the financial report, or 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 must provide a copy of the report upon request for any person for a reasonable charge.

Twelve CFR 9.18(c)(5) (and 12 CFR 150.260 by cross-reference) require that, for special exemption CIFs, national banks and FSAs must submit to the OCC a written Plan that sets forth:

- 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; and
- The manner in which the proposed fund addresses the rights and interests of participating accounts.

3. Consideration of the use of improved information technology:

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. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden.

There are no alternatives that would result in lowering the burden on small institutions, while still accomplishing the purpose of the rule.

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

The consequences of less frequent preparation or disclosure would be untimely, and therefore inadequate, information that would not meet the needs of national banks and FSAs, the OCC, and fund participants. 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:

These information collections are conducted in a manner consistent with the requirements of 5 CFR part 1320.

8. Efforts to consult with persons outside the agency:

On November 13, 2018, the OCC issued a notice for 60 days of comment regarding the collection, 83 FR 56400. Two comments were received. One comment was from an advocacy group and one was from a trade association.

One commenter requested that the OCC allow flexibility in the timing of a final audit required by § 9.18(b)(6), which requires a national bank administering a CIF to prepare a financial audit of the fund once every 12 months. The commenter specifically recommended that the OCC should allow a bank that is terminating a fund within 15 months after the last audit to wait until the fund has terminated to complete the final audit.

The second commenter proposed the elimination of § 9.9(a) and (b), which require national banks to include in the minutes of the board of directors the results of any audits conducted of a national bank's fiduciary activities (including significant actions taken as a result of the audit). The commenter stated that these § 9.9 requirements are unnecessarily burdensome and overreaching in that they inappropriately prescribe the content and level of detail of information to be included in board minutes and presuppose that the board of directors should discuss the results of every audit conducted pursuant to Part 9, regardless of the materiality of the audit to the bank.

In response to both comments, the OCC notes that the OCC cannot revise or rescind regulations through the PRA renewal process. The OCC also notes that in 2015, as part of the OCC's ten-year regulatory review required under section 222 of the Economic Growth and Regulatory Paperwork Reduction Act ("EGRPRA"), the OCC issued notices soliciting comments on all OCC regulations, including 12 CFR Part 9.[3] In response to the relevant OCC notice regarding 12 CFR Part 9, the OCC received the same comment regarding § 9.18(b)(6), a recommendation that the OCC allow a national bank that is terminating a fund within 15 months after the most recent audit to wait until the fund has terminated to complete the final audit. The OCC did not agree with the proposed recommendation and did not adopt it in the part 9 rules.[4]

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[3] *See* Regulatory Publication and Review Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, 79 FR 32171, 32178 (June 4, 2014).
[4] 82 FR 8082, 8088 (Jan. 23, 2017).

The OCC stated that in many instances, banks should be able to schedule fund terminations to occur at or just prior to the end of a plan year.[5]

The OCC did not receive any comments regarding § 9.9(a) or (b) in response to the OCC EGRPRA notice regarding 12 CFR Part 9. The OCC therefore did not rescind or propose any revisions to § 9.9 in connection with the review required under EGRPRA. Given the lack of comments on § 9.9 during the most recent EGRPRA review and the OCC's inability to rescind or revise § 9.9 through this PRA renewal, the OCC has not adopted the proposed recommendation to rescind the board minutes-related requirements in § 9.9(a) and (b).

9. Payment or gift to respondents:

There are no payments to respondents.

10. Any assurance of confidentiality:

The information will be kept confidential to the extent permitted by law.

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	**Recordkeeping:** *Documentation of accounts* – An institution shall document the establishment and termination of each fiduciary account and shall maintain adequate records. *Retention of records* – 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. *Separation of records* – An institution shall ensure that the records are separate and distinct from other records of the institution.	320 Institutions Established and Terminated an Average of 2,553 Participating Accounts per Year	.10	1	81,696
12 CFR 9.9(a) and	**Audit of Fiduciary**	320 Institutions	.25	1	80

[5] *See* id.

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
(b) & 12 CFR 150.480 Recordkeeping	**Activities:** *Annual audit* – 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. *Continuous audit* – 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.				
12 CFR 9.17(a) & 12 CFR 150.530 Reporting	**Surrender or revocation of fiduciary powers:** *Surrender* – 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:** *Plan* – The institution shall establish and maintain each collective investment fund in accordance with a Plan. The Plan must include provisions relating to: • 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	42 Institutions Managing 1,759 Collective Investment Funds Establish Plan (Estimate 15 unique funds established in any given year.) Maintain Plan (1,759 funds)	 20 .75	 1 1	 300 1,319

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
	• 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	**Collective investment funds:** *Plan* – 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.	1,759 Funds	.25	1	440
12 CFR 9.18(b)(4)(iii)(E) Recordkeeping	**Short-term investment funds:** Adopt portfolio and issuer qualitative standards and concentration restrictions.	Currently 7 Respondents Managing 26 Funds. Estimate 3 new funds established in any given year.	20	1	60
12 CFR 9.18(b)(4)(iii)(F) Recordkeeping	**Short-term investment funds:** Adopt liquidity standards and include provisions that address contingency funding needs.	See response above.	20	1	60
12 CFR 9.18(b)(4)(iii)(G) Recordkeeping	**Short-term investment funds:** Adopt shadow pricing procedures.	See Response above.	20	1	60
12 CFR 9.18(b)(4)	**Short-term 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; report the results				
Recordkeeping	Develop procedures	See Response above.	80	1	240
Recordkeeping	Conduct stress tests	Currently 7 Respondents Managing 26 Funds.	25	12	7,800
Reporting	Draft report	Currently 7 Respondents Managing 26 Funds.	12	12	3,744
Reporting	Review of report by Risk Manager	Currently 7 Respondents Managing 26 Funds.	8	12	2,496
12 CFR 9.18(b)(4) (iii)(I)	**Short-term investment funds:** Adopt procedures that require a bank to disclose to the OCC and to STIF participants within five business days after each calendar month-end the following information about the fund: total assets under management; mark-to-market and amortized cost net asset values; dollar-weighted average portfolio maturity; dollar-weighted average portfolio life maturity as of the last business day of the prior calendar month; and certain other security-level information for each security held				
Recordkeeping	Initial burden	Estimate 3 new funds established in any given year.	40	1	120
Disclosure	Ongoing burden	Currently 7 Respondents Managing 26 Funds.	8	12	2,496
12 CFR 9.18(b)(4) (iii)(J) Recordkeeping	**Short-term investment funds:** Adopt procedures that require an institution that manages a	Estimate 3 new funds established in any given year.	10	1	30

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
	STIF to notify the OCC prior to or within one business day thereafter of certain events.				
12 CFR 9.18(b)(4)(iii)(K) Recordkeeping	**Short-term investment funds:** Adopt procedures in the event that the STIF has repriced its net asset value below $0.995 per participating interest.	Estimate 3 new funds established in any given year.	10	1	30
12 CFR 9.18(b)(4)(iii)(L) Recordkeeping	**Short-term investment funds:** Adopt procedures for initiating liquidation of a STIF upon the suspension or limitation of withdrawals as a result of redemptions.	Estimate 3 new funds established in any given year.	10	1	30
12 CFR 9.18(b)(6)(ii) & 12 CFR 150.260 Recordkeeping	**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 the state in which the institution maintains the fund. This report must contain: • List of investments in the fund showing the cost and current market value of each investment • Statement covering the period after the previous report showing the following (organized by type of investment): ■ A summary of purchases (with costs) ■ A summary of sales (with profit or loss and any	1 ,759 Funds	7.75		13,632

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
	investment change) ■ Income and disbursements ■ An appropriate notation of investments in default				
12 CFR 9.18(b)(6)(iv) & 12 CFR 150.260 Disclosure	**Collective investment funds:** *Availability of the report* – An institution managing 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.	1,759 Funds	.25		440
12 CFR 9.18(c)(5) & 12 CFR 150.260 Reporting	**Collective investment funds:** *Other collective investments: Special exemption funds* – An institution shall submit to the OCC a written Plan that sets forth: • 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	Estimate 1 new fund established in any given year.	50		50

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
	fund addresses the rights and interests of participating accounts				
TOTALS		**320 Respondents**			**115,125 hours**

Cost of Hour Burden to Respondents:

115,125 hours x $117 = $13,469,625.

To estimate wages we reviewed data from May 2017 for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for depository credit intermediation (NAICS 522100). To estimate compensation costs associated with the rule, we use $117 per hour, which is based on the average of the 90th percentile for seven occupations adjusted for inflation (2.2 percent), plus an additional 34.2 percent to cover private sector benefits for financial activities.

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

None.

14. Estimate of annualized costs to the federal government:

None.

15. Change in burden:

Prior Burden:
109,320 burden hours

Current Burden:
115,125

Difference:
+ 5,805

The increase in burden is due to the availability of more accurate burden estimates.

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

The information will not be used for statistical purposes.

17. Reasons for not displaying OMB approval expiration date:

Not applicable.

18. Exceptions to the certification statement:

Not applicable.

B. Collections of Information Employing Statistical Methods

Not applicable.