

**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), proposes to extend 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)
- 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 1,698 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 bank 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. State member banks also are permitted to invest in financial subsidiaries that conduct financial activities, if certain conditions are met.² 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 requirements are organized in the following information collections:

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.³ Similarly, an SLHC or foreign bank that seeks to be treated as an FHC must also file a

¹ All further references in this document to FHCs include SLHCs and foreign banks that have successfully elected to be treated as an FHC, unless otherwise noted. A foreign bank is eligible to be treated as a FHC only if it operates a branch or agency or owns or controls a commercial lending company in the United States, or is a company that owns or controls such a foreign bank.

² 12 CFR 208.71(a).

³ 12 U.S.C. § 1843(l)(1)(D).

declaration with the Board.⁴ The Board’s Regulation Y - Bank Holding Companies and Change in Bank Control (12 CFR Part 225) implements this declaration requirement for BHCs and foreign banks, and the Board’s Regulation LL – Savings and Loan Holding Companies (12 CFR Part 238) implements the requirement for SLHCs.⁵ These regulations require institutions to file these declarations with the appropriate Federal Reserve Bank. The Board uses the information contained in an FHC declaration 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.⁶ To implement this provision, the Board’s Regulation Y permits an FHC or other interested party to request a determination from the Board that a specific proposed activity is financial in nature or incidental to a financial activity.⁷ Additionally, an FHC or other interested party may request an advisory opinion from the Board about whether a specific proposed activity falls within the scope of an activity listed in section 225.86 of Regulation Y as financial in nature or incidental to a financial activity.⁸ The Board uses the information it requires for such requests in order to issue such a determination or advisory opinion.

An FHC may engage in an activity that is complementary to a financial activity with the prior approval of the Board.⁹ Regulation Y implements this prior approval requirement.¹⁰ The Board uses the information submitted in such a prior approval request 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 may commence additional activity or acquire control or shares of a company under section 4(k) of the BHC Act without prior approval from the Board only if it and all of its subsidiary depository institutions are well managed and well capitalized.¹¹ 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.¹² Such notices are necessary because an FHC may have access to capital and managerial data on

⁴ 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 foreign banks seeking to be treated as FHCs.

⁵ 12 CFR 225.82 (BHCs), 12 CFR 225.91 (foreign banks), and 12 CFR 238.65(b) (SLHCs).

⁶ 12 U.S.C. § 1843(k).

⁷ 12 CFR 225.88(a).

⁸ 12 CFR 225.88(e).

⁹ 12 U.S.C. § 1843(j)(1)(A).

¹⁰ 12 CFR 225.89(a).

¹¹ 12 U.S.C. § 1843(l)(1). In the case of a foreign bank, Regulation Y requires that the foreign bank 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)).

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

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.¹³

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 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.¹⁴ The Board uses the information contained in the notice 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.¹⁵ The Board uses the information contained in the request 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.¹⁶ 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.¹⁷ 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.¹⁸ 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.¹⁹ 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.

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

¹⁴ See 12 U.S.C. § 335 (applying the prior approval requirements of 12 U.S.C. § 24a(a)(2)(F)); 12 CFR 208.76(a).

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

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

¹⁷ 12 CFR 225.171(e)(3).

¹⁸ 12 CFR 225.175(a).

¹⁹ 12 CFR 225.171(e)(4).

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 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 a foreign bank must state that the foreign bank elects to be treated as an FHC and must provide the following information:

- with respect to the foreign bank, 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 foreign bank, and each foreign bank that maintains a U.S. branch, agency, or commercial lending company and is controlled by the foreign bank, is well capitalized and well managed;
- a certification that all U.S. depository institutions controlled by the foreign bank 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 foreign bank.

FHC declarations must be filed in written form with the appropriate Federal Reserve Bank. These declarations may be filed using the Federal Reserve's EZFile system.

FR 4011

The Board's Regulation Y specifies the information to be collected in connection with each type of request under the FR 4011.²⁰ These requests are filed with the appropriate Reserve Bank, and may be filed using the Federal Reserve's EZFile system. 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

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

- financial activity; and
- include information supporting the request and any other information required by the Board.

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

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

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

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

FR 4012

The Board's Regulation Y provides that the FR 4012 notice must identify the noncompliant banking entity and the area of noncompliance. This notice is filed with the appropriate Reserve Bank, and may be filed using the Federal Reserve's EZFile system. 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 filed with the appropriate Federal Reserve Bank, 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
- if applicable, 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.²¹

The letter may be filed with the appropriate Reserve Bank using the Federal Reserve's EZFile system.

FR 4019

The Board's Regulation Y requires requests for extension of the holding period for a merchant bank investment to be filed with the appropriate Reserve Bank, and should include the following information:²²

- 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.

These requests may be filed with the appropriate Reserve Bank using the Federal Reserve's EZFile system.

²¹ 12 CFR 208.76(b)–(c).

²² 12 CFR 225.172(b)(4).

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. These records must be reasonably designed to conduct, monitor and manage such investment activities and the risks associated with such investment activities in a safe and sound manner, and may be kept in any format.²³

Respondent Panel

Respondents for these information collections include BHCs, SLHCs, foreign banks, and state member banks, as well as other interested parties with respect to the FR 4011.

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.²⁴ 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.²⁵ 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.²⁶

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 Bank Holding Company Act (“BHC Act”)²⁷ and section 10(c)(2)(H) of the Home Owners’ Loan Act (“HOLA”).²⁸ The FR 4011 is authorized pursuant to sections 4(j) and (k) of the BHC Act.²⁹ The FR 4012 is authorized

²³ 12 CFR 225.175(a)(1).

²⁴ 12 CFR 225.83(b)(1) and 238.66(d).

²⁵ 12 CFR 225.172(b)(4).

²⁶ 12 CFR 225.171(e)(3).

²⁷ 12 U.S.C. § 1843(l). 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 International Banking Act. 12 U.S.C. § 3106(a).

²⁸ 12 U.S.C. § 1467a(c)(2)(H).

²⁹ 12 U.S.C. § 1843(j)-(k).

pursuant to section 5(b) of the BHC Act³⁰ and section 10(g) of HOLA.³¹ The FR 4017 is authorized pursuant to section 9 of the Federal Reserve Act.³² The FR 4019 and FR 4023 are authorized pursuant to section 4(k)(7) of the BHC Act.³³ The FR 4010, FR 4011, FR 4017, and FR 4019 are required to obtain a benefit. The FR 4012 and FR 4023 are mandatory.

The information submitted under the FR 4010, FR 4011, FR 4012, and FR 4019 is not considered confidential unless an applicant requests confidential treatment in accordance with the Board's Rules Regarding Availability of Information.³⁴ Requests for confidential treatment of information are reviewed on a case-by-case basis. Information provided under these collections may be nonpublic commercial or financial information that is both customarily and actually treated as private by the respondent, which is protected from disclosure pursuant to exemption 4 of the Freedom of Information Act ("FOIA").³⁵

The information submitted under the FR 4012 is kept confidential by the Board pursuant to exemption 4 of the FOIA,³⁶ because it is nonpublic commercial or financial information that is both customarily and actually treated as private by the respondent, and under exemption 8 of the FOIA, because it is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.³⁷

With respect to the recordkeeping requirements under the FR 4023, the FOIA would only be implicated if the Federal Reserve's examiners retained a copy of a record as part of the supervision of a banking institution. Such information would be kept confidential under exemption 8 of the FOIA because it is contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions.³⁸

Consultation Outside the Agency

There has been no consultation outside the agency.

³⁰ 12 U.S.C. § 1844(b). 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 International Banking Act. 12 U.S.C. § 3106.

³¹ 12 U.S.C. § 1467a(g).

³² 12 U.S.C. § 335.

³³ 12 U.S.C. § 1843(k)(7). For foreign banking organizations, the FR 4019 and 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 International Banking Act. 12 U.S.C. § 3106.

³⁴ 12 CFR 261.17.

³⁵ 5 U.S.C. § 552(b)(4).

³⁶ *Id.*

³⁷ 5 U.S.C. § 552(b)(8).

³⁸ *Id.*

Public Comments

On January 27, 2023, the Board published an initial notice in the *Federal Register* (88 FR 5340) requesting public comment for 60 days on the extension, without revision, of this collection. The comment period for this notice expires on March 28, 2023.

Estimated of Respondent Burden

As shown in the table below, the estimated total annual burden for the six information collections is 1,698 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 respondents³⁹</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<i>Reporting</i>				
FR 4010				
BHCs and SLHCs	27	1	3	81
Foreign Banks	1	1	3.5	4
FR 4011	1	1	10	10
FR 4012				
Noncompliance notice	9	1	1	9
Extension of time request	8	1	10	80
FR 4017	1	1	4	4
FR 4019				
Regulatory relief requests	9	1	1	9
Portfolio company notification	1	1	1	1
<i>Recordkeeping</i>				
FR 4023	30	1	50	<u>1,500</u>
<i>Total</i>				1,698

³⁹ Of these respondents required to comply with this information collection, 10 respondents for the FR 4010 and 2 respondents for the FR 4012 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$750 million in total assets), <https://www.sba.gov/document/support--table-size-standards>. The other forms are estimated to have no small respondents.

The estimated total annual cost to the public for this information collection is \$102,644.⁴⁰

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.

⁴⁰ 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 \$21, 45% Financial Managers at \$74, 15% Lawyers at \$71, and 10% Chief Executives at \$102). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), Occupational Employment and Wages, May 2021, published March 31, 2022, <https://www.bls.gov/news.release/ocwage.t01.htm#>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.