

**Supporting Statement for the
Filings Related to the Gramm-Leach-Bliley Act
(OMB No. 7100-0292)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, without revision, the Filings Related to the Gramm-Leach-Bliley Act (OMB No. 7100-0292). These reporting and recordkeeping requirements, which are related to amendments made by the Gramm-Leach-Bliley Act (GLB Act) to the Bank Holding Company Act of 1956 (BHC Act) and the Federal Reserve Act (FRA), are composed of the following:

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

These information collections are event-generated and there are no formal reporting forms for these information collections (the FR designations are for internal purposes only). In each case, the information required to be filed is described in the Board's regulations. The estimated total annual burden for the six information collections is 1,846 hours.

Background and Justification

The GLB Act amendments to the BHC Act and FRA allow a bank holding company (BHC) that elects to become a financial holding company (FHC), and a savings and loan holding company (SLHC) or foreign banking organization (FBO) that elects to be treated as an FHC,¹ to engage in a broad range of otherwise impermissible financial activities, including securities underwriting, insurance sales and underwriting, and merchant banking. Both the GLB Act and the Board's implementing regulations impose certain reporting and recordkeeping requirements associated with becoming and operating as an FHC. These information collections include:

1. *Declarations to Become a Financial Holding Company (FR 4010)*. The BHC Act requires a BHC to file a declaration with the Board in order to elect to become an FHC.² Similarly, an SLHC or FBO that seeks to be treated as an FHC must also file a declaration with the Board.³ The Board's Regulation Y - Bank Holding Companies and

¹ All further references in this document to FHC include SLHCs and FBOs that have successfully elected to be treated as an FHC, unless otherwise noted.

² 12 U.S.C. § 1843(l)(1)(D).

³ Section 10(c)(2)(H) of the Home Owner's Loan Act (HOLA) (12 U.S.C. § 1467a(c)(2)(H)) and section 8(a) of the International Banking Act of 1978 (IBA) (12 U.S.C. § 3106(a)), respectively, make this requirement applicable to SLHCs and FBOs seeking to be treated as FHCs.

Change in Bank Control (12 CFR Part 225) implements this declaration requirement for BHCs and FBOs, and the Board's Regulation LL – Savings and Loan Holding Companies (12 CFR Part 238) implements the requirement for SLHCs.⁴ The information contained in an FHC declaration is used by the Board to ascertain whether the filer is eligible to become an FHC.

2. *Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011)*. The GLB Act authorizes the Board to determine, in conjunction with the U.S. Department of the Treasury (Treasury Department), that a nonbanking activity is financial in nature, incidental to a financial activity, or complementary to a financial activity.⁵ To implement this provision, the Board's Regulation Y permits interested parties to request the Board to issue advisory opinions that a specific proposed activity is financial in nature or incidental to a financial activity.⁶ The information that the Board requires to be provided in connection with such requests is needed by the Board in order to issue such an advisory opinion.

An FHC may engage in an activity that is complementary to a financial activity with the prior approval of the Board. This prior approval requirement is implemented by Regulation Y.⁷ The information that the Board requires to be included in a notice to engage in such an activity is needed by the Board to determine whether the proposed activity is, in fact, complementary to a financial activity, whether the proposed activity would pose a substantial risk to the safety or soundness of depository institutions or the financial system generally, and whether the proposal could be expected to produce benefits to the public that outweigh possible adverse effects.

3. *Notices of Failure to Meet Capital or Management Requirements (FR 4012)*. The BHC Act provides that a company is eligible for FHC status only if it and all of its subsidiary depository institutions are well managed and well capitalized.⁸ The Board's Regulations Y and LL require an FHC that falls out of compliance with these requirements to notify the Board of its noncompliance.⁹ Such notices are necessary because an FHC may have access to capital and managerial data on its subsidiaries before the Board does. Notice of noncompliance commences a 45-day period in which the FHC must execute an agreement acceptable to the Board to comply with all applicable capital and management requirements. Upon request by a noncompliant FHC, the Board may extend this 45-day period.¹⁰
4. *Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017)*. The FRA and the Board's Regulation H – Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208) require state member banks to obtain approval from

⁴ 12 CFR 225.82 (BHCs), 12 CFR 225.91 (FBOs), and 12 CFR 238.65(b) (SLHCs).

⁵ 12 U.S.C. § 1843(k).

⁶ 12 CFR 225.88(e).

⁷ 12 CFR 225.89(a).

⁸ 12 U.S.C. § 1843(l)(1). In the case of an FBO, Regulation Y requires that the FBO itself; its U.S. branches, agencies, and commercial lending companies; and any U.S. depository institution subsidiary are well capitalized and well managed (12 CFR 225.90(a)).

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

¹⁰ 12 CFR 225.83(c)(2), 225.93(c)(2), and 238.66(b).

the Board prior to establishing, acquiring control of, or acquiring an interest in a financial subsidiary, and prior to engaging in additional financial activities through an existing financial subsidiary.¹¹ The information contained in the notice is used by the Board to ascertain whether the filer is eligible to establish a financial subsidiary.

5. *Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019)*. The Board's Regulation Y generally limits holding periods for merchant banking investments to 10 years (15 years in the case of investments in or through private equity funds), but permits an FHC to request holding period extensions on a case-by-case basis.¹² Information contained in the request is used to determine whether the request should be granted in light of the relevant factors.

Additionally, the BHC Act bars FHCs from routinely managing or operating portfolio companies held as merchant banking investments, except as necessary or required to obtain a reasonable return on investment.¹³ To help monitor compliance with this limitation, Regulation Y requires an FHC to notify the Board if the FHC's routine management or operation of a portfolio company lasts longer than nine months.¹⁴ Information in the notice enables the Board to monitor compliance with requirements for engaging in merchant banking activities.

6. *Recordkeeping Requirements Associated with Merchant Banking Activities (FR 4023)*. The Board's Regulation Y requires companies engaging in merchant banking activities to establish and maintain policies, procedures, and records for managing the activities and the risk associated with them and to make these materials available upon request to the Board.¹⁵ Regulation Y also requires FHCs to document any routine management or operation of a portfolio company and to make this documentation available to the Board on request.¹⁶ Examiners use this information to assess whether the FHC is conducting its merchant banking activities in a safe and sound manner and whether the FHC is in compliance with applicable regulatory requirements for engaging in merchant banking activities.

The information collected through the filings is not available to the Board from other sources.

Description of Information Collection

FR 4010

An FHC declaration filed by a BHC or SLHC must state that the BHC or SLHC elects to become an FHC and must provide the following information:

- the name and head office address of the BHC or SLHC and of each depository institution controlled by the BHC or SLHC (multi-tiered filers may file a single declaration,

¹¹ 12 U.S.C. § 335 (applying the prior approval requirements of 12 U.S.C. § 24a(a)(2)(F)), 12 CFR 208.76(a).

¹² 12 CFR 225.172(b)(1) and 225.173(c), 12 CFR 225.172(b)(4) and 225.173(c)(2).

¹³ 12 U.S.C. § 1843(k)(4)(H)(iv), (I)(iv)

¹⁴ 12 CFR 225.171(e)(3).

¹⁵ 12 CFR 225.175(a).

¹⁶ 12 CFR 225.171(e)(4).

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

SLHC filers also must include a certification that the SLHC is well capitalized and well managed as of the date of the declaration.

An FHC declaration filed by an FBO must state that the FBO elects to be treated as an FHC and must provide the following information:

- with respect to the FBO, and each foreign bank that maintains a U.S. branch, agency, or commercial lending company and is controlled by the FBO, its 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 the FBO, and each foreign bank that maintains a U.S. branch, agency, or commercial lending company and is 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, and
- 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.

FHC declarations must be filed in written form with the appropriate Federal Reserve Bank.

FR 4011

The Board's Regulation Y specifies the information to be collected in connection with each type of request under the FR 4011.¹⁷ A request for a determination that an activity is financial in nature or incidental to a financial activity must be in writing and:

- 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.

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

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

The Board's Regulation Y provides that the FR 4012 notice must identify the noncompliant banking entity and the area of noncompliance. Regulation Y does not prescribe a format for such notices. A request for an extension of the 45-day period in which the FHC must execute an agreement acceptable to the Board must include an explanation of why an extension is necessary.

FR 4017

The Board's Regulation H requires FR 4017 notices to be in the form of a letter with enclosures and that the letter:

- 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 any applicable 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.¹⁸

FR 4019

The Board's Regulation Y requires requests for extension of the holding period for a merchant bank investment to include the following information:¹⁹

- 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) and
- an explanation of the FHC's plan for divesting the investment.

A notice of extended routine management or operation of a portfolio company must identify the portfolio company and the date on which the FHC first became involved in the routine management or operation of the portfolio company. Such notices also routinely provide 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.

FR 4023

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

- 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 and protect FHC from legal liability for the operations conducted and financial obligations of each such company, and
- ensure compliance with sections 23A and 23B of the FRA, anti-tying statutes, the Board's Regulation Y, and any other applicable provisions of law.²⁰

Respondent Panel

Respondents for these information collections include BHCs, SLHCs, FBOs, and state member banks.

¹⁸ 12 CFR 208.76.

¹⁹ 12 CFR 225.172(b)(4).

²⁰ 12 CFR 225.175(a)(1).

Time Schedule for Information Collection

The FR 4010, FR 4011, and FR 4017 are event-generated. The recordkeeping requirements associated with FR 4023 are ongoing.

An FHC must file an FR 4012 notice within 15 calendar days of becoming aware of failure to meet capital or management requirements.²¹ A request for an extension of the 45-calendar day period in which the FHC must execute an agreement acceptable to the Board must be filed prior to the expiration of that period.

An FR 4019 notice must be submitted at least 90 calendar days prior to expiration of the holding period.²² The notice of extended routine management or operation must be filed prior to the date that is nine months after the FHC commenced routinely managing or operating the portfolio company.²³

Public Availability of Data

There is no data related to this information collection available to the public.

Legal Status

The FR 4010 is authorized pursuant to section 4(l) of the BHC Act (12 U.S.C. § 1843(l)) and section 10(c)(2)(H) of the HOLA (12 U.S.C. § 1467a(c)(2)(H)). For foreign banking organizations, the FR 4010 is authorized pursuant to section 4(l) of the BHC Act (12 U.S.C. § 1843(l)), in conjunction with section 8 of the IBA (12 U.S.C. § 3106(a)). The FR 4011 is authorized pursuant to sections 4(j) and (k) of the BHC Act (12 U.S.C. § 1843(j)-(k)). The FR 4012 is authorized pursuant to section 5(b) of the BHC Act (12 U.S.C. § 1844(b)) and section 10(g) of HOLA (12 U.S.C. § 1467a(g)). For foreign banking organizations, the FR 4012 is authorized pursuant to section 5(b) of the BHC Act (12 U.S.C. § 1844(b)), in conjunction with section 8 of the IBA (12 U.S.C. § 3106). The FR 4017 is authorized pursuant to section 9 of the Federal Reserve Act (12 U.S.C. § 335). The FR 4019 and FR 4023 are authorized pursuant to section 4(k)(7) of the BHC Act (12 U.S.C. § 1843(k)(7)). For foreign banking organizations, the FR 4019 and FR 4023 are authorized pursuant to section 4(k)(7) of the BHC Act (12 U.S.C. § 1843(k)(7)), in conjunction with section 8 of the IBA (12 U.S.C. § 3106). The obligation to respond to the FR 4010, FR 4011, FR 4017, and FR 4019 is required to obtain a benefit. The obligation to respond to the FR 4012 and comply with the recordkeeping requirements of the FR 4023 is mandatory.

Regarding information submitted pursuant to the FR 4010, FR 4011, FR 4017, and FR 4019, a firm may request confidential treatment under the Board's rules regarding confidential treatment of information at 12 CFR 261.15. The Board will consider whether such information may be kept confidential in accordance with exemption 4 of the Freedom of

²¹ 12 CFR 225.83(b)(1) and 238.66(d).

²² 12 CFR 225.172(b)(4).

²³ 12 CFR 225.171(e)(3).

Information Act (FOIA), which protects from disclosure trade secrets and commercial or financial information (5 U.S.C. § 552(b)(4)), or any other applicable FOIA exemption.

Information submitted pursuant to the FR 4012 is considered confidential under exemption 4 of FOIA, which protects from disclosure trade secrets and commercial or financial information (5 U.S.C. § 552(b)(4)), and exemption 8 of FOIA, which protects from disclosure information related to the supervision or examination of a regulated financial institution (5 U.S.C. § 552(b)(8)).

Because the FR 4023 is a recordkeeping requirement, FOIA would only be implicated if the Board's examiners retained a copy of the record as part of the supervision of a banking institution. Such record would be exempt from disclosure under exemption 8 of FOIA, which protects from disclosure information related to the supervision or examination of a regulated financial institution (5 U.S.C. § 552(b)(8)).

Consultation Outside the Agency

There has been no consultation outside the agency.

Public Comments

On October 18, 2019, the Board published an initial notice in the *Federal Register* (84 FR 55956) requesting public comment for 60 days on the extension, without revision, of the Filings Related to the Gramm-Leach-Bliley Act. The comment period for this notice expired on December 17, 2019. The Board did not receive any comments. On February 4, 2020, the Board published a final notice in the *Federal Register* (85 FR 6182).

Estimated of Respondent Burden

As shown in the table below, the estimated total annual burden for the six information collections is 1,846 hours. For each information collection, the burden estimate is based on the amount of time needed to review filing and recordkeeping requirements, collect the necessary information, and format and transmit filings. The estimated number of respondents for each collection of information was determined using the average of the total number of respondents from the previous two years. These reporting and recordkeeping requirements represent less than 1 percent of the Board's total paperwork burden.

| | <i>Estimated number of respondents</i> ²⁴ | <i>Annual frequency</i> | <i>Estimated average hours per response</i> | <i>Estimated annual burden hours</i> |
|---|--|-----------------------------|---|--|
| FR 4010 | | | | |
| BHCs and SLHCs | 58 | 1 | 3 | 174 |
| FBOs | 4 | 1 | 3.5 | 14 |
| FR 4011 | 1 | 1 | 10 | 10 |
| FR 4012 | | | | |
| BHCs and SLHCs decertified as an FHC | 2 | 1 | 1 | 2 |
| FHCs back into compliance | | | | |
| BHCs and SLHCs | 14 | 1 | 10 | 140 |
| FR 4017 | 1 | 1 | 4 | 4 |
| FR 4019 | | | | |
| Regulatory relief requests | 1 | 1 | 1 | 1 |
| Portfolio company notification | 1 | 1 | 1 | 1 |
| FR 4023 | 30 | 1 | 50 | <u>1,500</u> |
| <i>Total</i> | | | | 1,846 |

The estimated total annual cost to the public for this information collection is \$106,607.²⁵

Sensitive Questions

These collections of information contain no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System is negligible.

²⁴ Of these respondents, 19 (16 of the FR 4010 respondents and 3 of the FR 4012 respondents) are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 million in total assets), <https://www.sba.gov/document/support--table-size-standards>.

²⁵ 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 \$20, 45% Financial Managers at \$71, 15% Lawyers at \$70, and 10% Chief Executives at \$93). 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 2019*, published March 31, 2020, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.