

## **Supporting Statement for the Recordkeeping Requirements of Regulation H and Regulation K Associated with Bank Secrecy Act Compliance Programs (Reg K; OMB No. 7100-0310)**

### **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 Recordkeeping Requirements Associated with Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K (OMB No. 7100-0310). The Federal Reserve is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995,<sup>1</sup> which classifies regulations such as Regulation K as “required information collections.”

Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K require Edge and agreement corporations and U.S. branches, agencies, and other offices of foreign banks supervised by the Federal Reserve to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act (BSA) and related regulations. Section 208.63 of Regulation H requires state member banks to establish and maintain the same procedures. The Federal Reserve proposes to revise the Recordkeeping Requirements Associated with Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K by combining the renewal of those requirements with the recordkeeping requirements in Section 208.63 of Regulation H. The information collection would be renamed the Recordkeeping Requirements of Regulation H and Regulation K Associated with Bank Secrecy Act Compliance Programs. The substantive requirements of Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K and Section 208.63 of Regulation H, including the institutions to which the respective sections apply, would remain unchanged.

The Federal Reserve’s total current annual burden is estimated to be 1,308 hours. The overall reporting burden is estimated to increase by 3,592 hours with the proposed revision. This increase is solely attributable to the combination of the two, previously separate recordkeeping requirements into one information collection for purposes of renewal. The proposed revision would impose no new or additional burdens on any institution. There are no required reporting forms associated with the three sections.

### **Background and Justification**

In 1987, the federal banking agencies amended their respective regulations to require the banks, savings associations, and credit unions they regulate to establish and maintain procedures to assure and monitor compliance with the requirements of the BSA and the Treasury regulations promulgated thereunder.<sup>2</sup> The BSA generally requires financial institutions to, among other things, keep records and make reports that have a high degree of usefulness in criminal, tax, or regulatory proceedings. The 1987 amendments to the regulations were adopted to comply with the requirements of section 1359 of the Anti-Drug Abuse Act of 1986, Pub. L. 99-570, which

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<sup>1</sup> 44 U.S.C. § 3501 *et seq.*

<sup>2</sup> The notice was issued by the Federal Reserve Board, the Federal Deposit Insurance Corporation, the Office of the Comptroller of the Currency, the Federal Home Loan Bank Board, and the National Credit Union Administration.

required the agencies to prescribe regulations requiring the institutions they regulate to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA and to review such procedures during the course of their examinations.

The amendments to the regulations incorporated the minimum components of a BSA compliance program as determined by the agencies and as generally set forth in the BSA (31 U.S.C. 5318(h)). The 1987 amendments to the Board's regulation were codified in section 208.63 of Regulation H and apply only to state member banks. Corresponding provisions were included in Regulation K in 2006 for Edge and agreement corporations and U.S. branches, agencies, and representative offices of foreign banks.<sup>3</sup> Those provisions were codified in sections 211.5(m)(1) and 211.24(j)(1) of Regulation K.

### **Description of Information Collection**

Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K require respondents to establish a written BSA compliance program that includes the following components: (1) a system of internal controls to assure ongoing compliance, (2) independent testing of compliance by the institution's personnel or by an outside party, (3) the designation of an individual or individuals for coordinating and monitoring day-to-day compliance, and (4) training for appropriate personnel. The compliance program must be approved by the board of directors and noted in the minutes, or in the case of a branch, agency, or other office of a foreign bank, it may also be approved by a delegate of the foreign bank's board of directors.

### **Proposed Revisions**

The Federal Reserve proposes to revise this information collection by combining with it the recordkeeping requirements for state member banks associated with the Section 208.63 of Regulation H. Although state member banks have been required to comply with Section 208.63 of Regulation H for some time, no formal information collection has been on the Federal Reserve's OMB inventory. At this time, the Federal Reserve is correcting this administrative oversight. This section of Regulation H requires the same components for a written BSA compliance program as listed above for Regulation K. As noted, the substantive requirements of Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K and Section 208.63 of Regulation H, including the institutions to which the respective sections apply, would remain unchanged.

### **Time Schedule for Information Collection**

This information collection contains a recordkeeping requirement, as mentioned above. The creation of a BSA compliance program is a mandatory one-time requirement. Subsequent changes to the program would be on-occasion.

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<sup>3</sup> See *Federal Register* (71 FR 13934).

## **Sensitive Questions**

This collection of information contains no questions of a sensitive nature, as defined by OMB guidelines.

## **Consultation Outside the Agency**

On December 23, 2008, the Federal Reserve published a notice in the *Federal Register* (73 FR 78797) requesting public comment for 60 days on the extension, with revision, of the current Recordkeeping Requirements Associated with Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K. The comment period for this notice expired on February 23, 2009. The Federal Reserve did not receive any comments; the revisions will be implemented as proposed. On March 12, 2009, the Federal Reserve published a final notice in the *Federal Register* (74 FR 10739).

## **Legal Status**

The Board's Legal Division has determined that the standards for BSA compliance programs associated with sections 211.5(m)(1) and 211.24(j)(1) of Regulation K and with section 208.63 of Regulation H are generally authorized pursuant to the BSA (31 U.S.C. 513(h)). In addition, sections 11, 21, 25, and 25A of the Federal Reserve Act (12 U.S.C. 248(a), 483, 602, and 611(a)) authorize the Federal Reserve to require the information collection and recordkeeping requirements set forth in Regulations K and H. Section 5 of the Bank Holding Company Act (12 U.S.C. 1844) and section 13(a) of the International Banking Act (12 U.S.C. 3108(a)) provide further authority for sections 211.5(m) and 211.24(j)(1) of Regulation K. Since the Federal Reserve does not collect any information, no issue of confidentiality normally arises. However, if a BSA compliance program becomes a Board record during an examination, the information may be protected from disclosure under exemptions (b)(4) and (8) of the Freedom of Information Act (5 U.S.C. 552(b)(4) and (b)(8)).

## **Estimate of Respondent Burden**

As shown in the table below, the current total annual burden for the recordkeeping requirement associated with sections 211.5(m)(1) and 211.24(j)(1) of Regulation K is estimated to be 1,308 hours. The overall reporting burden is estimated to increase to 4,900 hours with the proposed revisions. As noted, this increase is solely attributable to the combination of the two, previously separate recordkeeping requirements into one information collection for purposes of renewal. The proposed revision would impose no new or additional burdens on any institution. The Federal Reserve estimates that it will take each respondent 16 hours (2 business days) to create their BSA compliance program and 4 hours to maintain procedures to assure and monitor compliance with the BSA. This burden represents less than 1 percent of the total Federal Reserve System paperwork burden.

The Federal Reserve believes that little burden is associated with the requirements for establishing a compliance program for the BSA because the measures involved in the program are consistent with existing requirements under the BSA and with usual and customary business practices.

	<i>Number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
<i>Current</i>				
Establish compliance program	4	1	16 hours	64
Maintenance of compliance program	311	1	4 hours	<u>1,244</u>
<i>Total</i>				<u>1,308</u>
<i>Proposed</i>				
Establish compliance program	13	1	16 hours	208
Maintenance of compliance program	1,173	1	4 hours	<u>4,692</u>
<i>Total</i>				4,900
<i>Change</i>				+3,592

The total cost to the public is estimated to increase from the current level of \$136,163 to \$510,090.<sup>4</sup> As with the increase in burden, the increase in total cost is solely attributable to the combination of the two, previously separate recordkeeping requirements into one information collection for purposes of renewal. The proposed revision would impose no new or additional costs on the public.

### **Estimate of Cost to the Federal Reserve System**

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.

<sup>4</sup> 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% Managerial or Technical @ \$55, 30% Senior Management @ \$100, and 40% 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.