



FEDERAL RESERVE SYSTEM

Proposed Agency Information Collection Activities; Comment Request

AGENCY: Board of Governors of the Federal Reserve System

ACTION: Notice for comment regarding the Federal Reserve proposal to extend without revision the clearance under the Paperwork Reduction Act for the following information collection activity.

SUMMARY: The Board of Governors of the Federal Reserve System (Board or Federal Reserve) invites comment on a proposal to extend for three years, without revision, the following reporting and recordkeeping requirements related to amendments made by the Gramm-Leach-Bliley Act, to the Bank Holding Company Act, the Federal Reserve Act, and related regulations:

- The mandatory Declarations to Become a Financial Holding Company (FHC) (FR 4010);¹
- The voluntary Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011);
- The mandatory Notices of Failure to Meet Capital or Management Requirements (FR 4012);²
- The mandatory Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017);
- The mandatory Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019); and
- The mandatory Recordkeeping Requirements Associated with Merchant Banking Activities (FR 4023).

These collections of information are event-generated and as such, there are no formal reporting forms associated with them. In each case, the type of information required to be filed is described in the Board's regulations.

On June 15, 1984, the Office of Management and Budget (OMB) delegated to the Board authority under the Paperwork Reduction Act (PRA) to approve of and assign OMB control numbers to collection of information requests and requirements conducted or sponsored by the Board. In exercising this delegated authority, the Board is directed to take every reasonable step to solicit comment. In determining whether to approve a collection of information, the Board will consider all comments received from the public and other agencies.

DATES: Comments must be submitted on or before [insert date 60 days after publication in the Federal Register].

ADDRESSES: You may submit comments, identified by *GLB Filings*, by any of the following methods:

¹ Savings and Loan Holding Companies (SLHCs) were added to the FR 4010 as a result of Regulation LL. 12 CFR 238.65. (76 FR 56508) September 13, 2011.

² SLHCs were added to the FR 4012 as a result of Regulation LL. 12 CFR 238.65. (76 FR 56508) September 13, 2011.

- Agency Website: <http://www.federalreserve.gov>. Follow the instructions for submitting comments at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> .
- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.
- E-mail: regs.comments@federalreserve.gov. Include OMB number in the subject line of the message.
- FAX: (202) 452-3819 or (202) 452-3102.
- Mail: Robert deV. Frierson, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW, Washington, DC 20551.

All public comments are available from the Board’s website at <http://www.federalreserve.gov/apps/foia/proposedregs.aspx> as submitted, unless modified for technical reasons. Accordingly, your comments will not be edited to remove any identifying or contact information. Public comments may also be viewed electronically or in paper form in Room 3515, 1801 K Street (between 18th and 19th Streets NW) Washington, DC 20006 between 9:00 a.m. and 5:00 p.m. on weekdays.

Additionally, commenters may send a copy of their comments to the OMB Desk Officer – Shagufta Ahmed – Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 10235 725 17th Street, NW, Washington, DC 20503 or by fax to (202) 395-6974.

FOR FURTHER INFORMATION CONTACT: A copy of the PRA OMB submission, including the proposed reporting form and instructions, supporting statement, and other documentation will be placed into OMB’s public docket files, once approved. These documents will also be made available on the Federal Reserve Board’s public website at: <http://www.federalreserve.gov/apps/reportforms/review.aspx> or may be requested from the agency clearance officer, whose name appears below.

Federal Reserve Board Clearance Officer – Nuha Elmaghrabi – Office of the Chief Data Officer, Board of Governors of the Federal Reserve System, Washington, DC 20551 (202) 452-3829. Telecommunications Device for the Deaf (TDD) users may contact (202) 263-4869, Board of Governors of the Federal Reserve System, Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Request for comment on information collection proposal

The Board invites public comment on the following information collection, which is being reviewed under authority delegated by the OMB under the PRA. Comments are invited on the following:

- a. Whether the proposed collection of information is necessary for the proper performance of the Federal Reserve’s functions; including whether the information has practical utility;
- b. The accuracy of the Federal Reserve’s estimate of the burden of the proposed information collection, including the validity of the methodology and assumptions used;

- c. Ways to enhance the quality, utility, and clarity of the information to be collected;
- d. Ways to minimize the burden of information collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- e. Estimates of capital or startup costs and costs of operation, maintenance, and purchase of services to provide information.

At the end of the comment period, the comments and recommendations received will be analyzed to determine the extent to which the Federal Reserve should modify the proposed revisions prior to giving final approval.

Proposal to approve under OMB delegated authority the extension for three years, without revision, of the following information collection:

Report title: Certain Filings Related to the GLB Act.

Agency form number: FR 4010, FR 4011, FR 4012, FR 4017, FR 4019, and FR 4023.

OMB control number: 7100-0292.

Frequency: On occasion.

Respondents: BHCs, SLHCs, foreign banking organizations, and state member banks.

Estimated number of respondents: FR 4010: BHCs and SLHCs, 31, Foreign banks, 1; FR 4011: 5; FR 4012: BHCs decertified as an FHC, 2, FHCs back into compliance – BHC, 14; FR 4017: 1; FR 4019: Regulatory relief requests, 4, Portfolio company notification 2; FR 4023: 30.

Estimated average hours per response: FR 4010: BHCs and SLHCs, 3 hours, Foreign banks, 4 hours; FR 4011: 10 hours; FR 4012: BHCs decertified as an FHC, 1 hour, FHCs back into compliance – BHC, 10 hours; FR 4017: 4 hours; FR 4019: Regulatory relief requests, 1 hour, Portfolio company notification, 1 hour; FR 4023: 50 hours.

Estimated annual burden hours: FR 4010: BHCs and SLHCs, 93 hours, Foreign banks, 4 hours; FR 4011: 50 hours; FR 4012: BHCs decertified as an FHC, 2 hours, FHCs back into compliance – BHC, 140 hours; FR 4017: 4 hours; FR 4019: Regulatory relief requests, 4 hours, Portfolio company notification, 2 hours; FR 4023: 1500 hours.

General Description of Report:

FR 4010

The BHC Act, and Regulations Y and LL specify the information to be included in a declaration.³ In most cases, FHC declarations are filed in the form of a letter addressed to the appropriate Federal Reserve Bank.

³ 12 U.S.C. 1843(l)(1); 12 CFR 225.82, 238.65(b) and 225.91.

An FHC declaration filed by a U.S. BHC must state that the BHC elects to become an FHC, must be signed by an authorized official or representative, and must provide the following information:

- the name and head office address of the BHC and of each depository institution controlled by the BHC (multi-tiered filers may file a single declaration, provided the name and head office address of each tiered company is listed.)
- a certification that the BHC and all depository institutions controlled by the BHC are well capitalized and well managed as of the declaration date
- the capital ratios (as of the close of the previous quarter for all relevant capital measures) for each depository institution the BHC controls

An FHC declaration filed by a U.S. SLHC must state that the SLHC elects to be treated as an FHC, must be signed by an authorized official or representative, and must provide the following information:

- the name and head office address of the SLHC and of each depository institution controlled by the SLHC (Multi-tiered filers may file a single declaration, provided the name and head office address of each tiered company is listed.)
- a certification that the SLHC and all depository institutions controlled by the SLHC are well capitalized and well managed as of the declaration date
- the capital ratios (as of the close of the previous quarter for all relevant capital measures) for each depository institution the SLHC controls

An FHC declaration filed by an FBO must state that the FBO elects to be treated as an FHC, must be signed by an authorized official or representative, and must provide the following information:

- with respect to each foreign bank controlled by the FBO, the bank's risk-based capital ratios, amount of tier 1 capital, and total assets, as of the close of the most recent quarter and as of the close of the most recent audited reporting period
- a certification that each foreign bank controlled by the FBO is well-capitalized and well-managed
- a certification that all U.S. depository institutions controlled by the FBO are well capitalized and well managed as of the declaration date
- the capital ratios (as of the close of the previous quarter for all relevant capital measures) for each U.S. depository institution controlled by the FBO

FR 4011

Regulation Y specifies the information to be collected in connection with each type of request.⁴ A request for a determination that an activity is financial in nature or incidental to a financial activity must be in writing and:

⁴ 12 CFR 225.88(b) and (e), and 225.89.

- identify, define, and describe the activity and explain how the activity would be conducted,
- explain why the activity should be considered financial in nature or incidental to a financial activity; and
- include information supporting the request and any other information required by the Board.

A request for an advisory opinion that a specific activity is within the scope of activities previously determined to be financial in nature, or incidental to a financial activity, must be in writing and:

- identify and describe the proposed activity or the proposed product or service,
- offer support for the desired interpretation, and
- include any other information requested by the Board.

An applicant seeking prior approval to engage in an activity that the applicant believes is complementary to a financial activity must submit a written request that:

- identifies, defines, and describes the activity and explains how the activity would be conducted;
- identifies the financial activity to which the proposed activity would be complementary and provides information sufficient to support a finding that the proposed activity is complementary to the financial activity;
- describes the scope and relative size of the proposed activity, measured by the percentage of the FHC's projected revenues expected to be derived from, and assets associated with, the activity;
- discusses the risks the activity may reasonably be expected to pose to the safety and soundness of the FHC's depository institutions and to the financial system generally;
- describes the potential adverse effects, including potential conflicts of interest, decreased or unfair competition, or other risks, that the activity could cause, and the measures the FHC proposes to take to address those potential effects;
- describes the potential benefits to the public, such as greater convenience, increased competition, or gains in efficiency, the proposal may be reasonably expected to produce; and
- provides information about the FHC's financial and managerial resources and any other information requested by the Board.

FR 4012

Regulation Y provides that the notice must identify the noncompliant banking entity and the area of noncompliance. Regulation Y does not prescribe a format for such notices, however, they typically take the form of a letter.⁵ Plans submitted to remediate capital and management deficiencies typically include the following:

- an explanation of the specific actions the FHC will take to correct all areas of noncompliance
- a schedule within which each action will be taken
- any other information the Board may require

⁵ 12 CFR 225.83(b)(1), 225.93(b)(1) and 238.66(b).

FR 4017

Regulation H requires FR 4017 notices to be in the form of a letter with enclosures and to:⁶

- describe the proposed transaction by which the bank would acquire the stake in the financial subsidiary;
- provide the name and head office address of the subsidiary;
- describe each current and proposed activity of the financial subsidiary and the legal authority for each activity;
- provide the capital ratios, as of the end of the most recent calendar quarter, for the bank and each of its depository institution affiliates;
- certify that the bank and each of its depository institution affiliates were well-capitalized at the close of the previous calendar quarter and as of the notice date;
- certify that the bank and each of its depository institution affiliates are well-managed as of the notice date;
- certify that the bank meets any applicable debt rating or alternative requirements and complies both before and after the transaction with the limit on the aggregate amount of assets held by the bank's financial subsidiaries; and
- describe the insurance activities, if the financial subsidiary will engage in insurance activities, to be conducted and identify each state in which the company holds an insurance license and the state insurance authority that issued the license.

FR 4019

Regulation Y requires requests for extension of the holding period for a merchant bank investment to include the following information:⁷

- the reasons for the request, including information addressing the factors the Board must consider in acting on such a request (including the costs and risks to the FHC of disposing of the investment, market conditions, the extent and history of the FHC's involvement in managing or operating the portfolio company, and the FHC's average holding period for its merchant banking investments)
- an explanation of the FHC's plan for divesting the investment

A notice of extended routine management or operation of a portfolio company can be in the form of a brief letter and must identify the portfolio company, the date on which the FHC first became involved in the routine management or operation of the portfolio company, the reasons for the FHC's involvement, the actions taken by the FHC to address the circumstances giving rise to its involvement, and an estimate of when the FHC anticipates ceasing routinely managing or operating the portfolio company.

⁶ 12 CFR 208.76.

⁷ 12 CFR 225.172(b)(4).

FR 4023

The general policies and procedures that an FHC must establish with respect to merchant banking must be reasonably designed to:⁸

- monitor, with respect to each investment and the entire portfolio, carrying and market values and performance;
- identify and manage market, credit, and other risks of such investments;
- identify and monitor terms and risks of transactions of companies in which the FHC has merchant banking investments;
- ensure the corporate separateness of the FHC and the companies in which it has merchant banking investments;
- ensure compliance with sections 23A and 23B of the FRA, anti-tying statutes, Regulation Y, and any other applicable provisions of law.

Legal authorization and confidentiality:

- FR 4010 is authorized by section 4(l)(1)(C) of the BHC Act (12 U.S.C. 1843 (l)(1)(C)); section 10(c)(2)(H) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(2)(H)); section 8(a) of the International Banking Act (12 U.S.C. 3106(a)); sections 225.82 and 225.91 of the Board's Regulation Y (12 CFR 225.82, 225.91); and section 238.65 of the Board's Regulation LL (12 CFR 238.65)).
- FR 4011 is authorized by section 4(j) and (k) of the BHC Act (12 U.S.C. 1843(j)-(k)), and sections 225.88 and 225.89 of the Board's Regulation Y (12 CFR 225.88, 225.89).
- FR 4012 is authorized by section 4(l)(1) and 4(m) of the BHC Act (12 U.S.C. 1843(l)(1), (m)); section 10(c)(2)(H) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(2)(H)); section 8(a) of the International Banking Act (12 U.S.C. 3106(a)); sections 225.83 and 225.93 of the Board's Regulation Y (12 CFR 225.83, 225.93); and section 238.66(b) of the Board's Regulation LL (12 CFR 238.66(b)).
- FR 4017 is authorized by section 9 of the FRA (12 U.S.C. 335), and section 208.76 of the Board's Regulation H (12 CFR 208.76).
- FR 4019 is authorized by section 4(k)(7) of the BHC Act (12 U.S.C. 1843(k)(7)); sections 225.171(e)(3), 225.172(b)(4); and section 225.173(c)(2) of the Board's Regulation Y (12 CFR 225.171(e)(3), 225.172(b)(4), 225.173(c)(2)).
- FR 4023 is authorized by section 4(k)(7) of the BHC Act (12 U.S.C. 1843(k)(7)), and sections 225.171(e)(4) and 225.175 of the Board's Regulation Y (12 CFR 225.171(e)(4), 225.175).

⁸ 12 CFR 225.175(a)(1).

The obligation to respond to the FR 4011 is voluntary (for requests to determine that an activity is financial in nature or to issue an advisory opinion that an activity is within the scope of an activity previously determined to be financial in nature) and required to obtain or retain benefits (for approvals to engage in an activity that is complementary to a financial activity). The obligation to respond to the FR 4010, FR 4017, and FR 4019 is required to obtain or retain benefits. The obligation to respond to FR 4012 and the obligation to comply with the recordkeeping requirements of the FR 4023 is mandatory.

The information collected on the FR 4010, FR 4011, FR 4017, and FR 4019 and information related to a failure to meet capital requirements on the FR 4012 is not generally considered confidential. Nevertheless, a respondent may request confidential treatment of information contained in these information collections in accordance with section (b)(4) or (b)(6) of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4), (b)(6)). Any request for confidential treatment of information must be accompanied by a detailed justification for confidentiality. Information related to a failure to meet management requirements on the FR 4012 is considered confidential and exempt from disclosure under section (b)(4), because the release of this information would cause substantial harm to the competitive position of the entity, and section (b)(8), if the information is related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions (5 U.S.C. 552(b)(4), (b)(8)).

Additionally, the records kept in accordance with the Recordkeeping Requirements Associated with Merchant Banking Activities are retained by the respondent itself and the FOIA would only be implicated if the Board's examiners retained a copy of the records as part of an examination or supervision of a banking institution. In this case, the records would likely be exempt from disclosure under exemption (b)(8), for examination material. 5 U.S.C. 552(b)(8). In addition, the records may also be exempt under (b)(4) and (b)(6).

Board of Governors of the Federal Reserve System, October 13, 2016.

Robert deV. Frierson
Secretary of the Board.

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