

**Supporting Statement for the
Interagency Bank Merger Act Application
(FR 2070; OMB No. 7100-0171)**

Summary

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Interagency Bank Merger Act Application (FR 2070; OMB No. 7100-0171). The Board, Office of the Comptroller of the Currency (OCC), and Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) each use this reporting form to collect information on bank merger proposals that require prior approval under the Bank Merger Act. Prior approval is required for merger transactions involving affiliated or nonaffiliated institutions and must be sought from the regulatory agency of the depository institution that would survive the proposed transaction. A merger transaction may include a merger, consolidation, assumption of deposit liabilities, or certain asset transfers between or among two or more institutions. The Board collects this information so that it may meet its statutory obligation of evaluating, with respect to every state member bank (SMB) merger proposal, the competitive effects, the adequacy of the financial and managerial resources of the institutions involved, future prospects, financial stability, and the effect on the convenience and needs of the affected communities¹.

The Board proposes to revise the FR 2070 reporting form and instructions to improve transparency for filers by adding requests for information required to evaluate merger transactions, clarifying certain existing requests, deleting requests for information no longer considered necessary to evaluate the proposal, and updating the form to conform to current legal and accounting requirements. The current annual reporting burden for the FR 2070 is estimated to be 1,800 hours. The revisions increase the estimated average hours per response by one hour for a total annual burden of 1,864 hours.

Background and Justification

The FR 2070 was instituted in 1960 with the enactment of section 18(c) of the Federal Deposit Insurance Act (12 U.S.C. 1828(c)), which is known as the Bank Merger Act. The FR 2070 was discontinued in 1990 when the Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-2) was amended for use with a broader range of proposals. The FR Y-2 was modified for use with proposals filed pursuant to sections 3(a)(3) and 3(a)(5) of the Bank Holding Company Act and for proposals filed pursuant to the Bank Merger Act and section 9 of the Federal Reserve Act. At the time, it was felt that there was sufficient commonality with the information requirements of these three types of expansionary proposals to use the same application form. However, subsequent experience indicated that the resulting application form was more cumbersome and somewhat more confusing than originally anticipated. As a consequence, the FR 2070 was reinstated in 1994.

¹ See 12 U.S.C. 1828(c).

The FR 2070 was reformatted in 1998 to address directives in the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle-Neal) (12 U.S.C. 1831u), that the agencies should (to the extent consistent with principles of safety and soundness, statutory law, and policy) work together to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The bank merger application forms of each of the agencies were viewed to be subject to the directive. The new interagency bank merger application form streamlined filing requirements and identified specific information that each of the agencies believed was necessary for reviewing a bank merger proposal. Supplemental pages were added to collect certain additional information that individual agencies believed was critical to the consideration of a bank merger proposal. The supplemental questions and advice were intended to address particular concerns of the individual agencies and facilitate the overall review process.

Information submitted on the FR 2070 is used by the Board to fulfill its statutory obligations under the Bank Merger Act to evaluate, with respect to an SMB merger or other restructuring, the competitive effects of the proposal, the financial and managerial resources and future prospects of the existing and proposed banking organizations, financial stability, and the effect of the proposal on the convenience and needs of the affected communities. The application form collects information on the basic legal and structural aspects of the proposed transaction and on the extent to which the surviving SMB intends to retain and continue operating as individual branches the headquarters and branches of the target bank.

As a general matter, the collected information is not readily available from any other source and is used by the Board to determine whether a proposal is financially sound, competitively acceptable, and consistent with the public interest, and to assess the impact on financial stability.

Description of Information Collection

The FR 2070 is an event-generated application and is completed by an SMB each time the bank requests approval to effect a merger, consolidation, assumption of deposit liabilities, other combining transaction with a nonaffiliated party, or a corporate reorganization with an affiliated party. The reporting form collects information on the basic legal and structural aspects of these transactions.

The applicant is required to publish a notice in a newspaper of general circulation in the community(ies) in which the head office of each of the banks to be a party to the merger, consolidation, or acquisition of assets or assumption of liabilities is located. The notice must be published on at least three occasions at appropriate intervals. The last publication of the notice shall appear at last 30 days after the first publication. The notice must state the name and address of each party to the proposal, and it must invite the public to submit written comments to the appropriate Federal Reserve Bank. Within seven days of publication of notice for the first time, the applicant shall submit its application to the appropriate Reserve Bank for acceptance, along with a copy of the notice.

Proposed Revisions

The Board proposes a number of revisions to the FR 2070. The changes are being made in order to improve transparency for filers by adding requests for information required to evaluate merger transactions, clarifying certain existing requests, deleting requests for information no longer considered necessary to evaluate a proposal, and updating the reporting form to conform to current statutory requirements, banking regulations, and accounting rules. The Board surveyed the Federal Reserve Banks for suggested changes and considered the effects of the changes on respondents, including community bank organizations, which represent the vast majority of Bank Merger Act filers. Certain revisions are related to information commonly requested on a follow-up basis by the respective regulators. Requesting the information upfront should increase transparency as well as the efficiency of the review process. The changes are outlined below and are grouped into the following categories:

- A. Information that is customarily requested as supplemental information for a filing or that is otherwise considered necessary to evaluate the statutory factors,
- B. Clarification of certain items related to biographical and financial information for principals and Community Reinvestment Act-related information,
- C. Deletion of unnecessary information,
- D. Updates relating to modified capital requirements and outdated accounting rules (this revision is solely with respect to the FR 2070), and
- E. Other minor and stylistic changes, such as improved grammar.

Discussion of FR 2070 Revisions

- A. Additional requested items

The Board proposes to revise the FR 2070 to supplement the questions included in the current form. This should save time and effort. These newly requested items are:

- 1. Any contract deadlines associated with the transaction.
- 2. Identification of any filings to other state and federal regulators in connection with the merger transaction.
- 3. A discussion of the changes in the resultant institution's business strategy and operations and integration plans along with the submission of a business plan, if available.
- 4. Projected financial statements and capital figures as of the end of each of the first three years of operation following consummation. The prior form's request for only one year of projected statements was not viewed as providing sufficient information for analysis of the transaction.
- 5. Any changes to directors and senior executive officers due to the proposed transaction.
- 6. Statement of any litigation or investigations involving the applicant, the target institution, and their subsidiaries during the past two years.
- 7. A discussion of the effect of the proposed transaction on the stability of the United States banking and financial systems in light of the Dodd-Frank Wall Street Reform and Consumer Protection Act.

8. Information regarding whether the proposed investment in branches is consistent with section 208.21 of the Board's Regulation H. (This is a Board-only request; the FDIC and OCC will not request this information.)

B. Clarification of certain items

1. The instructions provide greater detail on what is considered an affiliate transaction.
2. The instructions provide greater detail regarding establishment of branches and branch closing.
3. The instructions now discuss publications requirements when there is no newspaper of general circulation in the community or communities in which the main office of each of the parties is located.
4. The instructions to the form now recommend consultation with the Board to determine whether biographical or financial information for new principal shareholders, directors, and senior executive officers involved in the transaction will need to be provided.
5. Questions regarding how the proposal will assist in meeting the convenience and needs of the community, including with respect to the Community Reinvestment Act, are modified or expanded to provide more detail on what is required.
6. Questions regarding the interstate merger provisions of the Riegle-Neal Act are modified or expanded to provide more detailed information regarding the statutory requirements.

C. Deletion of unnecessary information

1. The request for cash flow projections for the parent company in certain transactions will be deleted. This request has been superseded by the enhanced financial projections now requested.
2. The request for goodwill amortization and purchase discount accretion schedules is no longer required due to accounting rule changes.

D. Updated capital information

1. Ratios included in the request for a projected regulatory capital schedule are updated to reflect the latest capital regulatory rules. The following ratios will now be required: common equity tier 1 capital, tier 1 capital, total capital, and leverage ratios.

E. Minor editing changes

1. Other changes to the form that are less significant in nature include those to improve grammar, update citations and addresses, clarify instructions, and note the option of filing electronically.

Time Schedule for Information Collection

The application is event-generated. If the application meets established criteria to be processed on a delegated basis, the Reserve Bank or Secretary of the Board generally acts on the proposal within 30 calendar days of submission of the application. If the proposal does not meet the criteria for processing under delegated authority, the application will be processed for action by the Board. Such an application will generally be acted on within 60 calendar days of submission of the application, unless an applicant is notified that the processing period is being extended and informed of the reasons for the extension.

Legal Status

The Bank Merger Act authorizes the Board to collect the information on the FR 2070. The Bank Merger Act requires, in relevant part, that a SMB, when it is the acquiring, assuming or resulting bank, obtain prior approval from the Board before merging or consolidating with another insured depository institution, or before acquiring the assets of or assuming liability to deposits made in any other insured depository institution (12 U.S.C. 1828(c)). The FR 2070 is required to obtain a benefit.

The Federal Reserve treats the Interagency Bank Merger Act Application as a public document. However, applicants may request that parts of their applications be kept confidential. In such cases, the filer must justify the exemption by demonstrating that disclosure would cause substantial competitive harm, would result in an unwarranted invasion of personal privacy, or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. 552). The confidentiality status of the information submitted will be judged on a case-by-case basis.

Consultation Outside the Agency

An interagency working group responsible for reviewing this collection is comprised of representatives from the Board, OCC, and FDIC, and collaborated to recommend the above changes. The agencies reviewed the forms in consideration of current law and applications processing procedures and practices. Each agency has separately published a notice with regard to this form and will separately publish the final version of the form. The Board's extension of these forms would align with the proposed extensions of identical forms by the OCC and FDIC.

On October 2, 2017, the Board published an initial notice in the *Federal Register* (82 FR 45847) requesting public comment for 60 days on the extension, with revision, of the FR 2070. The comment period for this notice expired on December 1, 2017. The Board did not receive any comments. On March 15, 2018, the Board published a final notice in the *Federal Register* (83 FR 11521). The revisions will be implemented as proposed.

Estimate of Respondent Burden

The burden for the revised FR 2070 is estimated to be 1,864 hours annually for state member banks, as shown in the table below. The Board estimates that the proposed average response time would be 31 hours for applications filed to effect a merger, consolidation,

assumption of deposit liabilities, or other combining transaction between nonaffiliated parties and 19 hours for applications filed to effect a corporate reorganization between affiliated parties. The current estimate is based on the number of applications filed and represents less than 1 percent of total Federal Reserve System paperwork burden. As noted above, some of the additional information being requested in the form was already being requested by regulatory staff on a follow-up basis. By adding these requests to the form, applicants should be able to receive a quicker response to their requests as staff will no longer need to send requests for such information. These revisions will make the application process more transparent and improve the accuracy of the Board’s burden estimate.

FR 2070	<i>Number of respondents²</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Current				
Nonaffiliate Transactions	54	1	30	1,620
Affiliate Transactions	10	1	18	<u>180</u>
<i>Total</i>				1,800
Proposed				
Nonaffiliate Transactions	54	1	31	1,674
Affiliate Transactions	10	1	19	<u>190</u>
<i>Total</i>				1,864
<i>Change</i>				64

The total cost to the public is estimated to increase from the current level of \$100,890 to \$104,477 for the revised FR 2070.³

Sensitive Questions

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

² Of these respondents, 17 are considered small entities as defined by the Small Business Administration (i.e. entities with less than \$50 million in assets). www.sba.gov/document/support--table-size-standards.

³ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$18, 45% Financial Managers at \$69, 15% Lawyers at \$68, and 10% Chief Executives at \$94). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages May 2017, published March 30, 2018 www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

Estimate of Cost to the Federal Reserve System

The estimated costs to the Federal Reserve System associated with this information is \$227,500 per year.