

**Supporting Statement for
Bank Holding Company Applications and Notifications
(FR Y-3, FR Y-3N, and FR Y-4; OMB No. 7100-0121)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, the following mandatory Bank Holding Company (BHC) application and notification forms (OMB No. 7100-0121):

- the Application for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-3),
- the Notification for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-3N), and
- the Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y-4).

The Federal Reserve requires the submission of these filings for regulatory and supervisory purposes and to allow the Federal Reserve to fulfill its statutory obligations under the Bank Holding Company Act of 1956 (the BHC Act). These filings collect information on proposals by BHCs involving formations, acquisitions, mergers, and nonbanking activities. The Federal Reserve must obtain this information to evaluate each individual transaction with respect to financial and managerial factors, permissibility, competitive effects, net public benefits, and the impact on the convenience and needs of affected communities.

The proposed revisions reflect changes to the Federal Reserve's Small Bank Holding Company Policy Statement and the Federal Reserve's risk-based and leverage capital guidelines that were announced in February 2006. The proposed revisions also reflect recent changes in the type of information that the Federal Reserve requires from filers for purposes of determining whether information submitted in a filing may be provided to the public under the Freedom of Information Act (FOIA). Each proposed revision is intended to make initial filings more reflective of the specifically proposed transaction and thereby reduce the need for subsequent information requests, which delay the Federal Reserve's consideration of a filing and create additional burden for filers. In addition, the instructions have been reformatted to clarify the possible filings, clarify the legal and financial requirements for different types of filings, and provide additional practical guidance to assist a filer in understanding the information and processing requirements for particular types of proposals.

The current combined annual burden for the application and notifications is estimated to be 22,920 hours. The proposed revisions are offsetting and technical in nature; therefore, the Federal Reserve believes that the estimated annual burden would remain unchanged. Copies of the proposed revised application and notification forms are attached.

Background and Justification

The FR Y-3 was created in July 1994 as a replacement for earlier separate application forms for proposed BHC formations, acquisitions, and mergers. The FR Y-3 combined the Application for Prior Approval to Become a Bank Holding Company (FR Y-1; OMB No. 7100-0119) and the Application for Prior Approval for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-2; OMB No. 7100-0171). The FR Y-1 and FR Y-2 applications had been in existence since the implementation of the BHC Act.

The FR Y-3N was created in April 1999 to accommodate certain changes to Regulation Y (approved by the Board on February 19, 1997) that established streamlined review processes for certain applications and notifications. These revisions reduced the burden and delay associated with the review process for proposals filed under section 3 of the BHC Act by well-run BHCs (those institutions that meet objective and verifiable measures for each of the criteria set forth in the BHC Act and Regulation Y). These procedures (which became effective April 21, 1997) reduced the amount of information required to be provided by a filer and permitted the Federal Reserve System to take expedited action on proposals meeting the qualifying criteria set forth in the regulation. The FR Y-3N was implemented to accommodate these streamlined procedures.

The FR Y-4 was created in June 1971 as a result of amendments to the BHC Act in 1970 permitting BHCs to engage in certain nonbanking activities. The notification form was significantly revised in April 1999 to accommodate other 1997 revisions to Regulation Y that established streamlined procedures for certain nonbanking proposals. These new procedures were intended to reduce significantly the regulatory burden associated with the review process for proposals filed under section 4 of the BHC Act by well-run BHCs.

In 1999, minor additions and substitutions to the FR Y-3 and the FR Y-3N and deletions to the FR Y-4 were necessary after passage of the Gramm-Leach-Bliley Act (the GLB Act). The revisions reflected that a filing organization could seek to become, or already had become, a financial holding company (FHC), as well as other related modifications. Other revisions to the FR Y-3 and the FR Y-3N were technical in nature and were intended to further clarify the application requirements for banking organizations, ensure consistency of phrasing within the forms, and, in several instances, suggest effective means (such as early contact with the Reserve Bank) to help reduce or avoid potential processing delays.

The subsequent review of these application and notifications in 2004 and 2007 have continued to focus on modifications that more clearly explain the information needs for specific types of proposals, as initial filings that more fully explain the particular type of proposal have proven to be the best means for reducing the time and public burden associated with the applications review process.

The Federal Reserve has the sole authority to act on the transactions contemplated under the application and notification forms. The information requested for each type of filing is necessary for the Federal Reserve to fulfill its responsibilities under the BHC Act. The completed filings are the primary source of comprehensive data on the structure of the proposal, the pro forma financial condition of the filer and of its subsidiary(ies), the competitive position

of the filer and entities being acquired, the effect that the proposal would have on the public interest, and the nonbanking activities in which the filer proposes to engage. This information is not available from any other source, and the information is critical to the Federal Reserve being able to determine whether a proposed transaction is financially sound, competitively acceptable, and consistent with the public interest.

Description of Information Collection

The FR Y-3, FR Y-3N, and FR Y-4 are event generated. The application and notification forms collect information concerning proposed BHC formations, acquisitions, mergers, and proposed nonbanking activities. The acquisitions may involve bank, nonbank, and BHC targets. Generally these applications and notifications are submitted to the appropriate Federal Reserve Bank by existing or proposed BHCs. A Reserve Bank participates in the review of every application and notification filed by a BHC for which it is responsible. Certain proposals are approved by a Reserve Bank under delegated authority, while certain other proposals are forwarded to the Board or the Secretary of the Board for action.¹

The financial information required for bank and BHC acquisitions is generally collected at both the holding company and bank level. The competitive data for such banking proposals generally involve only the affected local banking markets, with collection normally at the branch level and occasionally at the bank level. Financial information for nonbank applications is collected on the BHC and the particular company(ies) involved in the transaction. Nonbank competitive information is collected on a local, regional, or national basis, depending on the product or activity involved.

Current FR Y-3

The FR Y-3 application form is completed by an:

- organization seeking prior approval to become a BHC through the acquisition of one or more banks; and
- existing BHC seeking prior approval to (i) acquire 5 percent or more of the shares of an additional bank, (ii) acquire additional shares of any bank in which a BHC already has an ownership position of 5 percent or more, but less than 50 percent,² (iii) merge or consolidate with another BHC, or (iv) otherwise acquire all or a portion of the assets of a bank.

These applications are reviewed under the procedures described in section 225.15 of Regulation Y and are filed in the event the institution does not meet the requirements for filing the FR Y-3N (discussed below). Each of the applications requires information on the proposed transaction, information on competition, convenience, and needs, and financial and managerial information. The FR Y-3 instructions describe the publication requirements for each application.

Current FR Y-3N

¹ In an emergency situation (such as to avert the failure of a bank or savings association), the Director of the Division of Banking Supervision and Regulation may take the actions permitted of a Reserve Bank.

² Under the BHC Act, a subsidiary is defined as any bank or nonbank company in which a BHC directly or indirectly owns or controls 25 percent or more of any class of the outstanding voting shares or which is otherwise controlled by the BHC. Once a BHC owns 50 percent of a bank, the BHC Act provides that generally no further regulatory approval is required to acquire additional shares of the bank.

The FR Y-3N notification form is completed:

- for certain BHC formations, using the abbreviated notice procedures described in section 225.17 of Regulation Y; and
- to acquire shares, assets, or control of a bank, or a merger or consolidation between BHCs using the streamlined procedures described in section 225.14 of Regulation Y.

Formation notifications filed under section 225.17 of Regulation Y must be provided in writing and contain a certification that the requirements of 12 USC 1842(a)(C) and section 225.17(a) of Regulation Y are met. The notification also must contain shareholder information prior to and following the reorganization, management information, and financial information.

Acquisition and merger notifications filed under section 225.14 of Regulation Y must be provided in writing and contain a certification that all of the criteria listed in section 225.14(c) are satisfied. Among other criteria, only well-capitalized and well-managed organizations may use the expedited procedure. Each notification also must contain a description of the transaction, the effect on the convenience and needs of the communities to be served, evidence of publication of the proposed transaction, financial information based on the size of the BHC, managerial and capital information that is dependent on the type of proposal, and competitive information.³

Although the FR Y-3N requests the same type of information as the FR Y-3, significantly less detail is generally required. The FR Y-3N instructions describe the publication requirements for notifications filed under section 225.14 of Regulation Y. Notifications filed under section 225.17 do not require public notice.

Current FR Y-4

The FR Y-4 notification form is completed by a BHC in order to:

- acquire the assets or shares of a nonbank company (including a nonbank insured depository institution) and engage in nonbanking activities under section 4(c)(8) of the BHC Act; and
- engage *de novo* in nonbank activities under section 4(c)(8) of the BHC Act.

These notifications generally require information on the proposed transaction, information on competition and public benefits, and financial and managerial information. For notifications to engage *de novo* in nonbanking activities permissible under Regulation Y, only the name and location of the applicant, the name and location of the company that will perform the activity, the activity to be conducted, and the geographic area to be served must be submitted.

The instructions to the FR Y-4 provide substantial information about two expedited procedures for certain nonbanking proposals, one of which does not require use of the form. Both streamlined procedures were implemented in 1995 as replacements for other expedited procedures implemented in 1984, and both improve the ability of qualifying BHCs to respond quickly to market events. The first expedited procedure allows well-run BHCs to file post-

³ In some cases, an acquisition or merger proposal may result in a person or group of persons acquiring control of a BHC for purposes of the Change in Bank Control Act (CIBC Act). The requirements of the CIBC Act may be fulfilled if the notification filed under section 225.14 of Regulation Y contains certain information required under the CIBC Act and under section 225.43 of Regulation Y.

consummation notices for proposals to engage *de novo* in nonbanking activities that have been permitted by regulation.⁴ The second allows well-run BHCs (that also meet certain additional criteria in section 225.23(c) of Regulation Y) to seek prior Federal Reserve approval on a substantially shorter timeframe than usually occurs in the notification review process.⁵ To use the second procedure, a BHC must file, at the appropriate Reserve Bank and at least 12 business days before effecting the proposed transaction, a FR Y-4 form that contains the information required in section 225.23(a) of Regulation Y. During the 12-day review period, the Reserve Bank or the Board may indicate that a non-expedited notification is required under section 225.24 of Regulation Y.

Proposals that do not qualify for the two streamlined procedures are subject to the non-expedited procedures outlined in section 225.24 of Regulation Y. The information requirements for such a notification depend on the type of transaction and are contained in sections 225.24 (a) (1) and (2) of Regulation Y. To engage *de novo* in permissible nonbanking activities listed in section 225.28 of Regulation Y (listed activities), the BHC must file a notification containing a description of the activities to be conducted, with appropriate authorizations cited, and the identity of the company that will conduct the activity. To engage *de novo* in nonbanking activities not listed in section 225.28 of Regulation Y but previously approved by the Board (unlisted activities), or to acquire a company engaged in listed or unlisted activities, the notification must include a description of the proposal, the identity of any entity involved in the proposal, a statement of public benefits, certain financial information, a description of management expertise, internal controls, and risk-management systems to be utilized, and a copy of any purchase agreement(s). The FR Y-4 instructions describe the publication requirements for each relevant transaction.

Proposed FR Y-3, FR Y-3N, and FR Y-4 Revisions

Cover Pages

The Federal Reserve proposes to revise the cover pages by:

- adding the contact person's e-mail address,
- adding four check boxes to facilitate treatment of the submitted filing under FOIA, and
- adding certification language that would describe the nature of the information being submitted and recognize how the submitted information may be treated under the FOIA. The Federal Reserve believes that receiving the certification at the time of submission would facilitate the disclosure of relevant information to the public and reduce the processing delays that result from uncertainties about what information is eligible for disclosure under the FOIA.

⁴ As indicated above, the notifying BHC does not use the FR Y-4 form to satisfy this requirement. Instead, within 10 business days after commencing the activity, the BHC submits in writing to its appropriate Reserve Bank the information and certifications specified in section 225.22(a)(3) of Regulation Y.

⁵ The nonbanking proposals that may qualify for this expedited procedure involve a filing (i) to engage *de novo* in any nonbanking activity that the Board has permitted by order or regulation, or (ii) to acquire voting shares or assets of a going concern engaged in any nonbanking activity that the Board has permitted by order or regulation (except operating a nonbank insured depository institution). This procedure is generally shorter than other non-expedited procedures because it has no publication requirement.

Confidentiality

The Federal Reserve proposes to replace the Confidentiality section in its entirety. Like the recently revised Annual Report of Bank Holding Companies (FR Y-6; OMB No. 7100-0297), the confidentiality section would state that an Applicant may rely upon more than two types of FOIA exemptions to prevent applications information from being disclosed to the public. The new section would also more clearly explain how information related to an individual associated with a proposal should be presented to the Federal Reserve.

Proposed FR Y-3 Revisions

Cover Page and Preparation of Application

The Federal Reserve no longer accepts complete draft applications for prior review. As a result, the Federal Reserve proposes to delete the reference to draft and final applications from the Cover Page and revise the instructions for draft filings to state that an Applicant may request the Federal Reserve review draft materials before the submission of a formal filing.

Preliminary Charter Approval

Whereas an application filed under either the Federal Reserve Act or the BHC Act could previously only be filed with the Federal Reserve after the relevant chartering authority had granted preliminary charter approval, such applications may now be filed sooner if the preliminary charter approval is expected shortly. The Federal Reserve proposes to rename the Preliminary Charter Approval section to the Newly-Chartered or Converted Bank section and revise the instructions to reflect recent processing changes in connection with applications related to the establishment of new banks or the conversion of existing insured depository institutions to some type of bank. The section would state that, before the review process for the charter application of the proposed new or converted bank (and the review process for any related deposit insurance application) commence, an Applicant should consult with the appropriate Reserve Bank to determine the appropriate time when the related Federal Reserve application should be filed and to discuss the information requirements for the specific proposal. Such consultation also should continue during the relevant review processes.

Requested Information

With respect to the Proposed Transaction subsection, the definition of principal within footnote 1 of question 1.b is a legal concept that is often not well understood. As a result, the Federal Reserve proposes to expand the definition to state that an “individual” for this purpose may be one person or a group of persons (for example, the members of a group acting in concert).

The Federal Reserve has determined that the noncompete agreement information requested in question 1.e is no longer necessary to analyze the competitive aspects of a proposed transaction. Therefore, the Federal Reserve proposes to delete question 1.e and renumber question 1.f to 1.e. Current question 1.f would be revised to allow an Applicant to provide a copy of a purchase, operating, or other agreement associated with the proposed transaction as an

alternative to providing the various pieces of information otherwise requested. The Federal Reserve believes that with certain proposals an Applicant would find it less burdensome to provide a copy of the relevant agreements rather than provide the material otherwise requested in the question.

A description of the due diligence review conducted for a proposed acquisition is routinely requested in acquisition proposals and receipt of this information in the original filing would expedite review of the proposal. Therefore, the Federal Reserve proposes to add new question 3 (between the current questions 2 and 3) requesting this type of information. Subsequent questions would be renumbered accordingly.

Since 2006, the Federal Reserve's Small BHC Policy Statement has indicated that the combined level of long-term debt and trust preferred securities at a parent holding company should be carefully considered (particularly relative to capital and earnings) when evaluating the financial strength of a small BHC. As a result, the Federal Reserve proposes to revise current question 4.a of the Financial and Managerial Information subsection to collect only parent company balance sheets for an Applicant that on a pro forma basis would be subject to the Federal Reserve's Small BHC Policy Statement. Footnote 2 would be clarified to reflect all the qualifying criteria for a small BHC, including one established in 2006. Current question 4.b would be revised to collect parent company and consolidated balance sheets for an Applicant that on a pro forma basis would not be subject to the Federal Reserve's Small BHC Policy Statement. A new footnote 3 would be added to current question 4.b to emphasize the type of BHC that needs to file two types of balance sheets. Current question 4.c would be converted to a note that more fully explains what relevant financial elements should be included in the balance sheets provided in response to current questions 4.a and 4.b. The proposed note also would request some of the debt information previously requested in question 4.b and more details regarding the Applicant's level of trust preferred securities.

Cash flow information is necessary for the Federal Reserve to determine whether an Applicant would be in compliance with the Federal Reserve's Small BHC Policy Statement following consummation of the proposed transaction. As a result, the Federal Reserve proposes to revise current question 5.a to collect sufficient information regarding any plans the Applicant may have to issue, incur, or assume additional capital, debt, or trust preferred securities. Current questions 5.b, 5.c, and footnote 3 would be replaced by a three-part question that outlines under what limited circumstances cash flow statements are required for either a large or small BHC.

Proposed FR Y-3N Revisions

Filing Categories

The Federal Reserve proposes to delete the specific reference to risk-weighted assets to be acquired as this restriction is not critical to the form and its inclusion may be revised shortly, pending the completion of the Regulation Y revisions.

Time Schedule for Information Collection

The application and notifications submitted with these forms are event generated and the data are not part of any published reporting series. All timeframes are generally dependent upon when the filer chooses to enter into a transaction that requires an individual submission. The filing may be processed under various schedules. Final action may ultimately be taken by the appropriate Reserve Bank under delegated authority, by the Secretary of the Board under delegated authority, or by the Board directly.

FR Y-3

The FR Y-3 applications filed under section 225.15 of Regulation Y must satisfy established criteria to be processed under delegated authority. If the delegation criteria are satisfied, the Reserve Bank or the Secretary of the Board, as appropriate, will act on the application within five business days after the close of the public comment period (which generally is about thirty days after receipt of a final filing). If it is determined that an application does not meet the criteria for processing under delegated authority, the application will be forwarded to the Board for action. These applications will be acted on within sixty calendar days of receipt, unless the Board notifies the applicant that the processing period is being extended and discloses the reasons for the extension.

FR Y-3N

Proposals to form a BHC that would control a single bank and that satisfy all the criteria in section 225.17 of Regulation Y may be consummated within thirty calendar days after the BHC has provided the appropriate Reserve Bank with a notification that contains all the required information.

Proposals by existing BHCs to acquire additional banks or BHCs and that meet all the criteria in section 225.14 of Regulation Y must be acted on by the Reserve Bank or the Secretary of the Board (as appropriate) under delegated authority within five business days after the close of the public comment period.

FR Y-4

Nonbanking proposals by well-run BHCs that meet all of the criteria in section 225.23(c) of Regulation Y must be acted upon by the Reserve Bank, the Secretary of the Board, or the Board (as appropriate) within twelve business days of a substantially complete filing being submitted at the appropriate Reserve Bank.⁶

Non-expedited notifications filed under section 225.24 of Regulation Y must satisfy established criteria to be processed under delegated authority. If the delegation criteria are satisfied, the Reserve Bank or the Secretary of the Board, as appropriate, will act on the notification within five business days after the close of the public comment period (which is generally about thirty days after receipt of the filing). If it is determined that the notification

⁶ The Board generally acts only on those twelve day notifications that involve certain unlisted activities for which no delegated authority exists.

does not meet the criteria for processing under delegated authority, the application will be transferred to the Board for action generally within sixty calendar days of receipt. Under the BHC Act, the Federal Reserve System must act on nonbanking proposals within sixty days of receipt of a “complete notice,” which generally is a date sometime after the initial date of receipt. In the case of all nonbank proposals, the Board may extend the statutory sixty-day processing period for an additional thirty calendar days, if necessary, and for proposals involving unlisted activities, may extend the thirty-day processing period for an additional ninety calendar days.

For nonbanking proposals initiated under the post-consummation procedures of section 225.22(a)(3) of Regulation Y, a well-run BHC must notify the appropriate Reserve Bank within ten business days after commencing the activity.

Legal Status

The Board's Legal Division has determined that the FR Y-3 application and FR Y-3N notification are authorized by sections 3(a) and 5(b) of the BHC Act, as amended (12 U.S.C. 1842(a) and 1844(b)). The FR Y-4 notification is authorized by section 4(j) of the BHC Act, as amended (12 U.S.C. 1843(j)(1)(b)). Federal Reserve action on an application or notification filed using one of these forms is required for an organization to consummate the related proposal. The public sections of each filing (including those that do not require public comment periods) are subject to public disclosure under the FOIA.

The general instructions to each of these forms indicate the possibility for confidential treatment of certain information provided by the applicants, notificants, or related individuals. The forms are designed so that all information contained in a filing is available to the public unless the applicant, notificant, or individual(s) can substantiate that an exemption under the FOIA is satisfied. For example, information may be deemed confidential if the applicant, notificant, or individual(s) can substantiate that disclosure of the information would likely result in substantial harm to the competitive position of the BHC, its subsidiaries, or the bank or company to be acquired, or to the individual(s). In those instances, confidential treatment of such information may be warranted.

Consultation Outside the Agency

On February 4, 2008, the Federal Reserve published a notice in the *Federal Register* (73 FR 6515) requesting public comment for sixty days on the extension, with revision, of the application and notification forms. The comment period for this notice expired on April 4, 2008. The Federal Reserve did not receive any comment letters; the revisions will be implemented as proposed. On April 16, 2008, the Federal Reserve published a final notice in the *Federal Register* (73 FR 20673).

Sensitive Questions

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

Estimate of Respondent Burden

The annual burden for the FR Y-3, FR Y-3N, and FR Y-4 is estimated to be 22,920 hours and represents less than 1 percent of total Federal Reserve burden for all reports. The current burden estimates are based on the number of applications and notifications, including post-consummation notices, received in 2006. The majority of the proposed revisions to the FR Y-3 and all of the proposed revisions to the FR Y-3N and FR Y-4 are technical in nature; therefore, the current annual burden would remain unchanged. The burden associated with the FR Y-3 revision to delete data item 1.e would be offset by the revision to add data item 3.

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
FR Y-3				
Section 3(a)(1)	162	1	49.0	7,938
Section 3(a)(3) and 3(a)(5)	216	1	59.5	12,852
FR Y-3N				
Section 3(a)(1), 3(a)(3), and 3(a)(5)	113	1	5.0	565
FR Y-4				
Complete notification	116	1	12.0	1,392
Expedited notification	31	1	5.0	155
Post-consummation	<u>36</u>	1	.5	<u>18</u>
<i>Total</i>	674			22,920

The total annual cost to the public for these reports is estimated to be \$1,413,018.⁷

Estimate of Cost to the Federal Reserve System

The information submitted in the application and notifications is not automated. The Federal Reserve System's costs for printing and mailing the application and notifications are minimal.

⁷ Total cost to the public was estimated using the following formula. Percent of staff time, multiplied by annual burden hours, multiplied by hourly rate: 30% Clerical @ \$25, 45% Managerial or Technical @ \$55, 15% Senior Management @ \$100, and 10% Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.