

**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 following collections of information related to the Gramm-Leach-Bliley Act (“GLB Act”), OMB No. 7100-0292:

1. The required Declarations to Become a Financial Holding Company (FHC) (FR 4010). Each bank holding company (BHC) or foreign banking organization (FBO) seeking FHC status must file this declaration, which includes information needed to verify eligibility for FHC status;
2. The voluntary Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011). A requestor may ask the Federal Reserve to determine that an activity is financial in nature, to issue an advisory opinion that an activity is within the scope of an activity previously determined to be financial in nature, or to approve engagement in an activity complementary to a financial activity. Requests must include information to support the determination or interpretation sought.
3. The mandatory Notices of Failure to Meet Capital or Management Requirements (FR 4012). Any FHC ceasing to meet capital or managerial prerequisites for FHC status must notify the Federal Reserve of the deficiency, and often must submit plans to the Federal Reserve to cure the deficiency.
4. The required Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017). Any state member bank seeking to establish a financial subsidiary must seek the Federal Reserve’s prior approval by providing information similar to that required in a FHC declaration.
5. The required Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019). Any FHC seeking to extend the 10-year holding period for a merchant banking investment must apply for the Federal Reserve’s prior approval, and a FHC also must notify the Federal Reserve if it routinely manages or operates a portfolio company for more than nine months.
6. The mandatory Recordkeeping Requirements Associated with Merchant Banking Activities (FR 4023). All FHCs engaging in merchant banking activities must keep records of those activities, and make them available to examiners.

There are no formal reporting 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’s regulations. These collections of information are required pursuant to amendments made by the GLB Act to the Bank Holding Company Act (BHC Act) or the Federal Reserve Act, or Federal Reserve regulations issued to carry out the GLB Act, and their total annual burden is estimated to be 2,421 hours.

Background & 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 in 2001.

1. Declarations to Become a Financial Holding Company (FR 4010). The BHC Act 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 the 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, upon request or on its own initiative, to determine in conjunction with the Treasury Department 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 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 itself, and its U.S. branches, agencies, and commercial lending companies) 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. Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017). The Federal Reserve Act and Regulation H require state member banks 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 the 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 (15 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

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).

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).

to determine whether the request should be granted. The BHC Act 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. To help monitor compliance with this limitation, Regulation Y requires a FHC to notify the Federal Reserve 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 (FR 4023). 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 documentation available to the Federal Reserve 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.

A 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

⁸ 12 C.F.R. 225.171, 225.171(e)(3).

⁹ 12 C.F.R. 225.175.

¹⁰ 12 C.F.R. 225.171(e)(4).

¹¹ 12 C.F.R. 225.82 and 225.91.

- 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, 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 Federal Reserve.

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.

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.

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;

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

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

- a schedule within which each action will be taken; and
- any other information the Federal Reserve may require.

4. Notices by State 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;
- 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 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 (FR 4023).

The general policies and procedures that a FHC must establish with respect to merchant banking must be reasonably designed to:¹⁶

¹⁴ 12 C.F.R. 208.76.

¹⁵ 12 C.F.R. 225.172(b)(4).

¹⁶ 12 C.F.R. 225.175(a)(1).

- 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.

Time Schedule for Information Collection:

1. Declarations to Become a Financial Holding Company (FR 4010). 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 (FR 4011). The GLB Act requires the Federal Reserve to notify the Department of the 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 advises the Federal Reserve in writing within 30 days that Treasury believes the proposed activity is not financial in nature or incidental to financial activities. The Federal Reserve’s review of such a request often causes it 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 60 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 45 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 60 days after the date the notice is complete, though the Federal Reserve may extend the period an additional 30 days.

3. Notices of Failure to Meet Capital or Management Requirements (FR 4012). A FHC must file this notice within 15 days of becoming aware of failure to meet capital or management requirements, and then has 45 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 also may grant extensions of this cure period.

4. Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017). Under Regulation H, a notice to invest in financial subsidiaries is deemed approved 15 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 (FR 4019). A request for an extension of a merchant banking investment holding period must be submitted at least 90 days prior to expiration of the holding period. As noted, Regulation Y requires the Federal Reserve 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.

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(l)(1)(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).	Sections 4(j) and 4(k) of the BHC Act, 12 U.S.C. § 1843(j) through (k); and sections 225.88, and 225.89, of Regulation Y, 12 C.F.R. 225.88, and 225.89.
3. Notices of Failure to Meet Capital or Management Requirements (FR 4012).	Section 4(l)(1) and 4(m) of the BHC Act, 12 U.S.C. § 1843(l)(1) and (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 225.175.

For the FR 4010, FR 4011, FR 4017, and FR 4019, a company may request confidential treatment of the information contained in these information collections pursuant to section (b)(4) and (b)(6) of the Freedom of Information Act (FOIA)(5 U.S.C. 552 (b)(4) and (b)(6)). Since the Federal Reserve does not collect the FR 4023, no issue of confidentiality under the FOIA arises. FOIA will only be implicated if the Federal Reserve’s examiners retained a copy of the records in their examination or supervision of the institution, and would likely be exempt from disclosure pursuant to FOIA (5 U.S.C. §552(b)(4), (b)(6), and (b)(8)).

Sensitive Questions:

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

Summary of Estimated Burden:

The estimated total annual burden for these information collections is 2,421 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 for additional information. The estimated number of respondents for each collection of information is based on the actual number of respondents over the past few 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. Over the past three years, the number of filers has consistently been lower: sixty domestic and eight foreign in 2004; thirty-eight domestic and seven foreign in 2005; and forty-seven domestic and seven foreign in 2006. For the purposes of burden estimation, the Federal Reserve assumes forty-nine domestic filings per year (derived by taking the average of the annual number of domestic filers for 2004 through 2006), and eight 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 determinations or interpretations regarding activities financial in nature, but there have been no formal filings. In 2004, 2005, and 2006, there were a total of nine applications to engage in activities complementary to a financial activity. For the future, the Federal Reserve assumes four formal FR 4011 requests per year: for a determination that activities are financial in nature, are within the scope of activities that are financial in nature or incidental to financial activities, or for approval to engage in complementary activities.

3. Notices of Failure to Meet Capital or Management Requirements (FR 4012). From 2004 through 2006, FHCs fell out of compliance with the requirements 116 times. Of the 116 FHCs that have fallen out of compliance, thirty-two 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 thirty-nine 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-eight will not give up their FHC status and accordingly will be required to submit plans to correct deficiencies.

4. Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017). From 2004 through 2006, the Federal Reserve System approved five financial subsidiary requests by state member banks. Based on this recent history, the Federal Reserve assumes two filers per year.

5. Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019). To date, one request has been filed to extend the holding period for a merchant banking investment. Because holding periods for some investments will expire over the next several years, the Federal Reserve believes the incidence of these filings are apt to increase, and so has assumed five such requests per year in the future. To date, one notice has been filed by a FHC concerning its extended management of 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 (FR 4023). As of September 30, 2006, twenty-eight FHCs reported being engaged in merchant banking activities. For burden estimation purposes, the Federal Reserve assumes that ten additional FHCs will engage in merchant banking activities over the next three years and that thirty-eight FHCs therefore will be required to comply with this recordkeeping requirement each year.

	<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	49	1	3	147
Foreign Banks	8	1	3.5	28
<u>FR 4011</u>	4	1	10	40
<u>FR 4012</u>				
BHCs decertified as a FHCs	11	1	1	11
FHCs back into compliance	28	1	10	280
<u>FR 4017</u>	2	1	4	8
<u>FR 4019</u>				
Regulatory relief requests	5	1	1	5
Portfolio company notification	2	1	1	2
Recordkeeping	38	1	50	1,900
<i>Total</i>				2,421

The total annual cost to the public is estimated to be \$120,675.¹⁷

Consultation Outside the Agency:

On April 2, 2007, the Federal Reserve published a notice in the *Federal Register* (72 FR 15692) requesting public comment for 60 days on the extension, without revision, on the filings related to the GLB Act. The comment period for this notice expires on June 1, 2007.

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.

¹⁷ Total cost to the public was estimated using the following formula: Percent of staff time, multiplied by current annual burden hours, multiplied by hourly rate. For the FR 4010, FR 4017, and FR 4019: 100% Managerial or Technical @ \$55; for the FR 4011: 100% Legal Counsel @ \$144; for the FR 4012: decertification 100% Managerial or Technical @ \$55 and coming back into compliance 50% Managerial or Technical @ \$55 and 50% Legal Counsel @ \$144; and for Recordkeeping: 50% Clerical @ \$25 and 50% Managerial or Technical @ \$55. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.