

**Supporting Statement for the
Recordkeeping Requirements of Regulation H and Regulation K Associated with the
Procedures for Monitoring Bank Secrecy Act Compliance
(FR K¹; OMB No. 7100-0310)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), is extending for three years, without revision, the Recordkeeping Requirements of Regulation H and Regulation K Associated with the Procedures for Monitoring Bank Secrecy Act Compliance (FR K; OMB No. 7100-0310). Section 208.63 of the Board's Regulation H – Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208) requires state member banks to establish and maintain in writing procedures reasonably designed to ensure and monitor compliance with the provisions of the Bank Secrecy Act (BSA)² and the implementing regulations. Sections 211.5(m)(1) and 211.24(j)(1) of the Board's Regulation K – International Banking Operations (12 CFR Part 211) impose those same requirements on Edge and agreement corporations and, except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation, the U.S. branches, agencies, and representative offices of foreign banks supervised by the Board. The estimated total annual burden for the FR K is 3,844 hours.

Background and Justification

The BSA and its implementing regulations require financial institutions to keep records and make reports “where they have a high degree of usefulness in criminal, tax, or regulatory investigations or proceedings, or in the conduct of intelligence or counterintelligence activities, including analysis, to protect against international terrorism.”³ In 1986, the Anti-Drug Abuse Act amended the Federal Deposit Insurance Act⁴ 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 that the insured depository institutions they regulate establish and maintain procedures to assure and monitor compliance with the requirements of the BSA and the implementing regulations promulgated thereunder by the Secretary of the Treasury.⁵ These amendments incorporated the minimum components of a BSA compliance program, as determined by the federal banking agencies, and as generally set forth in the BSA.⁶

¹ The internal Agency Tracking Number previously assigned by the Board to this information collection was “Reg K.” The Board is changing the internal Agency Tracking Number to “FR K” for the purpose of consistency.

² See 31 U.S.C. 5311 et seq.

³ See 31 U.S.C. 5311.

⁴ See 12 U.S.C. 1818(s).

⁵ The 1987 notice was issued by the Board, Federal Deposit Insurance Corporation, Office of the Comptroller of the Currency, Federal Home Loan Bank Board, and National Credit Union Administration.

⁶ See 31 U.S.C. 5318(h).

The Board's 1987 amendments, codified at section 208.63 of Regulation H, apply to state member banks. In 2006, Regulation K was revised to add corresponding provisions for Edge and agreement corporations, and, except for a federal branch or a federal agency or a state branch that is insured by the Federal Deposit Insurance Corporation, the U.S. branches, agencies, and representative offices of foreign banks supervised by the Board.⁷

This information is not available from other sources.

Description of Information Collection

The BSA compliance program requirements of Regulation K and Regulation H require respondent institutions 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 responsible for coordinating and monitoring day-to-day compliance, and (4) training for appropriate personnel.⁸ The compliance program must be approved by the board of directors of the state member bank, Edge corporation, or agreement corporation and must be noted in the institution's 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 and noted in the minutes or approved by a delegee acting under the express authority of the foreign bank's board of directors.

Time Schedule for Information Collection

This information collection consists of recordkeeping requirements, 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 FR K is authorized pursuant to the Federal Deposit Insurance Act (12 U.S.C. 1818(s)), which requires the federal banking agencies, including the Board, 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.⁹ The FR K is mandatory.

Because the Federal Reserve will not collect this information, confidentiality issues would normally not arise. Because the records will be retained at banking organizations, the Freedom of Information Act (FOIA) will only be implicated if the Board's examiners retain a copy of the record as part of an examination or supervision of a banking institution. In that case,

⁷ See 71 FR 13934 (March 20, 2006).

⁸ See 12 CFR 208.63(c); these specific requirements are incorporated by reference in 12 CFR 211.5(m)(1) and 211.24(j)(1).

⁹ The Board's authority in 12 U.S.C. 1818(s) to prescribe regulations includes the entities required to comply with section 208.63 of the Board's Regulation H (12 CFR 208.63) and sections 211.5(m)(1) and 211.24(j)(1) of the Board's Regulation K (12 CFR 211.5(m)(1) and 12 CFR 211.24(j)(1)).

the records would be exempt from disclosure under exemption 8 to FOIA, which protects examination materials from disclosure (5 U.S.C. 552(b)(8)). Exemption 4 to FOIA, which protects confidential financial information, may also be applicable (5 U.S.C. 552(b)(4)).

Consultation Outside the Agency

There has been no consultation outside the agency.

Public Comments

On February 5, 2019, the Board published an initial notice in the *Federal Register* (84 FR 1731) requesting public comment for 60 days on the extension, without revision, of the FR K. The comment period for this notice expired on April 8, 2019. The Board did receive any comments. On May 15, 2019, the Board published a final notice in the *Federal Register* (84 FR 21779).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR K is 3,844 hours. The Board estimates that it takes each respondent 16 hours to create its BSA compliance program and 4 hours to maintain procedures to assure and monitor compliance with the BSA. Since the measures taken to comply with Regulations H and K are consistent with sound risk management and banking practices, the Board believes that little additional burden is associated with the requirements for establishing and maintaining a compliance program. These recordkeeping requirements represent less than 1 percent of the Board’s total paperwork burden.

FR K	<i>Estimated number of respondents</i> ¹⁰	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Establish compliance program	1 ¹¹	1	16	16
Maintenance of compliance program	957 ¹²	1	4	<u>3,828</u>
<i>Total</i>				3,844

¹⁰ Of these respondents, 548 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/document/support--table-size-standards.

¹¹ 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 from 2015 through 2017.

¹² 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 December 31, 2017.

The estimated total annual cost to the public for this information collection is \$221,414.¹³

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 in connection with the FR K, the cost to the Federal Reserve System is negligible.

¹³ 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 \$19, 45% Financial Managers at \$71, 15% Lawyers at \$69, and 10% Chief Executives at \$96). 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 2018*, published March 29, 2019, www.bls.gov/news.release/ocwage.t01.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.