

**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 delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without 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 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 in which the individual seeks to participate in the affairs thereof, may apply for an exemption from this prohibition. There is no reporting form associated with this information collection; however, an exemption request to the Board may be filed in letter form. The current annual burden for the FR LL-12 is estimated to be 240 hours for 15 respondents.

Background and Justification

Pursuant to section 19(e) of the FDI Act, as amended by section 710(a) of the Financial Services Regulatory Relief Act of 2006 (12 U.S.C. 1829(e)), 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 party (as that term is defined in 12 U.S.C. 1813(u)) with respect to any SLHC; (2) owning or controlling directly or indirectly any SLHC; and (3) otherwise participating directly or indirectly in the conduct of the affairs of any SLHC. An SLHC may not permit a prohibited person to engage in any conduct or continue any relationship prohibited by section 19(e) of the FDI Act.

In order for a prohibited person to participate in the conduct of the affairs of any SLHC, as described above, the SLHC or the individual must file an application seeking an exemption from the Board. The Board will use information provided by the applicant to fulfill its statutory obligation 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.

Description of Information Collection

All prohibited persons and SLHCs, regardless of size, that seek an exemption are subject to the application requirements of section 19(e) of the FDI Act and subpart I of Regulation LL.

The information collected pertains to 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, and other relevant factors listed in section 238.88(b) of Regulation LL (12 CFR 238.88). 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.

Time Schedule for Information Collection

The information is collected when an SLHC or a prohibited person applies for an exemption and it will be used by the Board to determine whether to approve the prohibited person's involvement in the affairs of the SLHC. 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), .90(a), or .90(d) of Regulation LL (12 CFR 238.89(b), 238.90(a), and 238.90(d), respectively).

Legal Status

The Board's Legal Division has determined that this information collection is authorized by section 19(e)(2) of the FDI Act, which states that the "Board ... may provide exemptions [from the prohibition] by regulation or order ... if the exemption is consistent with the purposes of this subsection" (12 U.S.C. 1829(e)(2)). The Board exercises general supervision over SLHCs, which includes examination authority and the imposition of reporting and recordkeeping requirements (12 U.S.C. 1467a(b)(2)). This information collection is required in order for prohibited persons to obtain the benefit of becoming, or continuing service as, an institution-affiliated party of an SLHC, and for an SLHC to permit that prohibited person to engage in any conduct or continue any relationship prohibited by section 19(e) of the FDI Act.

As required information, the information submitted can be withheld under Exemption 4 of the Freedom of Information Act (FOIA) (5 U.S.C. 552(b)(4)) if disclosure would result in substantial competitive harm (*National Parks and Conservation Association v. Morton*, 498 F.2d 765 (D.C. Cir. 1974)). Certain information required to be submitted, such as the nature and type of position to be held, the services to be rendered by the prohibited person, and their level of ownership in the SLHC, might under some circumstances qualify for withholding under FOIA exemption 4. Additionally, public disclosure of the personal information collected regarding the prohibited person, such as information related to the specific nature of the offense involved leading to the prohibition (which may result in a pretrial diversion or an expunged conviction that is not part of the public record) and evidence of any rehabilitation (which could include items such as community service), might be an undue invasion of personal privacy and qualify for withholding under FOIA exemption 6 (5 U.S.C. 552(b)(6)). Exemption determinations will be made on a case-by-case basis. The Board is required to consider in evaluating such exemption requests factors commonly associated with information "contained in or related to examination, operating, or condition reports" and exempt from disclosure under exemption 8 of FOIA (5 U.S.C. 552(b)(8)): e.g., the safety and soundness of the SLHC's insured depository institution, maintenance of public confidence in the institution, and the person's fitness to serve

(12 CFR 238.88(a)(1)(i), (ii)). To the extent the application contains information gleaned from examination reports, it may be withheld from disclosure under FOIA Exemption 8.

Consultation Outside the Agency

On July 24, 2017, the Board published an initial notice in the *Federal Register* (82 FR 34311) requesting public comment for 60 days on the proposal to extend, without revision, the FR LL-12. The comment period expired on September 22, 2017. The Board did not receive any comments. On November 27, 2017, the Board published a final notice in the *Federal Register* (82 FR 56021) and the information collection will be extended as proposed.

Estimates of Respondent Burden

The current annual reporting burden is estimated to be 240 hours as shown in the following table. These reporting requirements represent less than 1 percent of the total Federal Reserve System paperwork burden.

	<i>Number of respondents¹</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
FR LL-12	15	1	16	240

The total cost to the public is estimated to be \$13,176.²

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.

¹ Of these respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets) www.sba.gov/contracting/getting-started-contractor/make-sure-you-meet-sba-size-standards/table-small-business-size-standards.

² 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 rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2016*, published March 31, 2017, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.