

SUPPORTING STATEMENT
For the Paperwork Reduction Act Information Collection Submission for
Rule 31a-2

A. JUSTIFICATION

1. Necessity for the Information Collection

Section 31(a)(1) of the Investment Company Act of 1940 (the “Act”)¹ requires registered investment companies (“funds”) and certain underwriters, broker-dealers, investment advisers, and depositors to maintain and preserve records as prescribed by Commission rules.² Rule 31a-1 under the Act specifies the books and records that each of these entities must maintain.³ Rule 31a-2 under the Act specifies the time periods that entities must retain certain books and records, including those required to be maintained under rule 31a-1.⁴

Rule 31a-2 requires the following:

- Every fund must preserve permanently, and in an easily accessible place for the first two years, all books and records required under rule 31a-1(b)(1)–(4).⁵

¹ 15 U.S.C. 80a-1 *et seq.*

² 15 U.S.C. 80a-30(a)(1).

³ 17 CFR 270.31a-1.

⁴ 17 CFR 270.31a-2.

⁵ 17 CFR 270.31a-2(a)(1). These include, among other records, journals detailing daily purchases and sales of securities; general and auxiliary ledgers reflecting all assets, liability, reserve, capital, income, and expense accounts; separate ledgers reflecting for each portfolio security as of the trade date all “long” and “short” positions carried by the fund for its own account; and corporate charters, certificates of incorporation, by-laws, and minute books. 17 CFR 270.31a-1(b)(1)–(4).

- Every fund must preserve for at least six years, and in an easily accessible place for the first two years:
 - all books and records required under rule 31a-1(b)(5)–(12);⁶
 - all vouchers, memoranda, correspondence, checkbooks, bank statements, canceled checks, cash reconciliations, canceled stock certificates, and all schedules evidencing and supporting each computation of net asset value of fund shares, including schedules evidencing and supporting each computation of an adjustment to net asset value based on swing pricing policies and procedures;⁷
 - other documents required to be maintained by rule 31a-1(a) and not enumerated in rule 31a-1(b);⁸
 - any advertisement, pamphlet, circular, form letter, or other sales literature addressed or intended for distribution to prospective investors;⁹

⁶ 17 CFR 270.31a-2(a)(2). These include, among other records, records of each brokerage order given in connection with purchases and sales of securities by the fund; records of all other portfolio purchases or sales; records of all puts, calls, spreads, straddles, and other options in which the fund has an interest, which it has granted, or which it has guaranteed; records of proof of money balances in all ledger accounts; files of all advisory material received from the investment adviser; and memoranda identifying persons, committees, or groups authorizing the purchase or sale of securities for the fund. 17 CFR 270.31a-1(b)(5)–(12).

⁷ 17 CFR 270.31a-2(a)(2).

⁸ *Id.*

⁹ 17 CFR 270.31a-2(a)(3).

- any record of the initial determination that a director is not an interested person of the fund, and each subsequent determination that the director is not an interested person of the fund, including any questionnaire and any other document used to determine that a director is not an interested person of the company;¹⁰
- any materials used by the disinterested directors of a fund to determine that a person who is acting as legal counsel to those directors is an independent legal counsel;¹¹ and
- any documents or other written information considered by the directors of the fund pursuant to section 15(c) of the Act in approving the terms or renewal of a contract or agreement between the fund and an investment advisor.¹²
- Every underwriter, broker, or dealer that is a majority-owned subsidiary of a fund must preserve records required to be preserved by brokers and dealers under rules adopted under section 17 of the Securities Exchange Act of 1934 (the “Exchange Act”)¹³ for the periods established in those rules.¹⁴

¹⁰ 17 CFR 270.31a-2(a)(4).

¹¹ 17 CFR 270.31a-2(a)(5).

¹² 17 CFR 270.31a-2(a)(6). Section 15 of the Act requires that fund directors, including a majority of independent directors, annually approve the fund’s advisory contract and that the directors first obtain from the adviser the information reasonably necessary to evaluate the contract. The information request requirement in section 15 provides fund directors, including independent directors, a tool for obtaining the information they need to represent shareholder interests. 15 U.S.C. 80a-15(c).

¹³ 15 U.S.C. 78q.

¹⁴ 17 CFR 270.31a-2(b).

- Every depositor of a fund and every principal underwriter of a fund (other than a closed-end fund) must preserve for at least six years records required to be maintained by brokers and dealers under rules adopted under section 17 of the Exchange Act to the extent the records are necessary or appropriate to record the entity's transactions with the fund.¹⁵
- Every investment adviser that is a majority-owned subsidiary of a fund must preserve the records required to be preserved by investment advisers under rules adopted under section 204 of the Investment Advisers Act of 1940 (the "Investment Advisers Act")¹⁶ for the periods specified in those rules.¹⁷
- Every investment adviser that is not a majority-owned subsidiary of a fund must preserve for at least six years records required to be maintained by registered investment advisers under rules adopted under section 204 of the Investment Advisers Act to the extent the records are necessary or appropriate to reflect the adviser's transactions with the fund.¹⁸

The records required to be maintained and preserved under this part may be maintained and preserved for the required time by, or on behalf of, a fund on

- (1) micrographic media, including microfilm, microfiche, or any similar medium, or
- (2) electronic storage media, including a digital storage medium or system that meets

¹⁵ 17 CFR 270.31a-2(c).

¹⁶ 15 U.S.C. 80b-4.

¹⁷ 17 CFR 270.31a-2(d).

¹⁸ 17 CFR 270.31a-2(e).

certain requirements.¹⁹ The fund, or person that maintains and preserves records on its behalf, must arrange and index the records in a way that permits easy location, access, and retrieval of any particular record.²⁰

On July 12, 2023, the Commission adopted rule and form amendments (the “amendments”) that require money market funds to implement a liquidity fee framework that will better allocate the costs of providing liquidity to redeeming investors. The amendments also amend rule 31a-2 to require money market funds to retain books and records containing schedules evidencing and supporting each such computation of a liquidity fee.

Commission staff periodically inspect the operations of all funds to ensure their compliance with the provisions of the Act and the rules under the Act. The staff spends a significant portion of its time in these inspections reviewing the information

¹⁹ 17 CFR 270.31a-2(f)(1).

²⁰ 17 CFR 270.31a-2(f)(2)(i). In addition, the fund, or person who maintains and preserves records for the fund, must provide promptly any of the following that the Commission (by its examiners or other representatives) or the directors of the fund may request: (A) a legible, true, and complete copy of the record in the medium and format in which it is stored; (B) a legible, true, and complete printout of the record; and (C) means to access, view, and print the records. 17 CFR 270.31a-2(f)(2)(ii). The fund (or person) also must separately store, for the time required for preservation of the original record, a duplicate copy of the record on any medium allowed by rule 31a-2. 17 CFR 270.31a-2(f)(2)(iii). In the case of records retained on electronic storage media, the fund, or person that maintains and preserves records on its behalf, must establish and maintain procedures: (1) to maintain and preserve the records, so as to reasonably safeguard them from loss, alteration, or destruction; (2) to limit access to the records to properly authorized personnel, the directors of the fund, and the Commission (including its examiners and other representatives); and (3) to reasonably ensure that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved. 17 CFR 270.31a-2(f)(3).

contained in the books and records required to be kept by rule 31a-1 and to be preserved by rule 31a-2.

2. Purpose and Use of the Information Collection

The retention of records, as required by the rule, is necessary to ensure access to material business and financial information about funds and certain related entities. As noted above, Commission staff periodically inspect the operations of funds to ensure they are in compliance with the Act and regulations under the Act. Due to the limits on the Commission's resources, however, each fund may only be inspected at intervals of several years. In addition, the prosecution of persons who have engaged in certain violations of the federal securities laws may not be limited by timing restrictions. For these reasons, Commission staff often need information relating to events or transactions that occurred years ago. Without the requirement to preserve books, records, and other documents, Commission staff would have difficulty determining whether the fund was in compliance with the law in such areas as valuation of its portfolio securities, computation of the prices investors paid, and, when purchasing and selling fund shares, types and amounts of expenses the fund incurred, kinds of investments the fund purchased, actions of affiliated persons, or whether the fund had engaged in any illegal or fraudulent activities. As part of the staff's examinations of funds, the staff also reviews the materials that directors consider in approving the advisory contract.

3. Consideration Given to Information Technology

Rule 31a-2(f) permits records that are required to be maintained and preserved under the rule to be maintained electronically provided that the storage meets certain conditions, including that (i) the records are maintained and preserved so as to reasonably safeguard them from loss, alteration, or destruction, (ii) access is limited to properly authorized personnel, the fund's directors, and the Commission and its staff, and (iii) the fund reasonably ensures that any reproduction of a non-electronic original record on electronic storage media is complete, true, and legible when retrieved.

4. Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or form, or a change in either, and did so when proposing the amendments. The requirements of rule 31a-2 are not generally duplicated elsewhere. While funds may currently maintain records under the requirements of rule 31a-1, rule 31a-1 does not specifically require preservation of these records.

5. Effect on Small Entities

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act,²¹ to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. The recordkeeping requirements of rule

²¹ 5 U.S.C. 601 *et seq.*

31a-2 do not distinguish between large and small entities. The Commission believes that compliance with rule 31a-2 is not unduly burdensome for large or small entities and that imposing different requirements on smaller funds would not be consistent with investor protection and the purposes of the preservation of records requirements.

6. Consequences of Not Conducting Collection

Rule 31a-1 requires funds, certain of their majority-owned subsidiaries, and other related entities to maintain certain records. The frequency with which entities collect this information depends, to a large extent, on the circumstances of the activities and transactions of the fund and these entities. Rule 31a-2 requires funds, their majority-owned subsidiaries, and other related entities to preserve the records required to be maintained under rule 31a-1. Rule 31a-2 also requires funds to maintain advertising materials, materials considered by a fund board each time it approves a fund's advisory contract, materials relating to the independence of legal counsel and fund directors and, for any fund that chooses to use swing pricing, a record of support for each computation of an adjustment to the NAV of the fund's shares based on the fund's swing policies and procedures. The amendments also require that money market funds maintain records evidencing and supporting each computation of a liquidity fee as required by the amendments. If entities did not have to preserve these records, our staff would have difficulty determining whether a fund is in compliance with the Act.

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

Rule 31a-2 requires funds to preserve certain records for six years and other records permanently. The Commission believes that the long-term retention of records is necessary to carry out our examination and enforcement responsibilities, and our mandate to ensure that the Act's provisions are legally enforceable. The Commission's staff periodically inspect the operations of funds to ensure compliance with the rules and regulations under the Act; however, each fund may be inspected only at intervals of several years due to limits on our resources. Furthermore, the prosecution of persons that have engaged in certain violations of the federal securities laws may not be limited by timing restrictions. For these reasons, Commission staff often need information relating to events or transactions that occurred years ago. In section 31(a) of the Act,²² Congress specifically authorized the Commission to require funds to "maintain and preserve" books and records "for such period or periods" as the Commission may prescribe by rules. Electronic record storage, as permitted by the rule, has made long-term retention of records less burdensome.

8. Consultations Outside the Agency

The Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the fund industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon paperwork burdens confronting the industry. The Commission requested public comment on the

²² 15 U.S.C. 80a-30(a).

collection of information requirements in rule 31a-2 before it submitted this request for extension and approval to the Office of Management and Budget, and the Commission's solicitation of public comments on the amendments included estimating and requesting public comments on the burden estimates for all information collections under this OMB control number (*i.e.*, both changes associated with the rulemaking and other burden updates). The Commission did not receive any comments regarding its PRA estimates for rule 31a-2.

9. Payment or Gift

No payment or gift to respondents was provided.

10. Confidentiality

To the extent the Commission receives confidential information pursuant to the collections of information, such information will be kept confidential, subject to the provisions of applicable law.²³

11. Sensitive Questions

Rule 31a-2 requires that funds and other registered entities maintain records as prescribed by Commission rules; however, this information collection does not

²³ *See, e.g.*, 15 U.S.C. 80b-10 and 5 U.S.C. 552. Section 10 of the Investment Company Act generally prohibits disclosure of information obtained during the course of an investigation. In addition, Exemption 4 of the Freedom of Information Act provides an exemption for trade secrets and commercial or financial information obtained from a person and privileged or confidential. Exemption 8 of the Freedom of Information Act provides an exemption for matters that are contained in or related to examination, operating, or condition reports prepared by, or on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.

collect personally identifiable information (PII). No information of a sensitive nature, including social security numbers, will be required under this collection of information. The agency has determined that a system of records notice (SORN) and privacy impact assessment (PIA) are not required in connection with the collection of information.

12. Burden of Information Collection

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995²⁴ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Compliance with rule 31a-2 is mandatory. To the extent the Commission receives confidential information pursuant to the collections of information, such information will be kept confidential, subject to the provisions of applicable law.

²⁴ 44 U.S.C. 3501 *et seq.*

TABLE 1: BURDEN ESTIMATES FOR RULE 31a-2

	Burden Per Response					Aggregate Burden			
	Internal Burden		Wage Rate ¹	Cost of Internal Burden	Annual External Cost Burden	Annual Responses	Internal Burden	Cost of Internal Burden	Annual External Cost Burden
REVISED ESTIMATES									
Liquidity fee recordkeeping	1.5.hours	×	\$73 (general clerk)	\$110				\$12,210	
requirements for money market funds ²	1.5 hours	×	\$111 (senior computer operator)	\$167	\$600	×	111 ³	333 hours	\$18,537
Subtotal: additional burden for money market funds	3 hours				\$600	×	111 ³	333 hours	\$30,747
Current burden estimates							606,982 hours	\$52,200,418	\$111,751,674
Revised total annual burden estimates							607,315 hours	\$52,231,165	\$111,818,274

1. The Commission's estimates of the relevant wage rates are based on salary information for the securities industry compiled by the Securities Industry and Financial Markets Association's Office Salaries in the Securities Industry 2013. The estimated wage figures are modified by Commission staff to account for an 1,800-hour work-year and adjusted to account for bonuses, firm size, employee benefits, overhead, and adjusted to account for the effects of inflation.

2. For details about the proposed estimates, see Money Market Fund Reforms, Investment Company Act Release No. 34441 (Dec. 15, 2021) [87 FR 7248 (Feb. 8, 2022)], at section IV.C.

3. Includes prime and tax-exempt money market funds as of Mar. 2023. We assume for purposes of this analysis that no government money market fund will opt in to the discretionary liquidity fee framework.

The hour burden estimates for retaining records under rule 31a-2 are based on our experience with registrants, our experience with similar requirements under the Act and the rules under the Act, and on prior conversations with representatives of the fund industry. The number of burden hours may vary depending on, among other things, the complexity of the fund, the issues faced by the fund, the number of series and classes of the fund, and whether the fund uses swing pricing (which no funds currently do).

13. Cost to Respondents

Cost burden is the cost of goods and services purchased to comply with the requirements of rule 31a-2, such as for the services of outside counsel. The cost burden does not include the hour burden discussed in Item 12 above. As summarized in Table 1 above, the Commission has previously estimated that funds incur about \$111,751,674 in external cost burden each year.²⁵

We have increased the estimated cost burden for each money market fund by \$600 to account for the effects of the liquidity fee recordkeeping requirements, as summarized above. As a result, the revised estimated cost burden is \$111,818,274.

14. Costs to the Federal Government

There is no cost to the Federal Government for these recordkeeping activities.

²⁵ The Commission believes that funds would already preserve these same books and records, as they are also necessary to prepare financial statements, meet various state reporting requirements, and prepare their annual federal and state income tax returns. Therefore, the Commission's estimates were previously reduced by 50% to reflect only the incremental cost associated with the rule.

15. Changes in Burden

TABLE 2: CHANGE IN BURDEN ESTIMATES

	Annual Number of Responses			Annual Time Burden (hours)			Cost Burden (dollars)		
	Previously Approved	Revised Estimate	Change	Previously Approved	Revised Estimate	Change	Previously Approved	Revised Estimate	Change
Rule 31a-2	2,754	2,754	0	606,982	607,315	333	\$111,751,674	\$111,818,274	\$66,600

As summarized in Table 3 above, the hour burden estimate for compliance with rule 31a-2 has changed from 606,982 hours to 607,315 hours (an increase of 333 hours). The cost burden estimate for compliance with rule 31a-2 has changed from about \$111.75 million to about \$111.82 million (reflecting an increase of \$66,600). These changes are due to the burden associated with the amendments. These changes in burden also reflect the Commission's revision and update of burden estimates for all information collections under this OMB control number (whether or not associated with rulemaking changes), and the Commission requested public comment on all information collection burden estimates for this OMB control number.

16. Information Collection Planned for Statistical Purposes

The results of any information collected will not be published.

17. Approval to Omit OMB Expiration Date

We request authorization to omit the expiration date on the electronic version of the form for design and IT project scheduling reasons. The OMB control number will be displayed.

18. Exceptions to Certification Statements for Paperwork Reduction Act

Submission

The Commission is not seeking an exemption to the certification statement.

**B. COLLECTION OF INFORMATION EMPLOYING
STATISTICAL METHODS**

The collection of information will not employ statistical methods.