

**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, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Filings Related to the Gramm-Leach-Bliley Act, which include: 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 (FR 4019), and Recordkeeping Requirements Associated with Merchant Banking Activities (OMB No. 7100-0292).

There are no formal forms for these collections of information, which are event-generated, though in each case the type of information required to be filed is described in the Federal Reserve Board's regulations. These collections of information are required pursuant to amendments made by the Gramm-Leach-Bliley Act (GLB Act) to the Bank Holding Company Act (BHC Act) or the Federal Reserve Act, or Federal Reserve Board regulations issued to carry out the GLB Act, and their total annual burden is estimated to be 3,142 hours.

Background and Justification

President Clinton signed the GLB Act into law on November 12, 1999. Final regulations implementing the GLB Act and mandating the subject information collections took effect on February 2, 2001 (with respect to Financial Holding Companies (FHCs) Declarations, Requests for Determinations and Interpretations Regarding Activities Financial in Nature, and Notices of Failure to Meet Capital or Management Requirements), February 15, 2001 (with respect to Regulatory Relief Requests and Recordkeeping Requirements Associated with Merchant Banking Activities), and September 17, 2001 (with respect to Notices by State Member Banks to (SMBs) Invest in Financial Subsidiaries).

1. Declarations to Become a Financial Holding Company (FR 4010). The BHC Act statute itself requires entities to file this declaration in order to be treated as FHCs.¹ The information contained in a FHC declaration is used by Federal Reserve to ascertain whether the filer is eligible to become a FHC.

2. Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011). The GLB Act authorizes the Federal Reserve Board, upon request or on its own initiative, to determine that nonbanking activities are financial in nature, incidental to a financial activity, or complementary to a financial activity.² In addition, Regulation Y permits interested

¹ 12 U.S.C. § 1843(l)(1)(C). Section 8(a) of the International Banking Act, 12 U.S.C. § 3106(a), makes this requirement applicable to certain foreign banking organizations (FBOs) seeking to be treated as FHCs.

² 12 U.S.C. § 1843(k)(1).

parties to request the Federal Reserve to issue advisory opinions that specific proposed activities fall within the scope of (or are incidental to) financial activities.³ To gather facts necessary to make determinations or issue opinions, the Federal Reserve must collect information from parties making such requests.

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 all of its subsidiary depository institutions (and the foreign bank, and its U.S. branches, agencies, and commercial lending companies, in the case of a foreign company) are well-managed and well-capitalized, and Regulation Y requires a FHC that falls out of compliance with these requirements to notify the Federal Reserve of the noncompliance.⁴ Notice of noncompliance triggers restrictions on the FHC's ability to engage in additional nonbanking activities, and commences a 45-day period for the FHC to submit plans to the Federal Reserve for curing the deficiencies and to execute a formal cure agreement with the Federal Reserve.⁵

4. Notice by State Member Banks to Invest in Financial Subsidiaries (FR 4017). The Federal Reserve Act and Regulation H require SMBs to obtain approval from the Federal Reserve prior to establishing, acquiring control of, or acquiring an interest in, a financial subsidiary.⁶ The information contained in such a notice is used by Federal Reserve to ascertain whether the filer is eligible to establish a financial subsidiary.

5. Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019). Regulation Y generally limits holding periods for merchant banking investments to ten years (fifteen years in the case of investments in or through private equity funds), but permits a FHC to request holding period extensions on a case-by-case basis.⁷ Information contained in such a request is used to determine whether the request should be granted. Regulation Y also 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, and requires a FHC to notify the Federal Reserve Board if the FHC's routine management or operation of a portfolio company lasts longer than nine months.⁸ Information in such a notice enables the Federal Reserve to monitor compliance with requirements for engaging in merchant banking activities.

6. Recordkeeping Requirements Associated with Merchant Banking Activities. Regulation Y requires companies engaging in merchant banking activities to establish and maintain policies, procedures, records, and systems for managing the activities and the risk associated with them, and to make these materials available upon request to the Federal Reserve.⁹ Regulation Y also requires FHCs to document any routine management or operation of a portfolio company and to make this

³ 12 C.F.R. 225.88(e).

⁴ 12 U.S.C. § 1843(l)(1); 12 C.F.R. 225.83(b)(1) and 225.93(b)(1).

⁵ 12 U.S.C. § 1843(m)(2), 12 C.F.R. 225.83(d) and 225.93(d).

⁶ 12 U.S.C. § 335 (applying the prior approval requirements of 12 U.S.C. § 24a(a)(2)(F)); 12 C.F.R. 208.76(a).

⁷ 12 C.F.R. 225.172(b), 225.173(c); 12 C.F.R. 225.172(b)(4), 225.173(c)(2).

⁸ 12 C.F.R. 225.171, 225.171(e)(3).

⁹ 12 C.F.R. 225.175.

documentation available to the Federal Reserve Board on request.¹⁰ 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.

Description of Information Collections

1. Declarations to Become a Financial Holding Company (FR 4010). Regulation Y specifies the information to be included in a declaration.¹¹ In most cases, FHC declarations are filed in the form of a letter addressed to the appropriate Reserve Bank.

A FHC declaration filed by a U.S. BHC must state that the BHC elects to become a 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 all depository institutions controlled by the BHC are well-capitalized and well-managed as of the declaration date; and
- the capital ratios (as of the close of the previous quarter) for each depository institution the BHC controls.

An FHC declaration filed by a FBO must state that the FBO elects to be treated as a 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; and
- the capital ratios as of the close of the previous quarter for each U.S. depository institution controlled by the FBO.

2. Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011). Regulation Y specifies the information to be collected in connection with each type of request.¹² 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, 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 Federal Reserve Board.

¹⁰ 12 C.F.R. 225.171(e)(4).

¹¹ 12 C.F.R. 225.82 and 225.91.

¹² 12 C.F.R. 225.88(b) and (e), and 225.89.

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:

- describe in detail the proposed activity or the proposed product or service;
- offer support for the desired interpretation; and
- include any other information requested by the Federal Reserve 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 Federal Reserve Board.

3. Notices of Failure to Meet Capital or Management Requirements (FR 4012). Regulation Y provides that the notice must identify the noncompliant banking entity and the area of noncompliance, and though Regulation Y does not prescribe a format for such notices, they typically take the form of a letter.¹³

Plans submitted to cure 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; and
- any other information the Federal Reserve Board may require.

4. Notice by Member Banks to Invest in Financial Subsidiaries (FR 4017). Regulation H requires these notices to be in the form of a letter with enclosures, and to:¹⁴

- 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;

¹³ 12 C.F.R. 225.83(b)(1) and 225.93(b)(1).

¹⁴ 12 C.F.R. 208.76.

- 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
- if the financial subsidiary will engage in insurance activities, describe the 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.

5. Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019).

Regulation Y requires requests for extension of the holding period for a merchant bank investment to include the following information:¹⁵

- the reasons for the request, including information addressing the factors the Federal Reserve 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 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. Recordkeeping Requirements Associated with Merchant Banking Activities. The general policies and procedures that a FHC must establish with respect to merchant banking must be reasonably designed to:¹⁶

- 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
- ensure compliance with sections 23A and 23B of the Federal Reserve Act, anti-tying statutes, Regulation Y, and any other applicable provisions of law.

¹⁵ 12 C.F.R. 225.172(b)(4).

¹⁶ 12 C.F.R. 225.175(a)(1).

Records regarding a FHC's routine management or operation of a portfolio company are required to be in writing, and must describe the FHC's involvement in managing or operating the portfolio company.

Time Schedule for Information Collection

1. **Declarations to Become a Financial Holding Company.** Under Regulation Y, a company's election to be treated as a FHC is effective on the 31st day after the declaration is received, unless the Federal Reserve notifies the company before that date that the election is ineffective because the filer does not meet the eligibility criteria to become a FHC. Alternatively, the Federal Reserve may make a FHC election effective prior to the 31st day, by notifying the filer in writing. In cases in which a company files a declaration in tandem with an application to become a BHC, an election typically becomes effective at the time the company becomes a BHC. For records management purposes, FHC declarations are treated in the same manner as other banking applications.

2. **Requests for Determinations and Interpretations Regarding Activities Financial in Nature.** The GLB Act requires the Federal Reserve Board to consult with the U.S. Department of the Treasury (Treasury) about any request for a determination that an activity is financial in nature or incidental to a financial activity, and bars the Federal Reserve from making a favorable determination on such a request if Treasury notifies the Federal Reserve in writing that Treasury believes the proposed activity is not financial in nature or incidental to financial activities. In addition, staff's review of such a request often causes staff to request additional information from the filer about the precise nature of the activity, the way in which it would be conducted, and the risks posed by the activity, among other matters. The Federal Reserve may (and typically does) publish a description of a request in the *Federal Register* and request public comment. Under Regulation Y, the Federal Reserve strives to make decisions on requests not more than sixty days after the consultative process and the public comment period have ended.

The Federal Reserve is not required to consult with Treasury about requests for advisory opinions regarding whether particular proposed activities would be within the scope of activities previously determined to be financial in nature or incidental to financial activities. The Federal Reserve will often request additional information from a filer, and typically will not deem a request to be complete until the filer has provided the requested additional information. Under Regulation Y, the Federal Reserve is to provide an advisory opinion within forty-five days of receiving a complete written request.

The Federal Reserve also typically needs to seek additional information from filers of requests for approval to engage in activities complementary to financial activities, and such a notice is not deemed complete until the Federal Reserve receives the requested information. No consultation with Treasury is required, but the Federal Reserve typically will publish a description of the request in the *Federal Register* and request public comment. Under the GLB Act, a notice seeking to engage in complementary activities is deemed approved sixty days after the date the notice is complete, though the Federal Reserve may extend the period an additional thirty days.

3. **Notices of Failure to Meet Capital or Management Requirements.** A FHC must file this

notice within fifteen days of becoming aware of failure to meet capital or management requirements, and then has forty-five days to reach agreement with the Federal Reserve on a plan to cure the deficiencies. If deficiencies are not cured within 180 days of the notice, the Federal Reserve is empowered to order the FHC to divest its banking companies or to cease engaging in all nonbanking activities apart from those authorized for BHCs prior to the enactment of the GLB Act. However, the Federal Reserve Board also may grant extensions of this cure period.

4. Notice by State Member Banks to Invest in Financial Subsidiaries. Under Regulation H, a notice to invest in financial subsidiaries is deemed approved fifteen days after it is received, unless the Federal Reserve notifies the filer prior to that date that the notice will require additional review or that the bank does not meet the requirements to hold a stake in a financial subsidiary.

5. Regulatory Relief Requests Associated with Merchant Banking Activities. A request for an extension of a merchant banking investment holding period must be submitted at least ninety days prior to expiration of the holding period. As noted, Regulation Y requires the Federal Reserve Board to weigh certain factors in considering a holding period extension request. 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.

Sensitive Questions

This information collection contains no sensitive questions as defined by OMB guidelines (i.e., questions about sexual behavior and attitudes, religious beliefs, or other matters commonly considered private).

Legal Status

These collections of information are authorized pursuant to the following statutes and regulations:

1. Declarations to Become a FHC (FR 4010).	Section 4(l)(1)(C) of the BHC Act, 12 U.S.C. § 1843(1)(l)(C); section 8(a) of the International Banking Act, 12 U.S.C. § 3106(a); and sections 225.82 and 225.91 of Regulation Y, 12 C.F.R. 225.82 and 225.91.
2. Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011).	Section 4(k) of the BHC Act, 12 U.S.C. § 1843(k); and sections 225.88(b) and (e), and 225.89, of Regulation Y, 12 C.F.R. 225.88(b) and (e), and 225.89.
3. Notices of Failure to Meet Capital or Management Requirements (FR 4012).	Section 4(m) of the BHC Act, 12 U.S.C. § 1843(m); section 8(a) of the International Banking Act, 12 U.S.C. § 3106(a); and sections 225.83 and 225.93 of Regulation Y, 12 C.F.R. 225.83 and 225.93.
4. Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017).	Section 9 of the Federal Reserve Act, 12 U.S.C. § 335; and section 208.76 of Regulation H, 12 C.F.R. 208.76.
5. Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019).	Section 4(k)(7) of the BHC Act, 12 U.S.C. § 1843(k)(7); and sections 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2) of Regulation Y, 12 C.F.R. 225.171(e)(3), 225.172(b)(4), and 225.173(c)(2).
6. Recordkeeping Requirements Associated with Merchant Banking Activities.	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 Regulation Y, 12 C.F.R. 225.171(e)(4) and 225.171.

A company may request confidential treatment of this information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (5 U.S.C. 552 (b)(4) and (b)(6)).

Summary of Estimated Burden

The estimated total annual burden for these information collections is 3,142 hours, as shown in the table below. This represents less than 1 percent of the total burden for the Federal Reserve System. For each collection of information, the burden estimate is based on the amount of time needed to review filing requirements, collect the necessary information, format and transmit the filing, and respond to requests from the Federal Reserve Board for additional information. The estimated number of respondents for each collection of information is based on the actual number of respondents over the past two years with respect to each information collection:

1. Declarations to Become a Financial Holding Company (FR 4010). In 2000, when the FHC designation first became available, there were roughly 400 declarations filed by domestic companies and twenty-five by foreign companies. The number of FHC declaration filers has steadily declined since then, to 120 domestic and six foreign in 2001; eighty domestic and six foreign in 2002; and thirty domestic and one foreign in 2003 through November 14. For the purposes of burden estimation, the Federal Reserve assumes fifty-eight domestic filings per year (derived by taking the average of the annual number of domestic filers for 2002 and 2003), and five foreign filings per year.

2. Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011). Since the GLB Act took effect, there have been a number of inquiries of the Federal Reserve concerning such determinations or interpretations, but few actual formal filings. For the future, the Federal Reserve assumes four formal FR 4011 requests per year: two for determinations that activities are financial in nature, or incidental or complementary to financial activities; and two requests for advisory opinions that specific activities are within the scope of activities that are financial in nature or incidental to financial activities.

3. Notices of Failure to Meet Capital or Management Requirements (FR 4012). From 2000 through 2003, FHCs fell out of compliance 160 times. Of the 160 FHCs that have fallen out of compliance, sixty have chosen to give up their FHC status, and accordingly have not been required to submit plans to correct deficiencies. Based on this track record, the Federal Reserve assumes an average of forty instances per year of FHCs falling out of compliance with capital or management requirements and therefore being required to submit the notice. Of these, the Federal Reserve assumes twenty-seven will not give up their FHC status and accordingly will be required to submit plans to correct deficiencies.

4. Notice by State Member Banks to Invest in Financial Subsidiaries (FR 4017). Since the GLB Act took effect in 2000, the Federal Reserve Board has approved thirteen financial subsidiary requests by SMBs, including three in 2000, seven in 2001, and three in 2002. No such requests were filed in 2003. The Federal Reserve assumes five filers per year.

5. Regulatory Relief Requests Associated with Merchant banking Activities (FR 4019). To date, no requests have been filed to extend the holding period for merchant banking investments; we assume there will be five filings of such requests per year in the future. To date, no notices have been filed by FHCs extending the time period for managing a portfolio company; the Federal Reserve assumes the filing of two such notices per year in the future.

6. Recordkeeping Requirements Associated with Merchant Banking Activities. As of March 31, 2003, twenty-six FHCs reported being engaged in merchant banking activities. For burden estimation purposes, the Federal Reserve assumes that twenty-six additional FHCs will engage in merchant banking activities over the next three years, and that fifty-two FHCs therefore will be required to comply with this recordkeeping requirement each year. The Federal Reserve assumes that FHCs, in total, will file two notices per year that the FHC has routinely managed or operated a portfolio company in the course of year and therefore will be required to keep additional records related to the FHC's management of the portfolio company.

	<i>Number of respondents</i>	<i>Annual Frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<u>FR 4010</u>				
BHC	58	1	3	174
Foreign Banks	5	1	3.5	18
<u>FR 4011</u>				
Activities financial in nature, or incidental or complementary to financial activities	2	1	10	20
Advisory opinions	2	1	10	20
<u>FR 4012</u>				
BHCs decertified as a FHCs	13	1	1	13
FHCs back into compliance	27	1	10	270
<u>FR 4017</u>	5	1	4	20
<u>FR 4019</u>				
Regulatory relief requests	5	1	1	5
Portfolio company notification	2	1	1	2
Recordkeeping	52	1	50	2,600
<i>Total</i>				3,142

Based on a rate of \$20 per hour, the annual cost to the public is estimated to be \$62,840.

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System, and none appears to be necessary for these reports.

Estimate of Cost to the Federal Reserve System

The information to be submitted is not automated. The Federal Reserve System's costs for processing this information are minimal.