

**Supporting Statement for the
Application for Exemption from Prohibited Service at
Savings and Loan Holding Companies (FR LL-12; OMB No. 7100-0338)**

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, with revision, the Application for Exemption from Prohibited Service at Savings and Loan Holding Companies (FR LL-12; OMB No. 7100-0338). The Federal Deposit Insurance (FDI) Act and the Board's Regulation LL - Savings and Loan Holding Companies (12 CFR Part 238) prohibit individuals who have been convicted of certain criminal offenses or who have agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such criminal offenses from participating in the affairs of a savings and loan holding company (SLHC) or any of its subsidiaries without the written consent of the Board. Such an individual, or the SLHC with which the individual seeks to participate, may apply for an exemption from this prohibition.

The Board proposes to revise the FR LL-12 by clearing two previously uncleared recordkeeping and disclosure requirements: 1) In order to utilize the exception at 12 CFR 238.86 related to employees in non-policymaking roles, an SLHC must maintain a list of all policymaking positions and review this list annually; and 2) A person who is not subject to the requirement to seek an exemption from the Board because their criminal offenses are de minimis must disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates.¹

The estimated total annual burden for the FR LL-12 is 144 hours and would increase to 674 hours. There is no formal reporting form for this collection of information (the FR LL-12 designation is for internal purposes only). An exemption request to the Board may be filed in a letter, or by using the Federal Deposit Insurance Corporation (FDIC) form described in the Description of Information Collection section. The Board also proposes to create a web page for the FR LL-12 at <https://www.federalreserve.gov/apps/ReportingForms/>.

Background and Justification

Pursuant to section 19 of the FDI Act (12 U.S.C. § 1829) and subpart I of Regulation LL (12 CFR 238.81 et seq.), any person who has been convicted of any criminal offense involving dishonesty or a breach of trust or money laundering, or has agreed to enter into a pretrial diversion or similar program in connection with a prosecution for such an offense (prohibited person), is prohibited from (1) becoming or continuing as an institution-affiliated party² with respect to any SLHC, (2) owning or controlling directly or indirectly any SLHC, or (3) otherwise participating directly or indirectly in the conduct of the affairs of any SLHC. An SLHC may not

¹ See 12 CFR § 238.85(b)(5).

² 12 U.S.C. § 1813(u) (defining institution-affiliated party, but substituting “savings and loan company” for “insured depository institution” as provided at 12 CFR 238.82(a)).

permit a prohibited person to engage in any conduct or continue any relationship prohibited by section 19 of the FDI Act.

Pursuant to section 19 of the FDI Act, the Board may provide an exemption to a prohibited person if such exemption is consistent with the purposes of section 19. In order for a prohibited person to participate in the conduct of the affairs of any SLHC in a manner described above, the SLHC or the individual must file with the Board, and the Board must approve an application seeking an exemption from the prohibitions of section 19 of the FDI Act and subpart I of Regulation LL. The Board will use information provided by the applicant when considering an exemption request concerning a prohibited person. Such considerations will include, but are not limited to, whether the prohibited person would participate in the major policymaking functions of the SLHC or would threaten the safety and soundness of any subsidiary insured depository institution of the SLHC or the public confidence in the insured depository institution.³ This information is not available from other sources. If this information were not collected, the Board would not be able to consider any exemptions to the general prohibition.

Description of Information Collection

All prohibited persons and SLHCs that seek an exemption are subject to the application requirements of subpart I of Regulation LL. An applicant must provide information regarding the position at the SLHC held or to be held by the prohibited person, the prohibited person's level of ownership of the SLHC, the specific nature of the offense involved, evidence of rehabilitation (if any), and other relevant factors listed in section 238.88(b) of Regulation LL (12 CFR 238.88(b)). The SLHC or prohibited person may seek an exemption only for a designated position (or positions) with respect to an SLHC identified in the application. If an individual who is granted a waiver is subsequently convicted of or enters into a pretrial diversion program for a covered crime, the individual must seek another exemption from the Board. An applicant may submit this information in a letter or by using the FDIC's Application Pursuant to Section 19 of the Federal Deposit Insurance Act (OMB No. 3064-0018).⁴

12 CFR 238.86 provides an exception to the general prohibition if an SLHC satisfies certain requirements, including that the SLHC maintains a list of all policymaking positions and reviews this list annually. Separately, 12 CFR 238.85(b)(5) requires that a person who is not subject to the requirement to seek an exemption from the Board because their criminal offense is de minimis must also disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates as a condition of using the de minimis exception.

The FR LL-12 may be submitted via FedEZFile at <https://www.federalreserve.gov/supervisionreg/afi/fedezezfile-fluent.htm/>.

³ 12 CFR 238.88.

⁴ While the Board will accept submissions of the FDIC's form, the Board has not adopted the FDIC's interpretative statements on the form and these should not be relied on by applicants. Information specific to the FDIC, such as the FDIC's Privacy Act statement or the FDIC's regional offices, are also inapplicable to applicants to the Board.

Respondent Panel

The FR LL-12 panel comprises SLHCs and prohibited persons that seek to participate in the affairs of an SLHC.

Frequency

The FR LL-12 is event-generated.

Proposed Revisions to the FR LL-12

The Board proposes to revise the FR LL-12 by clearing two previously uncleared recordkeeping and disclosure requirements: 1) In order to utilize the exception at 12 CFR 238.86 related to employees in non-policymaking roles, an SLHC must maintain a list of all policymaking positions and review this list annually; and 2) A person who is not subject to the requirement to seek an exemption from the Board because their criminal offenses are de minimis must disclose the conviction or pretrial diversion or similar program to all insured depository institutions and other banking organizations the affairs of which he or she participates.

Time Schedule for Information Collection

The information is collected when an SLHC or a prohibited person applies for an exemption. However, the SLHC or prohibited person may not file an application less than one year after the latter of the date of a denial of the same exemption under sections 238.89(b), 238.90(a), or 238.90(d) of Regulation LL.⁵

Public Availability of Data

No data collected by this information collection is published.

Legal Status

The FR LL-12 is authorized under section 19(e)(2) of the FDI Act.⁶ With respect to requirements that apply to SLHCs, the FR LL-12 is also authorized to under section 10(b)(2) of the Home Owners' Loan Act.⁷ Compliance with the requirements under the FR LL-12 is required to obtain a benefit (exemption from the prohibitions on employment with an SLHC for individuals; eligibility for the exemption for employees in non-policymaking roles under the exception contained in 12 CFR 238.86 for SLHCs).

Records retained by SLHCs or disclosed by individuals to insured depository institutions or other banking organizations under the FR LL-12 would generally be maintained by the person

⁵ 12 CFR 238.87(a)(3).

⁶ 12 U.S.C. § 1829(e)(2) (authorizing the Board to “provide exemptions [from the prohibition] by regulation or order ... if the exemption is consistent with the purposes of this subsection”).

⁷ 12 U.S.C. § 1467a(b)(2) (authorizing the Board to require SLHCs to submit to the Board reports containing “such information concerning the operations of such savings and loan holding company and its subsidiaries as the Board may require”).

or entity that created them or to which they were disclosed. The Freedom of Information Act (FOIA) would be implicated only if the Board obtained such records or disclosures as part of the examination or supervision of a financial institution, in which case the records would be protected from disclosure under FOIA exemption 8, which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process.⁸ Information retained pursuant to the recordkeeping requirements under the FR LL-12 may also be exempt from disclosure pursuant to FOIA exemption 4, if it is nonpublic commercial or financial information which is both customarily and actually treated as private by the respondent,⁹ or pursuant to FOIA exemption 6, if it relates to personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.¹⁰

Individual respondents may request that information submitted to the Board under the FR LL-12 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. Information submitted by individual respondents may be kept confidential under FOIA exemption 4, if it is nonpublic commercial or financial information which is both customarily and actually treated as private by the respondent,¹¹ or under FOIA exemption 6, if it relates to personnel and medical files and similar files, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.¹²

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On September 28, 2023, the Board published an initial notice in the *Federal Register* (88 FR 66844) requesting public comment for 60 days on the extension, with revision, of the FR LL-12. The comment period for this notice expires on November 27, 2023.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR LL-12 is 144 hours and would increase to 674 hours. The number of respondents is based on the average annual number of FR LL-12 filings received in the last three years. The Board does not have data on the number of institutions who take advantage of the exception at 12 CFR 238.86 related to non-policymaking roles.¹³ Based on publicly available information about SLHC business

⁸ 5 U.S.C. § 552(b)(8)

⁹ 5 U.S.C. § 552(b)(4).

¹⁰ 5 U.S.C. § 552(b)(6).

¹¹ 5 U.S.C. § 552(b)(4).

¹² 5 U.S.C. § 552(b)(6).

¹³ This exception was originally adopted by the former Office of Thrift Supervision (OTS) (see 72 FR 25948) with this explanation: “In the months following the enactment of section 19(e) of the [FDI Act], OTS received several inquiries from SLHCs that conduct forestry, manufacturing, or retail merchandising operations at the holding

activities, the Board estimates that five SLHCs utilize this exception. The Board also does not have data on the number of individuals who must report de minimis criminal offenses. Thus, the number of respondents is based on an estimated 5% of SLHC employees having a de minimis conviction and that would need to be disclosed every four years (so 1.25% of SLHC employees would need to disclose a year). The Board welcomes comment on this estimate. These reporting and recordkeeping requirements represent less than 1 percent of the Board's total paperwork burden.

FR LL-12	Estimated number of respondents ¹⁴	Estimated Annual frequency	Estimated average hours per response	Estimated annual burden hours
<i>Current</i>				
Reporting				
Individuals	8	1	16	128
Institutions	1	1	16	<u>16</u>
<i>Current Total</i>				144
<i>Proposed</i>				
Reporting				
Individuals	8	1	16	128
Institutions	1	1	16	16
Recordkeeping				
Institutions	5	1	4	20
Disclosure				
Individuals				

company level. These SLHCs employ thousands of employees that engage solely in these operations. The SLHCs report that the vast majority of these employees have no policymaking functions, do not otherwise participate in the conduct of the affairs of the SLHC or the subsidiary insured depository institution, and have no working relationship with the subsidiary insured depository institution. These SLHCs argue that applying section 19(e) of the FDIA to these employees would require the SLHCs to implement unnecessary and costly background checks and undertake unnecessary personnel actions. They also indicate that the application of section 19(e) of the FDIA would place them at a competitive disadvantage with respect to others in their industry that do not own an insured depository institution. As a result, several SLHCs requested exemptions from the prohibitions in section 19(e) of the FDIA for employees in their forestry, manufacturing, and retail merchandising operations.”

¹⁴ Of the respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets), <https://www.sba.gov/document/support--table-size-standards>.

De Minimis Criminal Offenses	2,039 ¹⁵	1 ¹⁶	0.25	<u>510</u>
<i>Proposed Total</i>				674
<i>Change</i>				530

The estimated current annual cost to the public for institutions is \$967, and the estimated current annual cost to the public for individuals is \$5,084.¹⁷ With the proposed revisions, the estimated annual cost for institutions would increase to \$2,176, and the estimated annual cost to the public for individuals would increase to \$25,341, for a total annual estimated cost of \$27,517.

Sensitive Questions

This collection of information contains 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 for collecting and processing the FR LL-12 is negligible.

¹⁵ A recent report from the Bureau of Justice Statistics notes that “very little empirical information exists about misdemeanor charges filed in state, county, and municipal courts” (See [Data on Adjudication of Misdemeanor Offenses: Results from a Feasibility Study](#)). The [Survey of State Criminal History Information Systems, 2020](#) reports that there are 114 million state-level criminal records. Based on U.S. Population Estimates from the Census Bureau ([U.S. Census Bureau QuickFacts: United States](#)), this would suggest 34% of Americans have a criminal record. However, a state-level criminal record may reflect an arrest without conviction and an individual may have state-level criminal records in multiple states. In addition, a de minimis criminal offense excludes a number of offenses, such as those punishable by more than one year or a fine of more than \$1,000, anyone who actually served jail time, or expunged offenses. It also does not include adjudication against youthful offenders or juvenile delinquents. The Board estimates that 5% of the total number of full-time equivalent employees at SLHCs have a de minimis criminal offense to disclose (the total number of full-time equivalent employees at SLHCs is 163,140, based on employment data from the [National Information Center](#), excluding employees at SLHCs included in the estimate of SLHCs utilizing the exemption at 12 CFR 238.86). As noted in the footnote below, this number (8,157) was divided by 4 in order to arrive at the estimated annual number of respondents.

¹⁶ Individuals would need to disclose convictions, including pretrial diversions, for de minimis crimes each time they become a new institution-affiliated party with an SLHC. According to Bureau of Labor Statistics Data, between January 2018 and January 2022, employees in the financial activities industry had a median tenure of 4.6 years (<https://www.bls.gov/news.release/pdf/tenure.pdf>). The Board estimates a disclosure every 4 years on average to account for those who may be affiliated with more than one banking organization, or who may need to disclose a conviction or pretrial diversion that occurred while already an institution-affiliated party.

¹⁷ Total cost to the public for organizations 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/>. The cost to individuals was estimated by multiplying the estimated annual burden hours by the mean hourly wage of employees in business and financial operations occupations. This rate of \$39.72 is based on data from the Bureau of Labor Statistics, Occupational Employment and Wages, May 2021, published March 31, 2022, <https://www.bls.gov/news.release/ocwage.t01.htm#>.