

**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 delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the following reporting and recordkeeping requirements related to amendments made by the Gramm-Leach-Bliley Act, to the Bank Holding Company Act, the Federal Reserve Act, and related regulations:

- The mandatory Declarations to Become a Financial Holding Company (FHC) (FR 4010);¹
- The voluntary Requests for Determinations and Interpretations Regarding Activities Financial in Nature (FR 4011);
- The mandatory Notices of Failure to Meet Capital or Management Requirements (FR 4012);²
- The mandatory Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017);
- The mandatory Regulatory Relief Requests Associated with Merchant Banking Activities (FR 4019); and
- The mandatory Recordkeeping Requirements Associated with Merchant Banking Activities (FR 4023).

These collections of information are event-generated and as such, there are no formal reporting forms associated with them. In each case, the type of information required to be filed is described in the Board's regulations. The Board estimates the total annual burden for the six collections of information to be 1,799 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. These data collections include:

1. *Declarations to Become a Financial Holding Company (FR 4010)*. The BHC Act requires entities to file this declaration in order to be treated as FHCs.³ The information contained in an FHC declaration is used by the Board 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, upon request or on its own initiative, to determine in conjunction with the Treasury Department that nonbanking

¹ Savings and Loan Holding Companies (SLHCs) were added to the FR 4010 as a result of Regulation LL. 12 C.F.R. 238.65. (76 FR 56508) September 13, 2011.

² SLHCs were added to the FR 4012 as a result of Regulation LL. 12 C.F.R. 238.65. (76 FR 56508) September 13, 2011.

³ 12 U.S.C. § 1843(l)(1)(D). Section 10(c)(2)(H) of the Home Owner's Loan Act, 12 U.S.C. § 1467a(c)(2)(H), and Section 8(a) of the International Banking Act, 12 U.S.C. § 3106(a), respectively, make this requirement applicable to SLHCs and Foreign Banking Organizations (FBOs) seeking to be treated as FHCs.

activities are financial in nature, incidental to a financial activity, or complementary to a financial activity.⁴ In addition, the Board's Regulation Y permits interested parties to request the Board to issue advisory opinions that specific proposed activities fall within the scope of (or are incidental to) financial activities.⁵ To gather facts necessary to make determinations or issue opinions, the Board 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 it and all of its subsidiary depository institutions (and in the case of an FBO, the foreign bank itself, and its U.S. branches, agencies, and commercial lending companies) are well managed and well capitalized. The Board's Regulations Y and LL require an FHC that falls out of compliance with these requirements to notify the Board of the noncompliance.⁶ 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 Board for curing the deficiencies and to execute a formal cure agreement with the Board.⁷
4. *Notices by State Member Banks to Invest in Financial Subsidiaries (FR 4017)*. The FRA and the Board's Regulation H 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.⁸ The information contained in the notice is used by the Board 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 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.⁹ Information contained in the request is used 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 an FHC to notify the Board if the FHC's routine management or operation of a portfolio company lasts longer than nine months.¹⁰ 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)*. 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 Board.¹¹ Regulation Y also requires FHCs to document any routine management or

⁴ 12 U.S.C. § 1843(k)(1).

⁵ 12 C.F.R. 225.88(e).

⁶ 12 U.S.C. § 1843(l)(1); 12 C.F.R. 225.83(b)(1), 225.93(b)(1), and 238.66(b).

⁷ 12 U.S.C. §§ 1843(m)(2) and 1467a(c)(2)(H)(ii), 12 C.F.R. 225.83(d) and 225.93(d).

⁸ 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).

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

¹⁰ 12 C.F.R. 225.171, 225.171(e)(3).

¹¹ 12 C.F.R. 225.175.

operation of a portfolio company and to make this documentation available to the Board on request.¹² 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

FR 4010

The BHC Act, and Regulations Y and LL specify the information to be included in a declaration.¹³ In most cases, FHC declarations are filed in the form of a letter addressed to the appropriate Federal Reserve Bank.

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

An FHC declaration filed by a U.S. SLHC must state that the SLHC elects to be treated as an FHC, must be signed by an authorized official or representative, and must provide the following information:

- the name and head office address of the SLHC and of each depository institution controlled by the 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 the SLHC and all depository institutions controlled by the SLHC are well capitalized and well managed as of the declaration date
- the capital ratios (as of the close of the previous quarter for all relevant capital measures) for each depository institution the SLHC controls

An FHC declaration filed by an FBO must state that the FBO elects to be treated as an FHC, must be signed by an authorized official or representative, and must provide the following information:

¹² 12 C.F.R. 225.171(e)(4).

¹³ 12 U.S.C. § 1843(l)(1); 12 C.F.R. 225.82, 238.65(b) and 225.91.[Put in order of presentation]

- 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
- 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 FBO

FR 4011

Regulation Y specifies the information to be collected in connection with each type of request.¹⁴ 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 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;

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

- 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

Regulation Y provides that the notice must identify the noncompliant banking entity and the area of noncompliance. Regulation Y does not prescribe a format for such notices, however, they typically take the form of a letter.¹⁵ Plans submitted to remediate 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
- any other information the Board may require

FR 4017

Regulation H requires FR 4017 notices to be in the form of a letter with enclosures and to¹⁶

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

¹⁵ 12 C.F.R. 225.83(b)(1), 225.93(b)(1) and 238.66(b).

¹⁶ 12 C.F.R. 208.76.

FR 4019

Regulation Y requires requests for extension of the holding period for a merchant bank investment to include the following information:¹⁷

- 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)
- 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.

FR 4023

The general policies and procedures that an FHC must establish with respect to merchant banking must be reasonably designed to¹⁸

- 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 FRA, anti-tying statutes, Regulation Y, and any other applicable provisions of law.

Time Schedule for Information Collection

All references to time schedules are in calendar days.

The Federal Reserve follows the retention requirements for reports set forth by an agreement with the National Archives and Records Administration on March 28, 2001. Accordingly, Reserve Bank staff should retain documentation associated with a notification indefinitely.

¹⁷ 12 C.F.R. 225.172(b)(4).

¹⁸ 12 C.F.R. 225.175(a)(1).

FR 4010¹⁹

Under Regulations Y and LL, a company's election to be treated as an FHC is effective on the 31st day after the declaration is received, unless the Board notifies the company before that date that the election is ineffective because the filer does not meet the eligibility criteria to become an FHC. Alternatively, the Board may make an 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 or an SLHC, an election typically becomes effective at the time the company becomes a BHC or an SLHC. For records management purposes, FHC declarations are treated in the same manner as other banking applications. An FBO may file an FHC election under a preclearance process, and in certain instances must use the preclearance process.²⁰

FR 4011

The information submitted in connection with the FR 4011 is event generated and the data are not part of any published reporting series. All timeframes are generally dependent upon when the filer chooses to request a determination or interpretation. The filing may be processed under various schedules and final action typically would be taken by the Board.

The GLB Act requires the Board 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 Board from making a favorable determination on such a request if Treasury advises the Board in writing within 30 days that Treasury believes the proposed activity is not financial in nature or incidental to financial activities.²¹ The Board's review of such a request often causes a request for 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 Board may (and typically does) publish a description of a request in the *Federal Register* and request public comment.²² Under Regulation Y, the Board strives to make decisions on requests not more than 60 days after the consultative process and the public comment period have ended.²³

The Board 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 Board 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 Board is to provide an advisory opinion within 45 days of receiving a complete written request.²⁴

The Board 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 Board receives the requested information. No consultation with Treasury is required, but the Board typically will publish a description of the request in the

¹⁹ 12 C.F.R. 225.82(e) and (f), 225.92(a) and (b) and 238.65(c), (e), and (f).

²⁰ 12 CFR 225.91(c).

²¹ 12 U.S.C. § 1843(k)(2)(A).

²² 12 C.F.R. 225.88(c)(2).

²³ 12 C.F.R. 225.88(d).

²⁴ 12 C.F.R. 225.88(e)(2).

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 Board may extend the period an additional 30 days.²⁵

FR 4012

An FHC must file this notice within 15 days of becoming aware of failure to meet capital or management requirements,²⁶ and then has 45 days to reach agreement with the Board on a plan to cure the deficiencies.²⁷ If deficiencies are not cured within 180 days of the notice, the Board 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.²⁸ However, the Board also may grant extensions of this cure period.

FR 4017

Under Regulation H, a notice to invest in financial subsidiaries is deemed approved 15 days after it is received, unless the Board 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.²⁹

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.³⁰ As noted, Regulation Y requires the Board to weigh certain factors in considering a holding period extension request.³¹ 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.³²

FR 4023

Companies required to establish and maintain policies, procedures, records, and systems for managing the activities and the risk associated with merchant banking activities must make these materials available upon request to the Board.

Sensitive Questions

These information collections contain no questions of a sensitive nature, as defined by OMB guidelines.

²⁵ 12 U.S.C. § 1843(j)(1)(C).

²⁶ 12 C.F.R. 225.83(b)(1) and 238.66(d).

²⁷ 12 U.S.C. §§ 1843(m)(2) and 1467a(c)(2)(H)(ii).

²⁸ 12 U.S.C. § 1843(m)(4).

²⁹ 12 CFR 208.76(d).

³⁰ 12 C.F.R. 225.172(b)(4).

³¹ 12 C.F.R. 225.172(b)(5).

³² 12 C.F.R. 225.171(e)(3).

Consultation Outside the Agency

On October 18, 2016, the Federal Reserve published in the *Federal Register* (81 FR 71730) requesting public comment for 60 days on the extension, without revision, of the reporting and recordkeeping requirements related to amendments made by the Gramm-Leach-Bliley Act, to the Bank Holding Company Act, the Federal Reserve Act, and related regulations. The comment period for this notice expires on December 19, 2016.

Legal Status

- FR 4010 is authorized by section 4(l)(1)(C) of the BHC Act (12 U.S.C. § 1843 (l)(1)(C)); section 10(c)(2)(H) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(2)(H)); section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)); sections 225.82 and 225.91 of the Board's Regulation Y (12 C.F.R. §§ 225.82, 225.91); and section 238.65 of the Board's Regulation LL (12 C.F.R. § 238.65)).
- FR 4011 is authorized by section 4(j) and (k) of the BHC Act (12 U.S.C. § 1843(j)-(k)), and sections 225.88 and 225.89 of the Board's Regulation Y (12 C.F.R. §§ 225.88, 225.89).
- FR 4012 is authorized by section 4(l)(1) and 4(m) of the BHC Act (12 U.S.C. § 1843(l)(1), (m)); section 10(c)(2)(H) of the Home Owners' Loan Act (12 U.S.C. 1467a(c)(2)(H)); section 8(a) of the International Banking Act (12 U.S.C. § 3106(a)); sections 225.83 and 225.93 of the Board's Regulation Y (12 C.F.R. §§ 225.83, 225.93); and section 238.66(b) of the Board's Regulation LL (12 C.F.R. § 238.66(b)).
- FR 4017 is authorized by section 9 of the FRA (12 U.S.C. § 335), and section 208.76 of the Board's Regulation H (12 C.F.R. § 208.76).
- FR 4019 is authorized by section 4(k)(7) of the BHC Act (12 U.S.C. § 1843(k)(7)); sections 225.171(e)(3), 225.172(b)(4); and section 225.173(c)(2) of the Board's Regulation Y (12 C.F.R. §§ 225.171(e)(3), 225.172(b)(4), 225.173(c)(2)).
- FR 4023 is authorized by 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 the Board's Regulation Y (12 C.F.R. §§ 225.171(e)(4), 225.175).

The obligation to respond to the FR 4011 is voluntary (for requests to determine that an activity is financial in nature or to issue an advisory opinion that an activity is within the scope of an activity previously determined to be financial in nature) and required to obtain or retain benefits (for approvals to engage in an activity that is complementary to a financial activity). The obligation to respond to the FR 4010, FR 4017, and FR 4019 is required to obtain or retain benefits. The obligation to respond to FR 4012 and the obligation to comply with the recordkeeping requirements of the FR 4023 is mandatory.

The information collected on the FR 4010, FR 4011, FR 4017, and FR 4019 and

information related to a failure to meet capital requirements on the FR 4012 is not generally considered confidential. Nevertheless, a respondent may request confidential treatment of information contained in these information collections in accordance with section (b)(4) or (b)(6) of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(4), (b)(6)). Any request for confidential treatment of information must be accompanied by a detailed justification for confidentiality. Information related to a failure to meet management requirements on the FR 4012 is considered confidential and exempt from disclosure under section (b)(4), because the release of this information would cause substantial harm to the competitive position of the entity, and section (b)(8), if the information is 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 (5 U.S.C. § 552(b)(4), (b)(8)).

Summary of Estimated Burden

The Board estimates the total annual burden for the six collections of information to be 1,799 hours, as shown in the table below. These reporting and recordkeeping requirements represent 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 Board for additional information. The estimated number of respondents for each collection of information was determined using the average of the total number of respondents over the past three years.

	<i>Estimated number of respondents³³</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<u>FR 4010</u>				
BHCs and SLHCs	31	1	3	93
Foreign Banks	1	1	4	4
<u>FR 4011</u>	5	1	10	50
<u>FR 4012</u>				
BHCs decertified as an FHC	2	1	1	2
FHCs back into compliance – BHC	14	1	10	140
<u>FR 4017</u>	1	1	4	4
<u>FR 4019</u>				
Regulatory relief requests	4	1	1	4
Portfolio company notification	2	1	1	2
<u>FR 4023</u>	30	1	50	<u>1,500</u>
<i>Total</i>				<u>1,799</u>

The total annual cost to the public is estimated to be \$95,617.³⁴

³³ Of the respondents, 14 are small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/content/table-small-business-size-standards.

³⁴ 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 \$17, 45% Financial Managers at

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. The Board believes that most of the information for the filings (FHC elections, financial subsidiary filings, requests for determinations and interpretations, requests for holding period extensions) are submitted via email or in hard-copy form to the Board although there are systems available to submit directly via Electronic Applications (EApps).

\$65, 15% Lawyers at \$66, and 10% Chief Executives at \$89). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages May 2015, published March 30, 2016, <http://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.