income ratio of the borrower and any co-borrowers; and the unpaid principal balance, term-to-maturity, interest rate, and type (*i.e.,* fixed- or adjustable-rate) of the loan. The remaining data that would not normally be exchanged in the ordinary course of business comprises information identifying the race, ethnicity, and gender of the borrower and any co-borrowers, which are items that the Banks are required to aggregate and report by census-tract to FHFA under section 10(k) of the Bank Act. It is these few items that comprise the actual information collection requirement to which Bank members and housing associates may be required to respond.

The OMB control number for the information collection, which expires on October 31, 2012, is 2590–0008. The likely respondents are member and non-member financial institutions that sell AMA assets to Banks.

B. Burden Estimate

FHFA estimates that the hour burden associated with the AMA collection will be lower than that estimated when the agency last requested clearance for this control number. FHFA estimates that the total annual average number of AMA loans acquired by all Banks will be 48,000 and that the average time needed for a respondent to record and transmit the relevant data to the acquiring Bank will be 5 minutes per loan. Accordingly, the estimate for the total annual hour burden on respondents is 4,000 hours (48,000 loans × 5 minutes per loan).

C. Comment Request

FHFA requests written comments on the following: (1) Whether the collection of information is necessary for the proper performance of FHFA functions, including whether the information has practical utility; (2) the accuracy of the FHFA estimates of the burdens of the collection of information; (3) ways to enhance the quality, utility and clarity of the information collected; and (4) ways to minimize the burden of the collection of information, including through the use of automated collection techniques or other forms of information technology.

Dated: July 31, 2012.

Kevin Winkler,

Chief Information Officer, Federal Housing Finance Agency.

[FR Doc. 2012–19243 Filed 8–6–12; 8:45 am]

BILLING CODE 8070–01–P

FEDERAL RESERVE SYSTEM

Formations of, Acquisitions by, and Mergers of Bank Holding Companies

The companies listed in this notice have applied to the Board for approval, pursuant to the Bank Holding Company Act of 1956 (12 U.S.C. 1841 *et seq.*) (BHC Act), Regulation Y (12 CFR part 225), and all other applicable statutes and regulations to become a bank holding company and/or to acquire the assets or the ownership of, control of, or the power to vote shares of a bank or bank holding company and all of the banks and nonbanking companies owned by the bank holding company, including the companies listed below.

The applications listed below, as well as other related filings required by the Board, are available for immediate inspection at the Federal Reserve Bank indicated. The applications will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the standards enumerated in the BHC Act (12 U.S.C. 1842(c)). If the proposal also involves the acquisition of a nonbanking company, the review also includes whether the acquisition of the nonbanking company complies with the standards in section 4 of the BHC Act (12 U.S.C. 1843). Unless otherwise noted, nonbanking activities will be conducted throughout the United States.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than August 31, 2012.

A. Federal Reserve Bank of New York (Ivan Hurwitz, Vice President) 33 Liberty Street, New York, New York 10045–0001:

1. *Oriental Financial Group Inc.,* San Juan, Puerto Rico; to acquire 100 percent of the voting shares of BBVAPR Holding Corporation, and thereby indirectly acquire Banco Bilbao Vizcaya Argentaria Puerto Rico, both in San Juan, Puerto Rico.

Board of Governors of the Federal Reserve System, August 2, 2012.

Robert deV. Frierson,

Secretary of the Board.

[FR Doc. 2012–19291 Filed 8–6–12; 8:45 am]

BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Withdrawal of the Commission Policy Statement on Monetary Equitable Remedies in Competition Cases

AGENCY: Federal Trade Commission.

ACTION: Notice of withdrawal of Commission policy statement.

SUMMARY: In 2003 the Federal Trade Commission issued a Policy Statement on Monetary Remedies in Competition Cases. The Commission has now withdrawn the Policy Statement.

DATES: *Effective Date:* July 31, 2012.

FOR FURTHER INFORMATION CONTACT: Mark Seidman, Attorney, Bureau of Competition, Federal Trade Commission, 600 Pennsylvania Avenue NW., Washington, DC 20580, 202–326–3296

SUPPLEMENTARY INFORMATION:

Statement of the Commission, Effecting the Withdrawal of the Commission's Policy Statement on Monetary Equitable Remedies in Competition Cases (July 31, 2012)

In 2003, the Federal Trade Commission issued the Policy Statement on Monetary Remedies in Competition Cases (''Policy Statement''),[1] which outlined an analytical framework to guide Commission determination of appropriate circumstances for the use of monetary equitable remedies in federal court. Although intended to clarify past Commission views on this topic, the practical effect of the Policy Statement was to create an overly restrictive view of the Commission's options for equitable remedies.[2] Accordingly, the Commission withdraws the Policy Statement and will rely instead upon existing law, which provides sufficient guidance on the use of monetary equitable remedies.

As past cases demonstrate, disgorgement and restitution can be effective remedies in competition matters, both to deprive wrongdoers of unjust enrichment and to restore their victims to the positions they would have occupied but for the illegal behavior. Because the ordinary purpose and effect of anticompetitive conduct is to enrich wrongdoers at the expense of consumers, competition cases may often be appropriate candidates for monetary equitable relief. Although our decisions and orders generally focus on structural

[1] Fed. Trade Comm'n, Policy Statement on Monetary Equitable Remedies in Competition Cases, 68 FR 45,820 (Aug. 4, 2003) [hereinafter ''Policy Statement''].

[2] Although footnote 4 of the Policy Statement notes that ''[i]t does not create any right or obligation, impose any element of proof, or adjust the burden of proof or production of evidence on any particular issue, as those standards have been established by the courts,'' we are concerned that parties could mistakenly argue that the factors laid out in the Policy Statement are binding on the Commission, thus creating an unnecessary side issue in litigation. *Id.* at n.4.

or behavioral remedies intended to curb future competitive harm, the agency's mission to protect consumers and competition also includes, where appropriate, taking action to remedy the actual, realized effects of antitrust violations. The policy of depriving wrongdoers of the fruits of their misconduct is evident in the Commission's consumer protection work, where the Commission regularly seeks and attains monetary remedies. Accordingly, while disgorgement and restitution are not appropriate in all cases, we do not believe they should apply only in ''exceptional cases,'' as previously set out in the Policy Statement.[3]

The Policy Statement provided three factors for the Commission to consider in potential disgorgement (or, to some extent, restitution) cases: (1) Whether the underlying violation is ''clear'';[4] (2) whether there is a reasonable basis to calculate the remedial payment; and (3) whether remedies in other civil or criminal litigation are likely to accomplish fully the purposes of the antitrust laws. While the second factor does no more than restate existing legal standards, the other two factors may impose constraints on the Commission beyond the requirements of the law.

As to the first factor, rarity or clarity of the violation is not an element considered by the courts in disgorgement requests.[5] Indeed, some have erroneously interpreted the clarity factor to mean that disgorgement should not be sought in cases of first impression. Whether conduct is common or novel, clearly a violation or never before considered, has little to do with whether the conduct is anticompetitive; some novel conduct can violate the antitrust laws and can be even more egregious than ''clear'' violations. Moreover, a notice requirement may be understood to suggest that disgorgement is a punitive tool akin to fines or imprisonment. It is not. Rather, it is designed, when used in conjunction with other forms of equitable relief, to return the market to the condition that existed before the violation occurred, and to ensure that the party that engaged in the anticompetitive conduct does not retain the profits derived from that conduct. We therefore do not see a basis for creating a heightened standard for disgorgement in cases brought under the federal antitrust statutes.[6]

The third factor also may place an undue burden on the Commission. Specifically, the Policy Statement provides that the Commission will consider whether ''other remedies are likely to fail to accomplish fully the purposes of the antitrust laws[.]''[7] That language may be read to require that the Commission demonstrate the insufficiency of other actions to secure monetary equitable remedies. If misinterpreted in that manner, such a burden is inappropriate. The question of whether there are alternative plaintiffs that may seek or are seeking monetary relief is relevant in this context, but it is not dispositive. It is only one of several questions that might usefully be asked in deciding whether a Commission imposed monetary remedy is appropriate and necessary.

It has been our experience that the Policy Statement has chilled the pursuit of monetary remedies in the years since the statement's issuance. At a time when Supreme Court jurisprudence has increased burdens on plaintiffs, and legal thinking has begun to encourage greater seeking of disgorgement,[8] the FTC has sought monetary equitable remedies in only two competition cases since we issued the Policy Statement in 2003.[9] Although many of the issues explored in the Policy Statement will continue to inform our future consideration of the use of monetary equitable remedies, we withdraw the Policy Statement to clarify that the Commission will assess the use of those remedies on the basis of relevant law. Existing case law suffices to guide our use of disgorgement and restitution remedies, and we will evaluate the unique circumstances of each case through that framework.

As always, the Commission will exercise responsibly its prosecutorial discretion in determining which cases are appropriate for disgorgement. The Commission regards disgorgement as one of many remedial solutions at its disposal in competition cases, and will employ it accordingly to protect consumers and promote competition.

By direction of the Commission, Commissioner Ohlhausen dissenting.

Donald S. Clark,

Secretary.

Statement of Commissioner Maureen K. Ohlhausen, Dissenting From the Commission's Decision To Withdraw Its Policy Statement on Monetary Equitable Remedies in Competition Cases (July 31, 2012)

I dissent from the majority's decision to withdraw the Commission's 2003 Policy Statement on Monetary Equitable Remedies in Competition Cases (''Policy Statement'').[1]

The Policy Statement had a strong pedigree. It was issued in 2003 through a 5–0 bipartisan vote.[2] The Policy Statement subsequently received a unanimous endorsement by the Antitrust Modernization Commission (''AMC''), which concluded in 2007 that ''[t]here is no need to clarify, expand, or limit the agencies' authority to seek monetary equitable relief. The [AMC] endorses the Federal Trade Commission's policy governing its use of monetary equitable remedies in competition cases.''[3] Other well-respected antitrust practitioners, such as former FTC Chairman Pitofsky, also have expressed support for using disgorgement only in exceptional cases.[4]

Rescinding the bipartisan Policy Statement signals that the Commission will be seeking disgorgement in

[3] *Id.* at 45,821 (''In general, we will continue to rely primarily on more familiar, prospective remedies, and seek disgorgement and restitution in exceptional cases.'').

[4] This factor did not apply to restitution.

[5] *See, e.g., United States* v. *KeySpan Corp.,* 763 F. Supp. 2d 633, 638–42 (S.D.N.Y. 2011) (supporting the Department of Justice's settlement of Sherman Act claims with disgorgement); *Fed. Trade Comm'n* v. *Mylan Laboratories,* 62 F. Supp. 2d 25, 36–37 (D.D.C. 1999) (upholding the FTC's ability to require disgorgement in a competition case). We note that the Department of Justice is not subject to the heightened standards articulated by the Commission in the Policy Statement.

[6] In addition to violating the federal antitrust statutes, anticompetitive conduct generally—and novel conduct in particular—may at times constitute a stand-alone violation of Section 5 of the FTC Act. The scope of the Commission's Section 5 enforcement authority is inherently broader than the antitrust laws, in keeping with Congressional intent to create an agency that would couple expansive jurisdiction with more limited and, typically, forward-looking remedies. We do not intend to use monetary equitable remedies in stand-alone Section 5 matters.

[7] Policy Statement, 68 FR at 45,822.

[8] *See, e.g.,* Einer Elhauge, *Disgorgement as an Antitrust Remedy,* 76 ANTITRUST L.J. 79 (2009).

[9] *Fed. Trade Comm'n* v. *Perrigo Co.,* No. 1:04CV1397 (D.D.C. Aug. 12, 2004); *Fed. Trade Comm'n* v. *Lundbeck, Inc.,* No. 08–6379, 2010 WL 3810015 (D. Minn. Aug. 31, 2010).

[1] Fed. Trade Comm'n, Policy Statement on Monetary Equitable Remedies in Competition Cases, 68 FR 45,820 (Aug. 4, 2003).

[2] Press Release, Fed. Trade Comm'n, FTC Issues Policy Statement on Use of Monetary Remedies in Competition Cases (July 31, 2003), *available at http://www.ftc.gov/opa/2003/07/disgorgement.shtm.*

[3] Antitrust Modernization Comm'n, Report and Recommendations 288 (2007). In fact, four of the AMC Commissioners recommended ''that the DOJ adopt a policy similar to the FTC's Policy Statement to articulate the circumstances in which it would exercise its authority to seek equitable monetary remedies.'' *Id.* n.*.

[4] *See* Statement of Chairman Pitofsky and Commissioners Sheila F. Anthony and Mozelle W. Thompson, Hearst Trust, File No. 991–0323, at 1, available at *http://www.ftc.gov/os/2001/04/hearstpitantthom.htm* (''The remedy of disgorgement should be sought by the Commission in competition cases only in exceptional circumstances.'').

circumstances in which the three-part test heretofore utilized under the Statement is not met, such as where the alleged antitrust violation is not clear or where other remedies would be sufficient to address the violation. I have significant concerns about sending such a signal and seeking disgorgement in such situations.

In withdrawing the Policy Statement, the majority makes the vague assertion that ''[i]t has been our experience that the Policy Statement has chilled the pursuit of monetary remedies in the years since the statement's issuance.'' [5] I have not been presented with any evidence that the Policy Statement has inappropriately constrained the Commission in the nine years it has been in effect. This begs the questions why the agency needs to rescind the Policy Statement now and why it should not perhaps be revised rather than rescinded altogether.

The guidance in the Policy Statement will be replaced by this view: ''[T]he Commission withdraws the Policy Statement and will rely instead upon existing law, which provides sufficient guidance on the use of monetary equitable remedies.'' [6] This position could be used to justify a decision to refrain from issuing any guidance whatsoever about how this agency will interpret and exercise its statutory authority on any issue. It also runs counter to the goal of transparency, which is an important factor in ensuring ongoing support for the agency's mission and activities. In essence, we are moving from clear guidance on disgorgement to virtually no guidance on this important policy issue.

Finally, I am troubled by the seeming lack of deliberation that has accompanied the withdrawal of the Policy Statement. Notably, the Commission sought public comment on a draft of the Policy Statement before it was adopted. That public comment process was not pursued in connection with the withdrawal of the statement. I believe there should have been more internal deliberation and likely public input before the Commission withdrew a policy statement that appears to have served this agency well over the past nine years.

[FR Doc. 2012–19185 Filed 8–6–12; 8:45 am]

BILLING CODE 6750–01–P

[5] Fed. Trade Comm'n, Withdrawal of the Commission's Policy Statement on Monetary Equitable Remedies in Competition Cases, at 2 (July 31, 2012).

[6] *Id.* at 1.

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[60Day–12–0128]

Proposed Data Collections Submitted for Public Comment and Recommendations

In compliance with the requirement of Section 3506(c)(2)(A) of the Paperwork Reduction Act of 1995 for opportunity for public comment on proposed data collection projects, the Centers for Disease Control and Prevention (CDC) will publish periodic summaries of proposed projects. To request more information on the proposed projects or to obtain a copy of the data collection plans and instruments, call 404–639–7570 and send comments to Kimberly S. Lane, 1600 Clifton Road, MS–D74, Atlanta, GA 30333 or send an email to *omb@cdc.gov.*

Comments are invited on: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information shall have practical utility; (b) the accuracy of the agency's estimate of the burden of the proposed collection of information; (c) ways to enhance the quality, utility, and clarity of the information to be collected; and (d) ways to minimize the burden of the collection of information on respondents, including through the use of automated collection techniques or other forms of information technology. Written comments should be received within 60 days of this notice.

Proposed Project

Congenital Syphilis (CS) Case investigation and Report Form (CDC73.126), (OMB) No.0920–0128, Expiration (03/31/2013)—Revision—Division of STD Prevention (DSTDP), National Center for HIV, Viral Hepatitis, STD and TB Prevention (NCHHSTP), Centers for Disease Control and Prevention (CDC).

Background and Brief Description

Congenital syphilis (CS) is an important sentinel health event that marks potential problems in both prenatal care and syphilis prevention programs. Congenital syphilis (CS) is nearly 100% preventable by early detection and treatment of syphilis in pregnant women before or during pregnancy.

Reducing congenital syphilis is a national objective in the U.S. Department of Health and Human Services report entitled, ''Healthy People 2020''.

The CDC continues to collect and report information on congenital syphilis morbidity as part of its ongoing Sexually Transmitted Disease (STD) surveillance efforts. A reporting form for congenital syphilis (CDC Form 73.126) was initiated in 1983 to improve detection, case management, and treatment of congenital syphilis cases. Continued data collection will assist in identifying needs for congenital syphilis prevention efforts nationwide.

The current CS reporting form was revised and approved by OMB in 2009 to collect information based on the surveillance case definition and removal of Reporting city information. It is being used by all health jurisdictions reporting CS to CDC as part of the National Notifiable Diseases Surveillance. For the new approval period, CDC requests elimination of the field ''Did the infant/child have an IgM-specific treponemal test?'' This data element is no longer required because treponemal IgM technologies, for the purpose of identifying CS in an infant, are highly insensitive. The following fields have been added: ''Mothers obstetric history'', ''Did mother have treponemal test result: If so, when was the test performed?'' ''What stage of syphilis did mother have?'', ''Date of Mother's treatment'', ''What was mother's treatment?'' ''Congenital Syphilis Case Classification—Presumptive has been replaced with probable,'' as there is no case definition for presumptive congenital syphilis.

This information collection is authorized under Sections 301 and 318 of the Public Health Service Act (42 U.S.C. 241 and 247c).

The congenital syphilis data will continue to be used to develop intervention strategies and to evaluate ongoing control efforts. There is no cost to respondents other than their time.