

SUPPORTING STATEMENT
RECORDKEEPING AND CONFIRMATION REQUIREMENTS
FOR SECURITIES TRANSACTIONS
(OMB Control No. 3064-0028)

INTRODUCTION

The FDIC is seeking OMB approval to extend, without change, its information collection entitled, “Recordkeeping and Confirmation Requirements for Securities Transactions,” OMB NO. 3064-0028, which expires on January 31, 2025. There is no change in the method or substance of the collection.

The purpose of the regulation is to ensure that purchasers of securities in transactions effected by insured state nonmember banks are provided with adequate information concerning such transactions. The regulation is also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to securities transactions

A. JUSTIFICATION

1. Circumstances that make the collection necessary:

On June 30, 1977, the Securities and Exchange Commission (SEC) published its final report on bank securities activities pursuant to its mandate under section 11A(e) of the Securities Exchange Act of 1934. The final report included a recommendation to Congress that the Federal banking agencies be mandated to issue and enforce specific rules and regulations governing the conduct of banks in effecting transactions in securities for the accounts of others. This recommendation required that such rules and regulations cover all aspects of this activity including personnel competency standards, recordkeeping requirements, and confirmation requirements.

The FDIC developed its regulation 12 C.F.R. Part 344 to be responsive to the recommendations of the SEC final report. The purpose of the regulation is to ensure that purchasers of securities in transactions effected by an insured state nonmember bank are provided adequate information concerning the transactions. The regulation is also designed to ensure that insured state nonmember banks maintain adequate records and controls with respect to these securities transactions.

2. Use of information collected:

An increasing number of banks, both large and small, located in both urban and rural areas, are offering their customers the ability to purchase and sell securities through the bank. This usually takes the form of a “discount brokerage” service which is advertised by the bank and which is conducted through the facilities of a

registered broker-dealer. It is estimated that 691 FDIC-supervised banks currently have some volume of income from securities brokerage activity.

Trust departments of banks, already involved in investments for beneficiaries of various types of trust accounts, are also involved in the purchase and sale of securities.

In addition, banks have for many years offered their customers -- as an accommodation -- the ability to redeem government bonds and purchase and sell securities. These accommodation services have typically been offered to "small" customers and to those in areas where no securities brokers were located. Usually the service was not advertised and the banks often charged no separate fee.

The FDIC requires insured state nonmember banks to keep certain types of records and provide customers with written confirmations for securities transactions. The past growth of these securities transaction activities, coupled with improved and standardized controls and customer information, was deemed necessary to ensure that the public received the highest possible quality of service and protection.

3. Consideration of the use of improved information technology:

Banks are free to use whatever technological methods are least burdensome for maintaining the required records and for sending the appropriate confirmation notices to their customers.

4. Efforts to identify duplication:

Every effort has been made to avoid duplication. There is no required format for maintaining the required records. If the existing records of the bank contain the required information in an accurate, verifiable form, the information need not be duplicated. The recordkeeping and confirmation requirements contained in 12 C.F.R. Part 344 do not duplicate requirements from any other source. Insured state nonmember banks which effect securities transactions as broker-dealers registered under the Securities Exchange Act of 1934, or which conduct their securities activities through operating subsidiaries registered as broker-dealers, are regulated by the SEC and exempt from the requirements of 12 C.F.R. Part 344. As noted in item 1, these requirements are (in-part) the result of recommendations made by the SEC in 1977. The OCC and the Board impose similar requirements on their supervised institutions.

5. Methods used to minimize burden if the collection has a significant impact on a substantial number of small entities:

This collection does not have a significant impact on a substantial number of small entities. In particular, 691 FDIC-supervised banks currently have some volume of income from securities brokerage activity. 383 of these FDIC-

supervised institutions have total assets of less than \$550 million therefore meeting the Small Business Administration's definition of a "small entity."

The following exemptions are granted by this regulation to small organizations to minimize burdens:

- (a) Transactions effected by broker-dealers that have entered into "networking arrangements" with banks are exempt from the recordkeeping and reporting requirements of this collection.
- (b) Banks need not generate their own customized confirmation forms. If they use another bank or a broker-dealer to effectuate securities transactions, the bank may opt to merely provide its customer with a copy of the other organization's confirmation form.
- (c) Banks having fewer than 200 securities transactions for customers per year are exempt from the need to establish more elaborate records. As such, they need not prepare or maintain account records for each customer, order tickets, or a record of broker/dealers used by the bank.
- (d) Banks which have fewer than 200 securities transactions for customers per year are exempt from the need to maintain written management policies and operational procedures.
- (e) Bank officers and employees need not report any securities transactions if they aggregate less than \$10,000 in any calendar quarter. Even when more than \$10,000 is involved, the figure is reduced by subtracting U.S. Government and Federal agency securities, as well as mutual fund and money market fund shares in arriving at the \$10,000 reportable figure.

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

Typically the bank is required to furnish the customer written notification within five business days from the date of the transaction. Also, when the bank exercises investment discretion it must furnish the customer, at least once every three months, with an itemized statement that specifies funds and securities in the custody or possession of the bank at the end of the period. These notification requirements are considered to be minimal to ensure that the customer adequately informed of the completion of each transaction and the status of the customer's account.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320.5(d)(2):

None. The information is collected in a manner consistent with 5 CFR Part 1320.5(d)(2).

8. Efforts to consult with persons outside the agency:

A 60-day notice seeking public comment on the FDIC's renewal of the information collection was published on August 21, 2024 (89 FR 67635). No comments were received.

9. Payment or gift to respondents:

Not applicable.

10. Any assurance of confidentiality:

Any information deemed to be of a confidential nature would be exempt from public disclosure in accordance with the provisions of the Freedom of Information Act (5 U.S.C. 552).

11. Justification for questions of a sensitive nature:

No sensitive information is collected.

12. Estimate of hour burden including annualized hourly costs:

Estimated Number of Respondents

Potential respondents to the requirements of 12 CFR 344.8 are all FDIC-supervised institutions that effect securities transactions for customers. Respondents include institutions that conduct securities transactions themselves or that conduct securities transactions through a broker/dealer. To estimate the annual number of respondents, FDIC counts the number of FDIC-supervised institutions that reported exercising fiduciary powers in the first quarter of 2024; this information is reported on item 2 of Call Report Schedule RC-T. This methodology is unchanged from the previous renewal.

As of March 31, 2024, 632 FDIC-supervised institutions reported exercising fiduciary powers. Accordingly, FDIC estimates 632 for this item. In the previous renewal the FDIC estimated 691 respondents to this IC. The 59-respondent decrease is in part due to the decrease in the number of FDIC-supervised banks. Of the 632 FDIC-supervised institutions, FDIC estimates that 376 (59.5 percent) are considered "small entities" for the purposes of the Regulatory Flexibility Act (RFA).

The requirements associated with 12 CFR 344.9 apply to officers and employees of FDIC-supervised institutions who "make investment recommendations or decisions for the accounts of customers; participate in the determination of such recommendations or decisions; or in connection with their duties, obtain information concerning which securities are being purchased or sold or recommend such action." Excluded from this requirement are "transactions for the benefit of the officer or

employee over which the officer or employee has no direct or indirect influence or control; transactions in registered investment company shares; transactions in government securities; and all transactions involving in the aggregate \$10,000 or less during the calendar quarter.” The FDIC does not currently have access to data on how many officers or employees are required to report trading activities in which they have a beneficial interest in accordance with 12 CFR 344.9. The FDIC assumes that larger institutions may have several affected employees, while the smaller institutions would not have any personnel subject to 12 CFR 344.9. Based on its supervisory experience, the FDIC estimates that, on average, three officers or employees per FDIC-supervised institution are affected by this IC and would respond to this line item. This estimate is unchanged from the previous renewal. Based on the number of respondents to the first line item, FDIC estimates 1,896 respondents per year to the second line item. This estimate constitutes a decrease of 177 in the estimated annual number of respondents to the second line item in this ICR, which is due to the decrease in the number of respondents to the IC associated with 12 CFR 344.8. The respondents to this line item are natural persons and the SBA does not define natural persons as “small entities” for the purposes of the RFA, so no small entities are affected by the requirements in 12 CFR 344.9.

Table 1 - Summary of Estimated Annual Implementation Burden (3064-0028)

| IC Description | Type of Burden (Obligation to Respond) | Frequency of Response | Number of Respondents | Number of Responses / Respondent | Estimated Time per Response (Hours) | Annual Burden (Hours) |
|----------------------------------------------------------------------------------------|----------------------------------------|-----------------------|-----------------------|----------------------------------|-------------------------------------|-----------------------|
| Maintain Securities Trading Policies and Procedures – 344.8 | Recordkeeping (Voluntary) | On Occasion | 632 | 1 | 1 | 632 |
| Officer/Employee Filing of Reports of Personal Securities Trading Transactions – 344.9 | Third Party Disclosure | On Occasion | 1,896 | 4 | 1 | 7,584 |
| Total Annual Burden Hours: | | | | | | 8,212 hours |
| Source: FDIC. | | | | | | |

Hourly Burden Cost Estimate

To estimate the average cost of compensation per hour, FDIC uses the 75th percentile hourly wages reported by the Bureau of Labor Statistics (BLS) National Industry-Specific Occupational Employment and Wage Estimates (OEWS) for the relevant occupations in the Depository Credit Intermediation sector. However, the latest OEWS wage data are as of May 2023 and do not include non-wage compensation. To adjust these wages for use in this estimate, FDIC multiplies the OEWS hourly wages by approximately 1.53 to account for non-wage compensation, using the BLS Employer Cost of Employee Compensation (ECEC) data as of March 2023 (the latest published release prior to the OEWS wage data). It then multiplies the resulting compensation rates by approximately 1.04 to account for the change in the seasonally

adjusted Employment Cost Index for the Credit Intermediation and Related Activities sector (NAICS Code 522) between March 2023 and March 2024.

| Table 2. Summary of Hourly Burden Cost Estimate (3064-0028) | | | | | | | | |
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| Information Collection (IC) (Obligation to Respond) | Hourly Weight (%) | Percentage Shares of Hours Spent by and Hourly Compensation Rates for each Occupation Group (by Collection) | | | | | | Estimated Hourly Compensation Rate |
| | | Exec. & Mgr. (\$145.59) | Lawyer (\$181.4) | Compl. Ofc. (\$76.79) | IT (\$110.5) | Fin. Anlst. (\$99.92) | Clerical (\$39.25) | |
| 1. Maintain Securities Trading Policies and Procedures, 12 CFR 344.8 (Mandatory) | 7.69 | 0 | 0 | 20 | 0 | 0 | 80 | \$46.76 |
| 2. Officer/Employee Filing of Reports of Personal Securities Trading, 12 CFR 344.9 (Mandatory) | 92.31 | 20 | 0 | 60 | 0 | 0 | 20 | \$83.04 |
| Weighted Average Hourly Compensation Rate: | | | | | | | | \$80.25 |
| <p>Source: Bureau of Labor Statistics: 'National Industry-Specific Occupational Employment and Wage Estimates: Industry: Credit Intermediation and Related Activities (5221 And 5223 only)' (May 2023), Employer Cost of Employee Compensation (March 2023), and Employment Cost Index (March 2023 and March 2024). Standard Occupational Classification (SOC) Codes: Exec. And Mgr = 11-0000 Management Occupations; Lawyer = 23-0000 Legal Occupations; Compl. Ofc. = 13-1040 Compliance Officers; IT = 15-0000 Computer and Mathematical Occupations; Fin. Anlst. = 13-2051 Financial and Investment Analysts; Clerical = 43-0000 Office and Administrative Support Occupations.</p> <p>Note: The estimated hourly compensation rate for a given IC is the average of the hourly compensation rates for the occupations used to comply with that IC, weighted by the estimated share of hours spent by each occupation. The weighted average hourly compensation rate for the entire ICR is the average of the estimated hourly compensation rates for all ICs, weighted by the share of hourly burden for IC. These hourly weights, as shown in the "Hourly Weight" column of this table, are the quotients of the estimated number of annual burden hours for each IC and the total estimated number of annual burden hours across all ICs.</p> | | | | | | | | |

Total Estimated Cost Burden

FDIC estimates the total annual cost burden for this ICR by multiplying the total annual estimated burden hours for each burden type, reported in Table 1, by the weighted average hourly compensation reported in Table 2. The total annual cost burden is estimated as: 8,216 hours / year * \$80.25 / hour = \$659,334 per year. This estimate represents an increase of \$24,727. This increase is due to the increase in the weighted average hourly compensation rate.

13. Estimate of start-up cost to respondents:

There are no anticipated capital, start-up, or operating costs.

14. Estimates of annualized cost to the federal government:

None.

15. Analysis of change in burden:

There is no change in the methodology or substance of this information collection. The change in estimated annual burden is due to a reduction in the number of respondents. The frequency or response and time per response remain the same.

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

The information contained in this collection is not published.

17. Exceptions to expiration date display:

Not applicable.

18. Exceptions to certification:

None.

B. STATISTICAL METHODS

Statistical methods are not employed in this collection.