

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. The OCC's CIF regulation in 12 CFR 9.18 governs CIFs managed by both national banks and FSAs.¹

Twelve CFR 9.8 and 12 CFR 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. Twelve CFR 9.9 and 150.480 also require that national banks and FSAs note the results of any audits of fiduciary activities (and any significant actions taken as a result of the audits) at least once annually in the minutes of the board of directors. These requirements are necessary to ensure the safety and soundness of fiduciary activities. Additionally, to ensure that the OCC has current information on which national banks and FSAs have fiduciary powers, 12 CFR parts 9 and 150 require that a bank or FSA seeking to surrender its fiduciary powers file a certified copy of a board resolution evidencing that intent.

To ensure the adequate disclosure of operational aspects of CIFs, part 9 (and 12 CFR 150.260 by cross-reference) require 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. The Plan 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 annual financial report contains, among other things, a list of fund investments

¹ Twelve CFR 9.18 expressly applies to national banks. FSAs are subject to 12 CFR 9.18 pursuant to 12 CFR 150.260(b)(3).

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 a list of 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 requirement is intended 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. Under part 9, a national bank or FSA administering a CIF that is invested primarily in real-estate or other assets that are not readily marketable may require a prior notice period, not to exceed one year, for withdrawals. In addition, with the OCC's approval, and if certain conditions are satisfied, a bank may withdraw an account from a collective investment fund up to one year after the end of the standard withdrawal period. In addition, a bank may request that the OCC approve an extension beyond the one-year extension period if certain conditions are satisfied. Extensions beyond the initial one-year extension must be requested and approved annually, for a maximum of two years after the initial one-year extension period.

A short-term investment fund (STIF) is a type of CIF that permits a bank or FSA 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. A STIF must meet certain conditions to qualify for this exception such as operating with a stable net asset value of \$1.00 per participating interest as a primary fund objective and maintaining 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. 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 of 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 the Plan to establish the operational parameters of a CIF and 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 CIF, 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.

Twelve CFR 9.9 and 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 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 with certain requirements that apply in the event a bank suspends or limits withdrawals and initiates liquidation of the STIF as a result of redemptions.

Twelve CFR 9.18(b)(5)(iii)(A) (and 12 CFR 150.260 by cross-reference) provides that a national bank or FSA administering a collective investment fund that is invested primarily in real estate or other assets that are not readily marketable may require a prior notice period, not to exceed one year, for withdrawals. Section 9.18(b)(5)(iii)(B) (and 12 CFR 150.260 by cross-reference) provides that a bank that requires a prior notice period for withdrawals must withdraw an account from the fund within the prior notice period or, if permissible under the fund's written plan, within one year after the date on which notice was required. Section 9.18(b)(5)(iii)(C) (and 12 CFR 150.260 by cross-reference) provides that a bank may, with OCC approval, withdraw an

account from a collective investment fund up to one year after the end of the standard withdrawal period) if certain conditions are satisfied.

Twelve CFR 9.18(b)(5)(iii)(D) (and 12 CFR 150.260 by cross-reference) provides that a bank may request that the OCC approve up to two additional one-year extensions beyond the initial one-year extended withdrawal period in 12 CFR 9.18(b)(5)(iii) (C), provided certain conditions are satisfied. Extensions past the initial one-year extension must be requested and approved annually, for a maximum of two years after the initial one-year extension period.

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 any investments in default.

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 the submission of untimely, and therefore inadequate, information that would not meet the needs of national banks and FSAs, the OCC, or fund participants. Less frequent preparation or disclosure could impair the OCC’s 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:*

The OCC issued a 60-day *Federal Register* notice on July 03, 2024, 89 FR 55308. No comments were received.

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: <i>Documentation of accounts</i> – An institution shall document | 282 Institutions Established and Terminated an | .10 | 1 | 170,525 |

| 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 |
|---|--|--|----------------------------|------------------|------------------------|
| Recordkeeping | <p>the establishment and termination of each fiduciary account and shall maintain adequate records.</p> <p><i>Retention of records</i> – 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.</p> <p><i>Separation of records</i> – An institution shall ensure that the records are separate and distinct from other records of the institution.</p> | Average of 6047 Participating Accounts per Year | | | |
| 12 CFR 9.9(a) and (b) & 12 CFR 150.480 Recordkeeping | <p>Audit of Fiduciary Activities:</p> <p><i>Annual audit</i> – 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.</p> <p><i>Continuous audit</i> – 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.</p> | 282 Institutions | .25 | 1 | 71 |
| 12 CFR 9.17(a) & 12 CFR 150.530 Reporting | <p>Surrender or revocation of fiduciary powers:</p> <p><i>Surrender</i> – 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.</p> | 2 Institutions | 1 | 1 | 2 |
| 12 CFR 9.18(b)(1) & 12 CFR 150.260 Recordkeeping | <p>Collective investment funds:</p> <p><i>Plan</i> – The institution shall establish and maintain each collective investment fund in</p> | 25 Institutions Managing 1,463 Collective Investment Funds | | | |

| 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 |
|---|---|--|----------------------------|-------------------|-------------------------|
| | <p>accordance with a Plan. The Plan must include provisions relating to:</p> <ul style="list-style-type: none"> • 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 • 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 | <p>Establish Plan (Estimate 15 unique funds established in any given year.)</p> <p>Maintain Plan (1,463 funds)</p> | <p>20</p> <p>.75</p> | <p>1</p> <p>1</p> | <p>300</p> <p>1,097</p> |
| 12 CFR 9.18(b)(1) & 12 CFR 150.260 Disclosure | <p>Collective investment funds: <u>Plan</u> – 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.</p> | 1,463 Funds | .25 | 1 | 366 |

| 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 9.18(b)(4) (iii)(E) Recordkeeping | Short-term investment funds: Adopt portfolio and issuer qualitative standards and concentration restrictions. | Currently 5 respondents managing 22 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) (iii)(H) Recordkeeping | Short-term investment funds: Adopt procedures for stress testing of the STIF's ability to maintain a stable net asset value per participating interest; report the results. Develop procedures | See response above. | 80 | 1 | 240 |
| Recordkeeping | Conduct stress tests | Currently 5 respondents managing 22 funds. | 25 | 12 | 6600 |
| Reporting | Draft report | Currently 5 respondents managing 22 funds. | 12 | 12 | 3,168 |
| Reporting | Review of report by Risk Manager | Currently 5 respondents managing 22 Funds. | 8 | 12 | 2,112 |
| 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; | | | | |

| 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 |
|--|--|---|----------------------------|------------------|------------------------|
| | 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 5 respondents managing 22 funds. | 8 | 12 | 2112 |
| 12 CFR 9.18(b)(4)(iii)(J) Recordkeeping | Short-term investment funds: Adopt procedures that require an institution that manages a STIF to notify the OCC prior to or within one business day thereafter of certain events. | Estimate 3 new funds established in any given year. | 10 | 1 | 30 |
| 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)(5)(iii)(A)-(C) Reporting | Collective investment funds: Request to withdraw an account from a collective investment fund with assets not readily marketable up to one year after the end of the prior notice period | 4 | 55 | 1 | 220 |
| 12 CFR 9.18(b)(5)(iii)(D) Reporting | Collective investment funds: Request for up to two additional one-year extensions beyond the initial one-year extended withdrawal period in 12 CFR 9.18(b)(5)(iii)(C) if certain | | | | |

| 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 9.18(b)(6) (ii) & 12 CFR 150.260 Recordkeeping | <p>conditions are satisfied.</p> <p>Collective investment funds: <i>Financial reports</i> – 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:</p> <ul style="list-style-type: none"> • 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): <ul style="list-style-type: none"> ▪ A summary of purchases (with costs) ▪ A summary of sales (with profit or loss and any investment change) ▪ Income and disbursements ▪ An appropriate notation of investments in default | 1,463 Funds | 7.75 | | 11,338 |
| 12 CFR 9.18(b)(6) (iv) & 12 CFR 150.260 Disclosure | <p>Collective investment funds: <i>Availability of the report</i> – An institution managing a collective investment fund</p> | 1,463 Funds | .25 | | 366 |

| 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 |
|--|--|--|----------------------------|------------------|------------------------|
| | 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. | | | | |
| 12 CFR 9.18(c)(5) & 12 CFR 150.260 Reporting | <p>Collective investment funds: <i>Other collective investments:</i> <u>Special exemption funds</u> – An institution shall submit to the OCC a written Plan that sets forth:</p> <ul style="list-style-type: none"> • 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 fund addresses the rights and interests of participating accounts | Estimate 1 new fund established in any given year. | 50 | | 50 |
| TOTALS | | 282 Respondents | | | 198,957 hours |

Cost of Hour Burden to Respondents:

198,957 x \$129.40 = \$25,745,036

To estimate wages the OCC reviewed May 2023 data for wages (by industry and occupation) from the U.S. Bureau of Labor Statistics (BLS) for credit intermediation and related activities

(NAICS 5220A1). To estimate compensation costs associated with the rule, the OCC uses \$129.40 per hour, which is based on the average of the 90th percentile for six occupations adjusted for inflation (4.3 percent as of Q1 2024), plus an additional 34.6 percent for benefits (based on the percent of total compensation allocated to benefits as of Q4 2023 for NAICS 522: credit intermediation and related 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:

The increase in burden was caused by a significant increase in the number of non-managed fiduciary accounts in 2022 and 2023. This led to a significant increase in total fiduciary accounts which in turn lead to a much higher estimation of average accounts terminated/opened per year per bank (6047).

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.