

**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 (Board), under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the mandatory Recordkeeping Requirements of Regulation H and Regulation K Associated with Bank Secrecy Act Compliance Programs (Reg K; OMB No. 7100-0310). The Federal Reserve is required to renew these requirements every three years pursuant to the Paperwork Reduction Act of 1995,¹ which classifies recordkeeping in regulations such as Regulation H and Regulation K as “required information collections.”

Section 208.63 of Regulation H requires state member banks to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act (BSA)² and related regulations. Sections 211.5(m)(1) and 211.24(j)(1) of Regulation K require Edge and agreement corporations and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board to establish and maintain the same procedures. There are no required reporting forms associated with this information collection. The Federal Reserve’s total current annual burden is estimated to be 5,032 hours.

Background and Justification

The BSA requires financial institutions to keep records and make reports that have a high degree of usefulness in criminal, tax, or regulatory proceedings. In 1986, the Anti-Drug Abuse Act amended the Federal Deposit Insurance Act³ to require the federal banking agencies to (1) prescribe regulations requiring the institutions they regulate to establish and maintain procedures reasonably designed to assure and monitor compliance with the BSA and (2) to review such procedures during the course of their examinations.

In 1987, the federal banking agencies amended their respective regulations to require the banks, savings associations, and credit unions they regulated to establish and maintain procedures to assure and monitor compliance with the requirements of the BSA and regulations promulgated thereunder by the Secretary of the Treasury.⁴ These amendments incorporated the minimum components of a BSA compliance program as determined by the federal banking agencies as generally set forth in the BSA.⁵

¹ See 44 U.S.C. § 3501 *et seq.*

² See 31 U.S.C. § 5311 *et seq.*

³ See 12 U.S.C. § 1818(s).

⁴ The 1987 notice was issued by the 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.

⁵ See 31 U.S.C. § 5318(h).

The Board's 1987 amendments, codified at section 208.63 of Regulation H, applied to state member banks. In 2006, Regulation K was revised to add corresponding provisions for Edge and agreement corporations, and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board.⁶

Description of Information Collection

The BSA compliance program requirements of Regulation K and Regulation H 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.⁷ The compliance program must be approved by the Edge or agreement corporation's board of directors and noted in the minutes. In the case of a branch, agency, or representative office of a foreign bank, the compliance program may be approved by the foreign bank's board of directors or a delegee acting under the express authority of the foreign bank's board of directors.

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.

Legal Status

The Board's Legal Division has determined that the standards for BSA compliance programs associated with section 208.63 of Regulation H and with sections 211.5(m)(1) and 211.24(j)(1) of Regulation K are generally authorized pursuant to the BSA. In addition, sections 11, 21, and 25 of the Federal Reserve Act (12 U.S.C. §§ 248(a), 483, 602) authorize the Board to require the information collection and recordkeeping requirements set forth in Regulations H. Section 25A of the Federal Reserve Act (12 U.S.C. § 611a), 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)(1) and 211.24(j)(1) of Regulation K. The information collection and recordkeeping requirements for BSA compliance programs are mandatory. 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 (b)(8) of the Freedom of Information Act (5 U.S.C. §§ 552(b)(4) and (b)(8)).

⁶ International Banking Operations, 71 Fed. Reg. 13934-37 (March 20, 2006) (codified at 12 C.F.R. §§ 211.5(m)(1) and 211.24(j)(1)).

⁷ See 12 C.F.R. § 208.63(c); these specific requirements are incorporated by reference in 12 C.F.R. §§ 211.5(m)(1) and 211.24(j)(1).

Consultation Outside the Agency

On September 15, 2015, the Federal Reserve published a notice in the *Federal Register* (80 FR 55360) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping Requirements of Regulation H and Regulation K Associated with Bank Secrecy Act Compliance Programs. The comment period for this notice expired on November 16, 2015. The Federal Reserve did not receive any comments. On December 8, 2015, the Federal Reserve published a final notice in the *Federal Register* (80 FR 76286).

Estimate of Respondent Burden

As shown in the table below, the current total annual burden for the recordkeeping requirements of section 208.63 of Regulation H and sections 211.5(m)(1) and 211.24(j)(1) of Regulation K is estimated to be 5,032 hours. The Board estimates that it takes each respondent 16 hours (or 2 business days) to create its BSA compliance program and 4 hours to maintain procedures to assure and monitor compliance with the BSA. The Board 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. This recordkeeping requirement represents less than 1 percent of the total Federal Reserve System paperwork burden.

Reg K	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Establish compliance program	10 ⁸	1	16	160
Maintenance of compliance program	1,218 ⁹	1	4	<u>4,872</u>
<i>Total</i>				5,032

The total cost to the public is estimated to be \$260,406.¹⁰

⁸ This number represents the average number of state member banks, Edge and agreement corporations, and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board that were established each year in 2012 through 2014.

⁹ This number represents the actual number of state member banks, Edge and agreement corporations, U.S. branches, agencies, and representative offices of foreign banks supervised by the Board that are open and active as of July 7, 2015.

¹⁰ 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% Office & Administrative Support at \$17, 45 % Financial Managers at \$63, 15 % Lawyers at \$64, and 10 % Chief Executives at \$87). Hourly rate for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2014*, published March 25, 2015, at www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.

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

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