

Supporting Statement for the Recordkeeping and Disclosure Requirements Associated with Regulation R (FR R; OMB No. 7100-0316)

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, without revision, the Recordkeeping and Disclosure Requirements Associated with Regulation R (FR R; OMB No. 7100-0316). The Board's Regulation R - Exceptions for Banks from the Definition of Broker in the Securities Exchange Act of 1934 (12 CFR Part 218) implements certain exceptions for banks from the definition of broker under section 3(a)(4) of the Securities Exchange Act of 1934 (Exchange Act). For purposes of the Exchange Act and this Supporting Statement, "banks" include banking institutions organized in the United States, including members of the Federal Reserve System, Federal savings associations, and other commercial banks, savings associations, and nondepository trust companies that are organized under the laws of a state or the United States and subject to supervision and examination by state or federal authorities having supervision over banks and savings associations. Sections 701, 723, and 741 of Regulation R contain certain recordkeeping provisions for banks that utilize the exceptions in the Exchange Act and certain customer and counterparty disclosure requirements.

The estimated total annual burden for the FR R is 62,709 hours.

Background and Justification

Under section 15 of the Exchange Act, securities brokers generally must register with the U.S. Securities and Exchange Commission (SEC) and join a self-regulatory organization.¹ However, section 3(a)(4)(B) of the Exchange Act provides conditional exceptions from the definition of broker for banks that engage in securities activities only in connection with third-party brokerage or networking arrangements; trust and fiduciary activities; permissible securities transactions; affiliate transactions; private securities offerings; transactions related to certain stock purchase plans, sweep accounts, identified banking products, or municipal securities; or safekeeping and custody activities, or that engage in a de minimis number of other securities transactions.

The Exchange Act requires the SEC and Board to jointly adopt rules or regulations to implement these exceptions for banks. The Board's Regulation R implements the broker exceptions for banks relating to, among other things, third-party networking arrangements, trust and fiduciary activities, sweep activities, and custody and safekeeping activities, as well as exemptions related to foreign securities transactions, securities lending transactions conducted in an agency capacity, and the execution of transactions other than through a broker-dealer.² As described below, Regulation R includes a number of recordkeeping and disclosure requirements for banks that utilize these exceptions.

¹ 15 U.S.C. § 78o.

² The Board's Regulation R was issued jointly with the SEC's identical Regulation R found at 17 CFR Part 247.

This information is not available from other sources. If this information were not retained or disclosed, or were retained for a shorter time period or disclosed less frequently, then the Board would not be able to assess whether securities transactions are exempt because they were undertaken in the exercise of trust or fiduciary responsibilities with respect to the account and would not be able to ensure that customers received appropriate disclosures regarding transactions exempt by Regulation R.

Description of Information Collection³

Recordkeeping Requirements

Section 218.723. A bank is exempt from the Exchange Act definition of broker with respect to its trustee or fiduciary activities if, among other requirements, the bank is chiefly compensated for such transactions on the basis of an administration or annual fee, a percentage of assets under management, or a flat or capped per order processing fee. Pursuant to section 723(e) of Regulation R, a bank that desires to exclude a trust or fiduciary account in determining its compliance with the chiefly compensated test pursuant to that section's de minimis exclusion must maintain records demonstrating that the securities transactions conducted by or on behalf of the account were undertaken by the bank in the exercise of its trust or fiduciary responsibilities with respect to the account.⁴

Disclosure Requirements

Section 218.701. Section 701 of Regulation R implements banks' exception from the Exchange Act definition of broker with respect to referral fees received in connection with third-party brokerage or networking arrangements. Sections 701(a)(2)(i) and 701(b) require banks (or their broker-dealer partners) that utilize this exemption to make certain disclosures to high net worth or institutional customers. Specifically, these banks must clearly and conspicuously disclose (1) the name of the broker-dealer and (2) that the bank employee participates in an incentive compensation program under which the bank employee may receive a fee of more than a nominal amount for referring the customer to the broker-dealer and payment of this fee may be contingent on whether the referral results in a transaction with the broker-dealer.

Section 701(a)(2)(iii) of Regulation R requires that, before a referral fee is paid to a bank employee under section 701, the bank must provide the broker or dealer the name of the employee and such other identifying information that may be necessary for the broker or dealer to determine whether the bank employee is registered or approved, or otherwise required to be registered or approved, in accordance with the qualification standards established by the rules of any self-regulatory organization or is subject to statutory disqualification. Additionally, section 701(a)(3)(iv) requires that the written agreement between the bank and the broker or dealer shall require that a broker or dealer inform the customer if it determines that the customer or the securities transaction(s) to be conducted by the customer does not meet certain standards, and

³ The Board understands that respondents use information technology to comply with these provisions, including storing records and making disclosures digitally.

⁴ Section 218.723 does not set forth a retention period for these records. The Board does not expect that it would require a bank to maintain such records for a period longer than three years.

section 701(a)(3)(v) requires that the same written agreement between the bank and the broker or dealer shall require that the broker or dealer inform the bank if it determines that a customer is not a high net worth customer or institutional customer, as applicable, or that a bank employee is subject to statutory disqualification.

Section 218.741. Section 741 of Regulation R implements the exemption from the Exchange Act definition of broker with respect to banks effecting transactions in money market funds. Section 741(a)(2)(ii)(A) requires a bank relying on this exemption to provide customers with a prospectus for the money market fund securities, not later than the time the customer authorizes the bank to effect the transaction in such securities, if the class or series of securities are not no-load.⁵ In situations where a bank effects transactions under the exemption as part of a program for the investment or reinvestment of deposit funds of, or collected by, another bank, the section permits either bank to provide the customer with the prospectus.

Respondent Panel

The FR R panel comprises banks, as defined in the Exchange Act, that qualify for the exemptions from the Exchange Act definition of broker described above.

Frequency and Time Schedule

The FR R is event-generated. This information collection contains both recordkeeping and disclosure requirements. The recordkeeping and disclosures are required when specific types of transactions occur as described above. Records required to be kept must be retained for a minimum of three years.⁶

Public Availability of Data

There are no data related to this information collection available to the public.

Legal Status

The FR R is authorized pursuant to sections 3(a)(4)(F) and 3(b) of the Exchange Act (15 U.S.C. §§ 78c(a)(4)(F) and 78c(b)), which, among other things, require the Board and SEC to jointly adopt rules to implement the bank exceptions to the definition of “broker” under the Exchange Act. Additionally, the Board has the authority to require reports from state member banks (12 U.S.C. §§ 248(a) and 324). Banks seeking the exception from the definition of “broker” under the Exchange Act must comply with the requirements of FR R. The obligation, therefore, is required to obtain a benefit.

⁵ A no-load security is one that is not subject to a sales load. 12 CFR 218.740.

⁶ 12 CFR 218.701(a)(2)(i) requires that this disclosure may be provided either (1) in writing prior to or at the time of the referral or (2) orally prior to or at the time of the referral. A bank opting to disclose orally must (1) provide the disclosure to the customer in writing within 3 business days of the date on which the bank employee refers the customer to the broker or dealer or (2) the written agreement between the bank and the broker or dealer must provide for the broker or dealer to provide such information to the customer in writing consistent with the requirements at 12 CFR 218.701(a)(3)(i).

Records retained by banking organizations or disclosed by individuals to depository institutions or other banking organizations under the FR R would generally be maintained at each banking organization. The Freedom of Information Act (FOIA) would be implicated only if the Board obtained such records or disclosures as part of the examination or supervision of a financial institution, in which case the records would be protected from disclosure under FOIA exemption 8, which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process (5 U.S.C. § 552(b)(8)). Information retained pursuant to the recordkeeping requirements under the FR R may also be exempt from disclosure pursuant to FOIA exemption 4, if it is nonpublic commercial or financial information which is both customarily and actually treated as private by the respondent (5 U.S.C. § 552(b)(4)).

Consultation Outside the Agency

The Board consulted with the SEC on the estimated burden with respect to the renewal of this information collection.

Public Comments

On September 11, 2023, the Board published an initial notice in the *Federal Register* (88 FR 62363) requesting public comment for 60 days on the extension, without revision,⁷ of the FR R. The comment period for this notice expired on November 13, 2023. The Board did not receive any comments. The Board adopted the extension, without revision, of the FR R as originally proposed. On January 29, 2024, the Board published a final notice in the *Federal Register* (89 FR 5543).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR R is 62,709 hours. The estimated number of respondents is based on the universe of banks that filed the Federal Financial Institutions Examination Council (FFIEC) Consolidated Reports of Condition and Income (Call Report) (FFIEC 031, FFIEC 041, and FFIEC 051; OMB No. 7100-0036) minus the SEC’s list of registered third-party broker dealer firms as of March 2023.

Under section 701, the Board estimates that 1,249 commercial banks and savings associations make the required referral fee disclosures to 100 customers annually and that 1,249 commercial banks and savings associations provide one notice annually to their broker-dealer partner regarding names and other identifying information about bank employees. The Board estimates that each respondent spends approximately 5 minutes per customer to comply with the disclosure requirement and approximately 15 minutes per notice to a broker-dealer. The Board estimates that approximately 62 commercial banks and savings associations annually use the de minimis exclusion in section 723 and on average maintain records with respect to 10 trust or fiduciary accounts annually conducted in the exercise of the banks’ trust or fiduciary responsibilities. The Board estimates that it takes each respondent 15 minutes to comply with recordkeeping requirements under section 723. Finally, the Board estimates that approximately

⁷ The initial *Federal Register* notice was published stating that the Board would be extending, with revision, the FR R. However, there are not actually any revisions to the FR R.

625 commercial banks and savings associations annually use the exemption in section 741 and each deliver the prospectus required by the section to approximately 1,000 customers annually. The Board estimates that a respondent spends approximately 5 minutes per response to comply with the delivery requirement of section 741. These recordkeeping and disclosure requirements represent less than 1 percent of the Board's total paperwork burden.

FR R	<i>Estimated number of respondents⁸</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Recordkeeping				
Section 218.723	62	10	0.25	155
Disclosure				
Section 218.701				
Disclosures to customers	1,249	100	0.083	10,367
Section 218.701				
Disclosures to brokers	1,249	1	0.25	312
Section 218.741				
Disclosures to customers	625	1,000	0.083	<u>51,875</u>
<i>Total</i>				62,709

The estimated total annual cost to the public for this collection of information is \$4,154,471.⁹

Sensitive Questions

This information collection contains no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System for collecting and processing this information collection is negligible.

⁸ Of these respondents, 16 for recordkeeping, 325 for section 218.701 disclosures to customers, 325 for section 218.701 disclosures to brokers, and 163 for section 218.741 disclosures are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets). Size standards effective March 17, 2023. See <https://www.sba.gov/document/support-table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions.

⁹ Total cost to the responding public is estimated using the following formula: total burden hours, multiplied by the cost of staffing, where the cost of staffing is calculated as a percent of time for each occupational group multiplied by the group's hourly rate and then summed (30% Office & Administrative Support at \$22, 45% Financial Managers at \$80, 15% Lawyers at \$79, and 10% Chief Executives at \$118). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), *Occupational Employment and Wages*, May 2022, published April 25, 2023, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.