

**Supporting Statement for  
Interagency Bank Merger Act Application  
(FR 2070; OMB No. 7100-0171)**

## **Summary**

The Board of Governors of the Federal Reserve System (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the Interagency Bank Merger Act Application form (FR 2070; OMB No. 7100-0171). The Board, the Office of the Comptroller of the Currency (OCC), and the Federal Deposit Insurance Corporation (FDIC) (collectively, the agencies) each use this form to collect information on bank merger proposals that require prior approval under the Bank Merger Act. Prior approval is required for merger transactions involving affiliated or nonaffiliated institutions and must be sought from the regulatory agency of the depository institution that would survive the proposed transaction. A merger transaction may include a merger, consolidation, assumption of deposit liabilities, or certain asset transfers between or among two or more institutions. The Board collects this information so that it may meet its statutory obligation of evaluating, with respect to every state member bank (SMB) merger proposal, the competitive effects, the adequacy of the financial and managerial resources of the institutions involved, future prospects, financial stability, and the effect on the convenience and needs of the affected communities.

The Board proposes to revise the FR 2070 reporting form and instructions by improving transparency for filers by adding requests for information frequently required to evaluate merger transactions, clarifying certain existing requests, deleting requests for information no longer considered necessary to evaluate the proposal, and updating the form for statutory requirements, banking regulations, and accounting rules.

The proposed reporting would be effective January 1, 2018. The current annual reporting burden for the FR 2070 form is estimated to be 1,800 hours. The proposed revisions are expected to increase the estimated average hours per response by one hour for a total burden of 1,864 hours. Additional information about the paperwork burden associated with the FR 2070, including statutory and regulatory history, a description of the requirements, and how the estimated total annual burden was calculated, is discussed below.

## **Background and Justification**

The FR 2070 was instituted in 1960 with the enactment of section 18(c) of the Federal Deposit Insurance Act (the FDI Act), 12 U.S.C. § 1828(c), which is known as the Bank Merger Act. The FR 2070 was discontinued in 1990 when the Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-2) was amended for use with a broader range of proposals. The FR Y-2 was modified for use with proposals filed pursuant to sections 3(a)(3) and 3(a)(5) of the Bank Holding Company Act (BHC Act) and for proposals filed pursuant to the Bank Merger Act and section 9 of the Federal Reserve Act (FR Act), 12 U.S.C. § 321. At the time, it was felt that there was sufficient commonality with the information requirements of these three types of expansionary proposals to use the same application form. However, subsequent experience indicated that the resulting

application form was more cumbersome and somewhat more confusing than originally anticipated. As a consequence, the FR 2070 was reinstated in 1994.

The FR 2070 was reformatted in 1998 to address directives in the Riegle Community Development and Regulatory Improvement Act of 1994 (Riegle-Neal), 12 U.S.C. § 1831u, that the agencies should (to the extent consistent with principles of safety and soundness, statutory law, and policy) work together to make uniform all regulations and guidelines implementing common statutory or supervisory policies. The bank merger application forms of each of the agencies were viewed to be subject to the directive. The new interagency bank merger application form streamlined filing requirements and identified specific information that each of the agencies believed was necessary for reviewing a bank merger proposal. Supplemental pages were added to collect certain additional information that individual agencies believed was critical to the consideration of a bank merger proposal. The supplemental questions and advice were intended to address particular concerns of the individual agencies and facilitate the overall review process.

The Board collects data using the FR 2070 in order to fulfill its statutory obligations under the Bank Merger Act to evaluate, with respect to an SMB merger or other restructuring, the competitive effects of the proposal, the financial and managerial resources and future prospects of the existing and proposed banking organizations, financial stability, and the convenience and needs of the affected communities. The application form also collects information on the basic legal and structural aspects of the proposed transaction and on the extent to which the surviving SMB intends to retain and continue operating as individual branches the headquarters and branches of the target bank.

The collected information is not available from any other source and is used by the Board to determine whether a proposal is financially sound, competitively acceptable, and consistent with the public interest, and to assess the impact on financial stability.

### **Description of Information Collection**

The FR 2070 is an event-generated application and is completed by an SMB each time the bank requests approval to effect a merger, consolidation, assumption of deposit liabilities, other combining transaction with a nonaffiliated party, or a corporate reorganization with an affiliated party. The form collects information on the basic legal and structural aspects of these transactions.

### **Proposed Revision**

The Board proposes to implement a number of revisions to the FR 2070 form. The proposed changes are being made in order to: improve transparency for filers by adding requests for information generally required to evaluate merger transactions, clarify certain existing requests, delete requests for information no longer considered necessary to evaluate the proposal, and update the form for statutory requirements, banking regulations, and accounting rules. The agencies in making the recommended changes surveyed regional offices for suggested changes and considered the effects of the changes on community bank organizations, which represent the

vast majority of Bank Merger Act filers. Board Staff notes that some of the revisions are related to information requested on a follow-up basis in certain circumstances by the respective regulators. Requesting the information upfront should increase transparency as well as the efficiency of the review process. The recommended changes are outlined below and are grouped into the following categories:

- A. Additional requested items relating to information that frequently was requested as supplemental information subsequent to the filing of the initial application or are otherwise considered necessary to evaluate the statutory factors.
- B. Clarification of certain requests related to biographical and financial information for principals and Community Reinvestment Act-related information
- C. Deletion of the request for cash flow projections for the parent company
- D. Updated requests to account for changed capital requirements and outdated accounting rules
- E. Other minor changes for improved grammar, comprehension, accurate citations, and mailing addresses

### **Discussion of FR 2070 Revisions**

#### **A. Additional Requested Items**

The agencies agreed to propose a revised FR 2070 to include additional requests for information that for the most part would be requested to supplement the questions included in the current form or are otherwise considered necessary to evaluate the statutory criteria. By requesting this information with the filing of the form, time and effort will be saved on the part of the applicant and the agencies. These newly requested items are:

1. Any contract deadlines associated with the transaction.
2. Identification of any filings to other state and federal regulators in connection with the merger transaction.
3. A discussion of the changes in the resultant institution's business strategy and operations and integration plans along with the submission of a business plan, if available.
4. Projected financial statements and capital figures as of the end of each of the first three years of operation following consummation. The prior form's request for only one year of projected statements was not viewed as providing sufficient information for analysis of the transaction.

5. Any changes to directors and senior executive officers due to the proposed transaction.
6. Statement of any litigation or investigations involving the applicant, the target institution, and their subsidiaries during the past two years.
7. A discussion of the effect of the proposed transaction on the stability of the United States banking and financial systems in light of the Dodd-Frank Wall Street Reform and Consumer Protection Act.
8. Information regarding whether the proposed investment in branches is consistent with Section 208.21 of the Board's Regulation H. (This is a Federal Reserve only request; the FDIC and OCC will not request this information.)

B. Clarification of certain requests

1. The instructions to the form will recommend consultation with the appropriate regulatory agency to determine whether biographical or financial information for directors and senior officers involved in the transaction will need to be provided.
2. Questions regarding how the proposal will assist in meeting the convenience and needs of the community, including with respect to the Community Reinvestment Act, are modified or expanded to provide more detailed instructions on what is required.
3. Questions seeking more detailed information regarding compliance with interstate merger provisions of the Riegle-Neal Act.

C. Deletion of requested items

1. The request for cash flow projections for the parent company in certain transactions will be deleted. This request has been superseded by the enhanced financial projections now requested.
2. The request for goodwill amortization and purchase discount accretion schedules is no longer required due to accounting rule changes.

D. Definition updates

1. Ratios included in the request for a projected regulatory capital schedule are updated to reflect the latest capital regulatory guidelines. The following ratios will now be required: common equity tier 1 capital, additional tier 1 capital, and tier 2 capital.

E. Minor editing changes

1. Other changes to the form that are less significant in nature include those to improve grammar, update citations and addresses, clarify instructions, and note the option of filing electronically.

## **Time Schedule for Information Collection**

The application is event-generated. If the application meets established criteria to be processed on a delegated basis, the Reserve Bank or Secretary of the Board generally acts on the proposal within 30 calendar days of submission of the application. If the proposal does not meet the criteria for processing under delegated authority, the application will be processed for action by the Board. Such an application will generally be acted on within 60 calendar days of submission of the application, unless an applicant is notified that the processing period is being extended and informed of the reasons for the extension.

## **Legal Status**

The Bank Merger Act requires, in relevant part, that a SMB, when it is the acquiring, assuming or resulting bank, obtain prior approval from the Board before merging or consolidating with another insured depository institution, or before acquiring the assets of or assuming liability to deposits made in any other insured depository institution.

(12 U.S.C. § 1828(c)). The Federal Reserve treats the Interagency Bank Merger Act Application as a public document. However, applicants may request that parts of their applications be kept confidential. In such cases, the filer must justify the exemption by demonstrating that disclosure would cause “substantial competitive harm,” would result in “an unwarranted invasion of personal privacy,” or would otherwise qualify for an exemption under the Freedom of Information Act (5 U.S.C. § 552). The confidentiality status of the information submitted will be judged on a case-by-case basis.

## **Consultation Outside the Agency**

The interagency working group responsible for this application is comprised of representatives from the OCC, the FDIC, and the Federal Reserve System, who worked together to recommend the above changes. On October 2, 2017, the Board published a notice in the *Federal Register* (82 FR 45847) requesting public comment for 60 days on the extension, with revision, of the FR 2070. The comment period for this notice expires on December 1, 2017.

## **Estimate of Respondent Burden**

The burden for the revised FR 2070 is estimated to be 1,864 hours annually for state member banks, as shown in the table below. The interagency task force has estimated an average response time of 31 hours for applications filed to effect a merger, consolidation, assumption of deposit liabilities, or other combining transaction between nonaffiliated parties and 19 hours for applications filed to effect a corporate reorganization between affiliated parties. The current estimate is based on the number of applications filed and represents less than 1 percent of total Federal Reserve System burden for all information collections. As noted above, some of the additional information being requested in the form was already being

requested by regulatory staff on a follow-up basis. By adding these requests to the form, applicants should be able to receive a quicker response to their requests as staff will no longer need to send requests for such information.

	<i>Number of respondents<sup>1</sup></i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<b><i>Current</i></b>				
Nonaffiliate Transactions	54	1	30	1,620
Affiliate Transactions	10	1	18	<u>180</u>
<i>Total</i>				1,800
<b><i>Proposed</i></b>				
Nonaffiliate Transactions	54	1	31	1,674
Affiliate Transactions	10	1	19	<u>190</u>
<i>Total</i>				1,864
<i>Difference</i>				+64

The current total annual cost to the public is estimated to be \$98,820 and with the proposed revisions will increase to \$102,334.<sup>2</sup>

## Sensitive Questions

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

<sup>1</sup> Of these respondents, 17 are small entities as defined by the Small Business Administration (i.e. entities with less than \$550 million in assets). [www.sba.gov/content/table-small-business-size-standards](http://www.sba.gov/content/table-small-business-size-standards).

<sup>2</sup> 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 \$18, 45% Financial Managers at \$67, 15% Lawyers at \$67, and 10% Chief Executives at \$93). Hourly rate for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2016, [www.bls.gov/news.release/ocwage.nr0.htm](http://www.bls.gov/news.release/ocwage.nr0.htm). Occupations are defined using the BLS Occupational Classification System, [www.bls.gov/soc/](http://www.bls.gov/soc/).

### **Estimate of Cost to the Federal Reserve System**

The estimated costs to the Federal Reserve System associated with this information is \$227,469 per year.