



BOARD OF GOVERNORS
OF THE
FEDERAL RESERVE SYSTEM

WASHINGTON, D.C. 20551

DIVISION OF BANKING
SUPERVISION AND REGULATION

DIVISION OF CONSUMER AND
COMMUNITY AFFAIRS

SR 12-12

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July 11, 2012

**TO THE OFFICER IN CHARGE OF SUPERVISION
AT EACH FEDERAL RESERVE BANK**

SUBJECT: Implementation of a New Process for Requesting Guidance from the Federal Reserve Regarding Bank and Nonbank Acquisitions and Other Proposals

Applicability to Community Banking Organizations: This guidance applies to all institutions supervised by the Federal Reserve, including community banking organizations, defined as institutions supervised by the Federal Reserve with total consolidated assets of \$10 billion or less.

This letter outlines the Federal Reserve's new process for an applicant to request feedback on a potential acquisition or other proposal prior to the submission of a formal application or notice.¹ The Board believes that this new process will be particularly helpful for community banking organizations that typically do not file applications on a frequent basis or for pre-filers with novel proposals. These applicants will now have the opportunity to work with Federal Reserve staff to receive critical feedback on potential issues related to acquisitions or other proposals. This new **optional process**, described more fully below, could shorten the review period for many formal applications.

General Guidance

Federal Reserve System staff understand that individuals or companies frequently have questions about potential filings and, as a courtesy, will now review submitted information, termed a "pre-filing," prior to the submission of a formal filing.² Pre-filings are inquiries related

¹ This process applies to all types of proposals requiring submission of an application or notice.

² Communications through brief phone conversations or limited e-mail correspondence are not generally considered pre-filings. In addition, the Federal Reserve will continue to receive requests for *Federal Register* publication or for the submission of biographical and financial information needed to commence background investigations related to proposals that are expected to be filed. However, this information will not be considered a pre-filing for purposes of this guidance.

to potential applications and notices that include, but are not limited to, information about a specific aspect of a proposal or a potential issue, business plans or pro forma financial information related to a potential filing, or presentations outlining specific potential proposals (i.e., not just proposal concepts). Pre-filings also may include draft transactional and structural documents such as shareholder agreements, purchase agreements, voting agreements, side letters, offering documents, partnership agreements, or qualified family partnership agreements. In addition, pre-filings may include questions regarding the type of filing required, if any; the individuals or entities that would need to join a filing; and whether an entity would be considered to be a “company” or have “control” under the Bank Holding Company Act or the Home Owners’ Loan Act.³

The Board believes that the new pre-filing process will be particularly beneficial to individuals and entities that are not frequent filers with the System or for filers with novel proposals that are seeking feedback on specific areas regarding a proposal. For community banking organizations in particular, the pre-filing process can be very useful in helping organizations understand relevant issues and the overall process. The pre-filing process is not expected to be typically used by organizations that frequently file proposals with the Federal Reserve.

Those submitting a pre-filing should understand that staff review will be targeted to the specific request for feedback and is not intended to identify or resolve all issues or concerns related to a possible future application or notice, or be predictive of the final outcome. In addition, this review is not intended to be a forum for negotiating the structure of a potential proposal or for resolving significant issues of policy or law. Finally, a pre-filing evaluation is **not part** of the formal review period for applications outlined in relevant statutes and regulations and should not be considered as such.

Such pre-filings should be submitted to the appropriate Reserve Bank. Pre-filings also may be submitted electronically through the System’s Electronic Applications System, E-Apps. Depending on the nature of the inquiry, a pre-filing review may include Board staff consultation. Although most pre-filings can be addressed swiftly, the Federal Reserve anticipates reviewing pre-filing and submitted information regarding a particular proposal for no more than 60 days.⁴ Some pre-filings may require additional time.

Pre-filing inquiries will be handled on a best-efforts basis, with staff giving priority to pending formal applications and notices. Pre-filers will be contacted upon completion of the review, but no later than 60 days from the date of receipt of the pre-filing. There generally will be only one pre-filing review period for a potential application or notice. If further review of a

³ Under the provisions of the Freedom of Information Act (FOIA), written inquiries and documents submitted in connection with a pre-filing inquiry become public records of the Board and may be requested by any member of the public. Board records generally must be disclosed unless they are determined to fall, in whole or in part, within the scope of one or more of the FOIA exemptions from disclosure. See 5 U.S.C. section 552(b)(1)-(9). Parties may seek confidential treatment for any portion of submission in accordance with the Board’s Rules Regarding Availability of Information (12 CFR 261.15). Pre-filings will not be published in the Board’s H.2 report.

⁴ Responses to most types of pre-filings are anticipated to take well less than the 60 day period noted above. However, the review of complex or novel proposals may require the full 60 day period. Also, this process is not intended for the review of fully complete applications or notices.

proposal is desired, a final application or notice should be filed, and the filer need not wait for staff to complete its review and assessment of the pre-filing within the pre-filing review period.

At the conclusion of the review period, a pre-filer wishing to pursue their proposal, or a pre-filer who has been informed that a proposal requires a filing, is encouraged to submit a final application or notice as soon as practicable. The final filing record should stand on its own whereby the applicant or notificant should provide all pertinent documents in the final filing. Final submissions generally are expected to be more quickly reviewed and acted upon when previously identified issues or concerns are fully addressed.

Questions about this letter concerning safety-and-soundness issues may be directed to Michael J. Sexton, Assistant Director, at (202) 452-3009, or Katie Cox, Manager, at (202) 452-2721, Domestic Acquisitions and Activities, in the Board's Division of Banking Supervision and Regulation. Questions about this letter concerning legal issues may be directed to Alison Thro, Assistant General Counsel, at (202) 452-3236, or Amanda Allexon, Senior Counsel, at (202) 452-3818, in the Board's Legal Division. Questions about this letter concerning consumer compliance or Community Reinvestment Act issues may be directed to Beverly Smith, Manager, at (202) 452-5291, or Charles Fleet, Senior Supervisory Consumer Financial Services Analyst, at (202) 452-2776, in the Board's Division of Consumer and Community Affairs. In addition, questions may be sent via the Board's public website.⁵

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⁵ See <http://www.federalreserve.gov/apps/contactus/feedback.aspx>.