



PAPERWORK REDUCTION ACT SUPPORTING STATEMENT
for the Revision of
Rule 12b-1
OMB Control Number 3235-0212

The U.S. Securities and Exchange Commission (“Commission” or SEC) submits this information collection request (ICR) pursuant to the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. Section 3501 et seq., with the following justification.

1. Necessity of Information Collection

Section 12(b) of the Investment Company Act of 1940 (the “Act”)¹ prohibits a registered open-end investment company (“fund”), other than a fund complying with Section 10(d) of the Act,² from acting as a distributor of securities that it has issued, except through an underwriter, in contravention of Commission rules.³ Rule 12b-1 under the Act permits a fund to bear expenses associated with the distribution of its shares, provided that the fund complies with certain requirements.⁴

Rule 12b-1 requires, among other things, that the fund adopt a written plan describing all material aspects of the proposed financing of distribution (“rule 12b-1 plan”).⁵ The rule 12b-1 plan must be in writing and approved by the fund’s board of directors, and separately by the “independent” directors (as described in the rule).⁶ If the rule 12b-1 plan is being adopted after public offering of the fund’s voting securities, it must also be approved initially by a vote of at least a majority of the fund’s outstanding voting securities.⁷ Similarly, any material amendments to the rule 12b-1 plan must be approved by the fund’s directors, including the independent directors, and any material increase in the amount to be spent under the rule 12b-1 plan must be approved by the fund’s shareholders.⁸ In considering the implementation or continuance of a rule 12b-1 plan, the fund’s board must request and evaluate information reasonably necessary to make an informed decision.⁹ The board also must

1 15 U.S.C. 80a-1 *et seq.*

2 15 U.S.C. 80a-10(d).

3 15 U.S.C. 80a-12(b).

4 17 CFR 270.12b-1.

5 17 CFR 270.12b-1(b).

6 17 CFR 270.12b-1(b)(2).

7 17 CFR 270.12b-1(b)(1).

8 17 CFR 270.12b-1(b)(4).

9 17 CFR 270.12b-1(d).

conclude, in the exercise of reasonable business judgment and in light of the directors' fiduciary duties, that there is a reasonable likelihood that the rule 12b-1 plan will benefit the fund and its shareholders.¹⁰

The rule 12b-1 plan and, in certain instances, any related agreements must incorporate certain specified provisions, including that: (i) the plan or agreement will continue in effect for more than one year only if the board, including the independent directors, approve the continuance at least annually;¹¹ (ii) the fund's board will review quarterly reports of the amounts spent under the plan;¹² and (iii) the plan may be terminated at any time by a majority vote of the independent directors or outstanding voting securities.¹³ Rule 12b-1 also requires the fund to preserve for six years copies of the rule 12b-1 plan and any related agreements and reports, as well as minutes of board meetings that describe the factors considered and the basis for implementing or continuing the rule 12b-1 plan.¹⁴

Rule 12b-1 also prohibits funds from paying for distribution of fund shares with brokerage commissions on their portfolio transactions.¹⁵ The rule requires funds that use broker-dealers that sell their shares to also execute their portfolio securities transactions, to implement policies and procedures reasonably designed to prevent: (i) the persons responsible for selecting broker-dealers to effect transactions in fund portfolio securities from taking into account broker-dealers' promotional or sales efforts when making those decisions; and (ii) a fund, its adviser, or its principal underwriter, from entering into any agreement under which the fund directs brokerage transactions or revenue generated by those transactions to a broker-dealer to pay for distribution of the fund's (or any other fund's) shares.¹⁶

On September 30, 2026, the Commission issued a release that, among other things, would amend certain rules under the Investment Company Act to permit registered closed-end funds and business development companies, as appropriate (together "regulated closed-end funds") to have multiple share class structures and allow them and their affiliates to enter into arrangements for the payment of asset-based distribution and service fees.¹⁷ Specifically, if a regulated closed-end fund imposes an asset-based distribution or service fee, that fee would be required to be charged under a written plan which, along with any agreements with any person relating to the plan's implementation, must comply with rule 12b-1 as if the fund were a registered open-end fund.

2. Purpose and Use of Information Collection

Rule 12b-1 enables funds to use their own assets to pay for distribution of their shares. The board and shareholder approval requirements of the rule are designed to ensure that fund shareholders and directors receive adequate information to evaluate and approve a rule 12b-1 plan and, thus, are necessary for investor protection. The provisions that require the board to be provided with quarterly reports and

¹⁰ 17 CFR 270.12b-1(e).

¹¹ 17 CFR 270.12b-1(b)(3)(i).

¹² 17 CFR 270.12b-1(b)(3)(ii).

¹³ 17 CFR 270.12b-1(b)(3)(iii).

¹⁴ 17 CFR 270.12b-1(f).

¹⁵ 17 CFR 270.12b-1(h)(1).

¹⁶ 17 CFR 270.12b-1(h)(2)(ii).

¹⁷ Interval Fund Modernization; Expansion of Multiple Share Class to Registered Closed-End Management Investment Companies and Business Development Companies, Rel. No. 33-11444 (Sep. 30, 2026).

U.S. Securities and Exchange Commission (SEC)

termination authority are designed to ensure that the rule 12b-1 plan continues to benefit the fund and its shareholders. The recordkeeping requirements of the rule are necessary to enable Commission staff to oversee compliance with the rule. The requirement that funds or their advisers implement, and fund boards approve, policies and procedures in order to prevent persons charged with allocating fund brokerage from taking distribution efforts into account is designed to ensure that funds' selection of brokers to effect portfolio securities transactions is not influenced by considerations about the sale of fund shares.

3. Use and Consideration of Information Technology

The Commission's Electronic Data Gathering, Analysis, and Retrieval ("EDGAR") system provides for the automated filing, processing, and dissemination of full disclosure filings. This automation has increased the speed, accuracy, and availability of information, generating benefits to investors and financial markets. Although rule 12b-1 does not require the filing of any documents with the Commission, the Commission may use its EDGAR facility in the future to improve the examination of records funds must keep under the rule.

4. Identifying and Minimizing Duplication

The Commission periodically evaluates rule-based reporting and recordkeeping requirements for duplication and reevaluates them whenever it proposes a rule or a change in a rule. Rule 12b-1 does not require duplicative reporting or recordkeeping. Although rules 31a-1 and 31a-2 under the Act generally require the maintenance and preservation of records, including board minutes,¹⁸ rule 12b-1 specifies documents to be retained under rule 12b-1 and substantive issues to be addressed in the board minutes. Although rule 38a-1 under the Act requires funds to adopt and implement compliance policies and procedures,¹⁹ the requirement in rule 12b-1 to adopt procedures is intended to ensure the active monitoring of brokerage allocation decisions when executing brokers also distribute a fund's shares.

5. Effect on Small Entities

The Commission reviews all rules periodically, as required by the Regulatory Flexibility Act,²⁰ to identify methods to minimize recordkeeping or reporting requirements affecting small businesses. The recordkeeping requirements of rule 12b-1 are the same for all funds that choose to rely on the rule, including small entities. The burden on smaller funds, however, to prepare a 12b-1 plan and to comply with the other conditions of the rule, may be proportionally greater than for larger funds. The Commission believes, however, that imposing different conditions on smaller funds would not be consistent with investor protection and the purposes of the rule's conditions. Rule 12b-1 is not mandatory, and funds may choose other distribution arrangements. All funds that use their selling brokers to execute fund portfolio securities transactions, however, are required to adopt policies and procedures under rule 12b-1(h).

6. Consequences of Not Conducting Collection and Obstacles to Reducing Burden

Pursuant to rule 12b-1, fund directors receive information regarding a rule 12b-1 plan and any related agreements (i) when the plan or any related agreements are implemented or when a material

¹⁸ 17 CFR 270.31a-1; 17 CFR 270.31a-2.

¹⁹ 17 CFR 270.38a-1.

²⁰ 5 U.S.C. 601 *et seq.*

amendment is made to the plan; (ii) quarterly in connection with reports concerning amounts spent under the plan; and (iii) annually when the board decides whether to continue the plan and any related agreements. The fund also must provide information to fund shareholders when their vote is required to implement the plan and if any material increases in amounts spent under the plan are proposed. These requirements are necessary to ensure proper approval by fund boards and shareholders in connection with the adoption, continuance, or amendment of a rule 12b-1 plan, and to ensure that fund boards can monitor payments made under a rule 12b-1 plan. These requirements also are necessary for Commission staff to monitor the duties and responsibilities of fund boards and to determine fund compliance with the requirements of the rule. Rule 12b-1 also requires that, before a fund uses a broker-dealer that sells fund shares to also execute portfolio transactions, the fund implement (and its board approve) policies and procedures to prevent distribution efforts from being a factor in the selection of executing broker-dealers. This requirement is necessary to ensure the active monitoring of brokerage allocation decisions when executing brokers also distribute the fund's shares.

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

Rule 12b-1 requires funds to retain certain written records for more than three years. Funds relying on rule 12b-1 must preserve copies of the rule 12b-1 plan, related agreements and reports, and board minutes related to the rule for at least six years and maintain such records in an easily accessible place for the first two years. The long-term retention of these records is necessary for the Commission's staff to determine compliance with rule 12b-1.

8. Public Comment and Consultations Outside the Agency

Before determining whether to adopt the proposed amendments, the Commission will receive and evaluate public comments on the proposal and its collection of information requirements. Moreover, the Commission and the staff of the Division of Investment Management participate in an ongoing dialogue with representatives of the investment company industry through public conferences, meetings, and informal exchanges. These various forums provide the Commission and staff with a means of ascertaining and acting upon the paperwork burdens that may confront the industry.

9. Payment or Gift to Respondents

Not applicable.

10. Assurance of Confidentiality and Privacy

No assurance of confidentiality was provided.

11. Collection Questions of a Sensitive Nature

Not applicable.

12. Estimated Time Burden and its Cost Equivalent

The following estimates of average burden hours and costs are made solely for purposes of the Paperwork Reduction Act of 1995²¹ and are not derived from a comprehensive or even representative survey or study of the cost of Commission rules and forms. Reliance on rule 12b-1 is generally voluntary, but compliance with its conditions for funds that do rely on it is mandatory.

21 44 U.S.C. 3501 *et seq.*

We are revising our total burden estimates to reflect the proposed amendments to rule 18f-3. Under the proposal, regulated closed-end funds that rely on rule 18f-3 would be subject to rule 12b-1 collection of information. Rule 12b-1 requires the board of each fund with a rule 12b-1 plan to (i) initially approve the plan and thereafter consider the plan's continuation on an annual basis and to approve any material amendments to the plan; (ii) review quarterly reports of amounts spent under the plan; and (iii) approve policies and procedures to enable the fund to effect portfolio securities transactions through an executing broker-dealer that also distributes the fund's shares. The number of hours required to comply with rule 12b-1 will vary considerably depending on several factors, including the complexity of the rule 12b-1 plan and the number of classes of fund shares covered by the plan.

Based on information filed with the Commission by funds, Commission staff previously estimated approximately 5,246 funds that have at least one share class subject to a rule 12b-1 plan. Under the proposed rule, 168 regulated closed-end funds that rely on 18f-3 will also be subject to the rule 12b-1 collection.²²

However, of the 5,246 funds that are currently subject to a rule 12b-1 plan, many of these funds are part of an affiliated group of funds, or fund family, that is overseen by a common board of directors. Although the board must review and approve the rule 12b-1 plan for each fund separately, we previously allocated the costs and hourly burden related to rule 12b-1 based on the number of fund families that have at least one fund that charges rule 12b-1 fees, rather than on the total number of funds that individually have a rule 12b-1 plan.²³

Based on information filed with the Commission, the staff previously estimated approximately 250 fund families with common boards of directors that have at least one fund with a rule 12b-1 plan. Based on previous conversations with fund representatives, Commission staff estimated that for each of the 250 fund families with a portfolio that has a rule 12b-1 plan, the average annual burden of complying with the rule is 425 hours. This estimate takes into account the time needed to prepare quarterly reports to the board of directors, the board's consideration of those reports, and the board's initial or annual consideration of whether to continue the plan.²⁴

22 This estimate is based on staff analysis of information filed with the Commission. For purposes of the estimates in Items 12-14 of this Supporting Statement, the term “fund” refers to a registered open-end investment company or a series thereof.

23 This allocation is based on previous conversations with fund representatives on how fund boards comply with the requirements of rule 12b-1. Despite this allocation of hourly burdens and costs, the number of annual responses each year will continue to depend on the number of funds with rule 12b-1 plans rather than the number of fund families with rule 12b-1 plans. The staff estimates that the number of annual responses per fund will be four per year (quarterly, with the annual reviews taking place at one of the quarterly intervals). Thus, we previously estimated that funds will make 20,984 responses each year. $5,246 \text{ funds} \times 4 \text{ responses per year per fund} = 20,984 \text{ responses per year}$. Rule 12b-1 has a collection of information which regulated closed-end funds that rely on rule 18f-3 would be subject to under the proposal. We estimate that 168 regulated closed-end funds would have multiple share classes under Rule 18f-3. This estimate is based on the number of funds currently operating under exemptive orders that permit deferred sales loads or multiple share classes, making them subject to Rule 12b-1 fee collection. Thus, we estimate 672 additional responses to rule 12b-1 (168×4).

24 We do not estimate any costs or time burden related to the recordkeeping requirements in rule 12b-1, as funds are either required to maintain these records pursuant to other rules or would keep these records in any case as a matter of business practice.

Accordingly, the previously estimated annual industry burden for complying with the current rule 12b-1 information collection requirements is 106,250 hours, calculated as 250 fund families multiplied by 425 hours. Under the proposal, we are estimating an increase of 3,330 burden hours with an industry total of 109,580 burden hours and a cost of \$304,520,608.32²⁵, and an increase of \$2,904.24 in cost burden with a total of \$92,904.24 in cost burden.

Estimated Burdens

	Previously Approved	Proposed	Difference
Responses	20,984 responses	21,656 responses ²⁶	672 ²⁷
Aggregate Time Burden (hours)	106,250 hours	109,580 hours	3,330 hours

13. Estimated Additional Cost Burden

If a currently operating fund seeks to (i) adopt a new rule 12b-1 plan or (ii) materially increase the amount it spends for distribution under its rule 12b-1 plan, rule 12b-1 requires that the fund obtain shareholder approval. As a consequence, the fund will incur the cost of a proxy.²⁸ Based on previous conversations with fund representatives, Commission staff estimates that approximately three funds per year prepare a proxy in connection with the adoption or material amendment of a rule 12b-1 plan. Funds typically hire outside legal counsel and proxy solicitation firms to prepare, print, and mail such proxies. The staff further estimates that the cost of each fund's proxy solicitation is \$30,000.²⁹ Thus, the total annual cost burden of rule 12b-1 to the fund industry is \$92,904.24.³⁰

²⁵ The estimated internal/equivalent cost per response (\$14,061.72) is based on (1) one hour of the rate of fund boards of directors (assuming an average of 9 directors per board) (\$12,186), plus (2) the remaining hours per response (4.06) times a \$462 blended wage rate. The \$462 blended wage rate reflects current estimates of the hourly rate for accountants and auditors (\$330), attorneys (\$774), and paralegals and legal assistants (\$281) in the securities industry $((\$330 + \$774 + \$281)/3 = \$462)$. $\$14,061.72 \times 21,656 = \$304,520,608.32$

²⁶ The estimated number of responses is based on the current OMB inventory (20,984) plus the increase in responses (672).

²⁷ We are estimating that there would be 168 regulated closed-end funds that would have multiple share class structures under rule 18f-3. Thus, we estimate 672 additional responses to rule 12b-1 (168×4) .

²⁸ In general, a fund adopts a rule 12b-1 plan before it begins operations. Therefore, the fund is not required to obtain the approval of its public shareholders because the fund's shares have not yet been offered to the public.

²⁹ The staff estimates these to be approximately \$30,968.08 per proxy solicitation. This estimate is based on a range of costs depending upon the nature and complexity of the matters disclosed in the proxy materials and the number of fund shareholders receiving proxy materials. Estimates range from \$7,500 to in excess of \$117,000.

³⁰ 3 funds requiring a proxy solicitation per year $\times$ \$30,968.08 per proxy solicitation = \$92,904.24 per year for proxy solicitations.

14. Annual Cost to the Federal Government

The SEC is in the process of revising its methodologies to estimate annualized costs to the Federal government for all its relevant collections of information. The SEC anticipates that future extensions of this collection of information will reflect the revised methodologies.

15. Reasons for Changes in Burden Estimates

The estimated number of responses has increased from 20,984 responses to 21,656 responses (an increase of 672 responses). The estimated annual cost burden associated with rule 12b-1 has increased from \$90,000 to \$92,904.24 (an increase of \$2,904.24). The estimated annual burden hours for funds with rule 12b-1 plans has increased from 106,250 hours to 109,580 hours (an increase of 3,330 hours). These increases are due to the increase in the number of respondents, as closed-end funds relying on rule 18f-3 will be subject to the rule 12b-1 collection of information under the proposed rule.

16. Plans for Publishing Results

The results of any information collection will not be published.

17. Approval to Omit Display of OMB Expiration Date

We are seeking OMB approval to omit the expiration date because the public may find it confusing to see an expiration date on a form, especially when approaching the expiration date.

18. Exceptions to the Certification for Paperwork Reduction Act Submissions

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