

**Supporting Statement for the
International Applications and Prior Notifications under
Subparts A and C of Regulation K
(FR K-1; OMB No. 7100-0107)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), has extended for three years, without revision, the International Applications and Prior Notifications under Subparts A and C of Regulation K (FR K-1; OMB No. 7100-0107). Subpart A of Regulation K, International Operations of U.S. Banking Organizations (12 CFR Part 211, Subpart A), governs the foreign investments and activities of member banks, Edge and agreement corporations, bank holding companies (BHCs), and certain investments by foreign organizations. Subpart C of Regulation K, Export Trading Companies (12 CFR Part 211, Subpart C), governs investments in export trading companies by eligible investors.¹ The FR K-1 information collection comprises a reporting form, as well as certain reporting and recordkeeping requirements contained in these subparts of Regulation K that are not directly reflected in the FR K-1 form, and a disclosure requirement (via newspaper notice) for certain transactions. The FR K-1 form contains eleven attachments associated with the application and notification requirements in Subparts A and C of Regulation K. The Board requires the information collected by the FR K-1 for regulatory and supervisory purposes and to allow the Board to fulfill its statutory obligations under the Federal Reserve Act (FRA) and the Bank Holding Company Act of 1956 (BHC Act).

The estimated total annual burden for the FR K-1 is 1,009 hours. The FR K-1 form and instructions are available on the Board's public website at <https://www.federalreserve.gov/apps/reportingforms>.

Background and Justification

Sections 25 and 25A of the FRA and sections 4(c)(13) and 4(c)(14) of the BHC Act govern the formation of Edge and agreement corporations and the international and foreign activities of U.S. banking organizations, including national banks, state member banks, and BHCs. Section 25 of the FRA authorizes the establishment of agreement corporations and foreign branches, and permits investments in foreign banks in accordance with regulations prescribed by the Federal Reserve.² Section 25A of the FRA authorizes the establishment of Edge corporations and empowers these corporations to engage in activities both in the United States and abroad.³ Section 4(c)(13) of the BHC Act authorizes BHCs to invest in companies that do business abroad.⁴ Section 4(c)(14) of the BHC Act authorizes BHCs to invest in export trading companies.⁵

¹ Eligible investors are BHCs, banker's banks, foreign banking organizations, and Edge and agreement corporations that are subsidiaries of BHCs but are not subsidiaries of banks. 12 CFR 211.32(d).

² 12 U.S.C. §§ 601, 603.

³ 12 U.S.C. §§ 611, 615.

⁴ 12 U.S.C. § 1843(c)(13).

⁵ 12 U.S.C. § 1843(c)(14).

The Board has adopted various regulatory provisions, all of which have been consolidated in the Board's Regulation K, setting forth the procedures for making investments and engaging in activities under these statutory provisions. These procedures include (1) a specific consent procedure, under which a banking organization may make the proposed investment or engage in the proposed activity only after receiving the Board's prior approval,⁶ (2) a notification procedure, under which a banking organization may make an investment after having given appropriate notice to the Board,⁷ and (3) a general consent procedure, under which a banking organization may make certain investments that may subsequently be reviewed during the examination process.⁸

The FR K-1 information collection contains both stand-alone regulatory requirements established in the regulation itself and the FR K-1 reporting form, which is used to collect information in relation to the procedures established by Subparts A and C of Regulation K. The regulatory requirements include reporting, recordkeeping, and disclosure requirements, which are contained in Regulation K. The FR K-1 reporting form includes multiple attachments and instructions to which specify the information a banking organization must include when submitting a Regulation K application or prior notice. The information required in the instructions pertains only to the specific investment or activity proposed.

The Recordkeeping Requirements Associated with Changes in Foreign Investments Made Pursuant to Regulation K (FR 2064; OMB No. 7100-0109) also contain recordkeeping expectations related to sections 211.8 to 211.10 of Regulation K, which apply independently of and in addition to the requirements of the FR K-1. The FR K-1 recordkeeping requirements differ from the FR 2064 expectations in that the FR K-1 requirements pertain to operational aspects of activities abroad, such as having effective systems of internal controls, risk management, liquidity management, and internal and external audit, for both supervisory and reporting purposes. The FR 2064, on the other hand, relates only to investments and activities abroad.

The information reported, recorded, and disclosed in the FR K-1 information collection is not available from any other source.

Description of Information Collection

The FR K-1 reporting form contains the following 11 attachments for the application and notification requirements in Subparts A and C of Regulation K:

- Attachment A Information Required in (1) Notification to Establish Initial Foreign Branches of Member Banks, Edge Corporations, or Foreign Subsidiaries (Section 211.3(b)(2) of Regulation K) and (2) Application for Branches to Engage in New Activities (Section 211.4(b) of Regulation K),
- Attachment B Notification to Establish Additional Foreign Branches of Member Banks, Edge Corporations, or Foreign Subsidiaries (Section 211.3(b)(3) of Regulation K),

⁶ 12 CFR 211.9(g).

⁷ 12 CFR 211.9(f), 211.34(c).

⁸ 12 CFR 211.8(g)(4), 211.9(b)-(d), 211.34(b).

- Attachment C Information Required in (1) Application to Establish an Edge Corporation (Section 211.5 of Regulation K), (2) Application for Edge Corporations to Engage in Certain Domestic Activities (Section 211.6(b) of Regulation K), and (3) Application to Acquire Edge Corporations by Foreign Controlled Institutions or Application to Change Control of Edge Corporations by Foreign Controlled Institutions (Sections 211.5(d) and 211.5(e)(1), respectively, of Regulation K),
- Attachment D Model Articles of Association for an Edge Corporation (Section 211.5 of Regulation K),
- Attachment E Model Organization Certificate for an Edge Corporation (Section 211.5 of Regulation K),
- Attachment F Notification to Establish a Domestic Branch of an Edge Corporation (Section 211.5(f) of Regulation K),
- Attachment G Application to Amend Articles of Association of an Edge Corporation (Section 211.5(c) of Regulation K),
- Attachment H Information Required in (1) Application to Invest in Other Foreign Organizations for Member Banks, Edge or Agreement Corporations, and BHCs (Sections 211.4(a)(8) and 211.9(g) of Regulation K) and (2) Application to Engage in New Foreign Activities by Member Banks, Edge or Agreement Corporations, and BHCs (Section 211.10(c) of Regulation K),
- Attachment I Notification to Invest in Other Foreign Organizations for Member Banks, Edge and Agreement Corporations, and BHCs (Section 211.9(f) of Regulation K),
- Attachment J Application to Invest in Excess of Ten Percent of Capital and Surplus in Edge Corporations (Section 211.5(h) of Regulation K), and
- Attachment K Notification to Establish Export Trading Companies (Section 211.34 of Regulation K).

A general description of each attachment is provided below. As noted, the FR K-1 information collection also includes certain reporting, recordkeeping, and disclosure requirements that are contained in Regulation K, which are also discussed in greater detail below.

The Board understands that respondents use information technology to comply with these provisions, including submitting applications electronically through the Federal Reserve System's FedEZFile platform (<https://www.federalreserve.gov/supervisionreg/afi/afi.htm>).⁹

FR K-1 Form

Foreign Branches (Attachments A and B)

Attachment A, which covers the information required in (1) the notification to establish initial foreign branches of member banks, Edge corporations, or foreign subsidiaries and (2) the

⁹ The FR K-1 form may alternatively be submitted in paper form, however applicants are strongly encouraged to submit applications through FedEZFile.

application for branches to engage in new activities, requires the name and location of the proposed branch; information about the banking organization's existing activities in the foreign country and discussion of how the proposed branch would further the development of the bank's international or foreign business (notification only); information regarding whether any existing or future businesses will be transferred to the branch and the risks associated with certain proposed activities; country exposure (notification only); estimated start-up costs and projected assets and earnings at the end of the third year of the branch's operation; background of the proposed officers of the branch (notification only); status of foreign government approvals; for certain organizations, a discussion of the banking organization's experience in international banking and the background of its staff (notification only); details on locally imposed capital requirements (notification only); and information regarding the effect of local law on information-sharing with U.S. bank regulators (notification only).

Attachment B, the notification to establish additional foreign branches of member banks, Edge corporations, or foreign subsidiaries, is used if the applicant has branches in two or more countries and wishes to establish a branch in an additional country. The notification requires the name of the applying organization and location of the proposed branch, a description of the activities of the proposed branch, a discussion of relevant foreign law and approvals, and the branch's projected asset size at the end of the third year of operation.

Edge Corporations (Attachments C, D, E, F, and G)

The application to establish, acquire, or change control of an Edge corporation or for an Edge corporation to engage in certain domestic activities (Attachment C) requires slightly different information for each type of transaction.

The application for Edge corporations to engage in domestic activities not listed in Regulation K requires information on the proposed activities, a description of how the convenience and needs of the community(ies) will be served, projected balance sheets and income statements, and any related requests for investment authority (Attachment H).

The application to acquire Edge corporations by foreign controlled institutions and the application to change control of Edge corporations by foreign controlled institutions require the above information and details about the management of the Edge corporation. If appropriate, applicants also are required to provide a summary of the bank's experience in international banking operations, file certain regulatory reporting forms if they do not already otherwise file them, describe the general supervisory review and oversight of the applicant by the applicant's home-country supervisor and any laws that might prevent the disclosure of information to the Board, and complete Attachment G, which requires an executed and dated certificate of amendment to the articles of association as well as a brief statement of reason for each of the proposed changes.

An application to establish an Edge corporation must contain all of the above information, except for Attachment G, in addition to a signed and dated proposed articles of association (Attachment D) and an executed organization certificate (Attachment E), as well as financial information about the capitalization of the Edge corporation.

The notification to establish a domestic branch of an Edge corporation (Attachment F) requires information about the name of the applying organization, any amended articles of association, the location of the proposed branch, an explanation of how the branch would further the development of the applicant's international or foreign business, information about the type of business to be conducted and types of services to be offered, and a discussion of the branch's ability to serve the convenience and needs of the community. Attachment F also requires the submission of a copy of the associated newspaper notice about the proposed branch required by section 211.5(f) of Regulation K (discussed below).

The application to amend articles of association of an Edge corporation (Attachment G) requires the Edge Corporation to submit an executed and dated certificate of amendment to the existing articles of association and a statement describing the reasons for the requested changes.

Investments in Other Foreign Organizations (Attachments H and I)

The application to invest in other foreign organizations for member banks, Edge or agreement corporations, and BHCs and the application to engage in new foreign activities for member banks, Edge or agreement corporations, and BHCs (Attachment H) require slightly different information for each type of transaction. For applications to engage in new foreign activities by member banks, Edge or agreement corporations, and BHCs, an applicant must provide its name; a brief description of the investment, including how the investment would further its international or foreign business, a list of the significant activities of the company, and a full description of activities not of a banking or financial nature; and certain financial information, including the source of funds, balance and income statements for established companies, credit arrangements, and local capital or other financial requirements. For investments in joint ventures, the applicant is required to describe any investment contracts, indicate who will exercise effective control, provide information regarding other large investors in the venture, provide details of any special shareholder relationships, detail certain management information and information about certain types of activities, state the percentages of consolidated assets and revenues attributable to activities not permissible in regard to section 211.8(c)(1) of Regulation K, and describe the extent to which the applicant's identity will be associated with the company. In addition, the applicant must provide information about foreign approvals for the transaction and any local requirements.

For applications to engage in new foreign activities by member banks, Edge and agreement corporations, and BHCs, the applicant must provide the information described above, along with information regarding: the name and location of the company in which the investment is to be made, the total investment amount, other large investors and the applicant's ability to control the company, any foreign regulation that may apply to the investment, management of the company invested in, and, if applicable, country exposure.

Investments that do not meet the criteria either for specific consent or for general consent, as detailed in section 211.9 of Regulation K (12 CFR 211.9), require prior notification. The notification to invest in other foreign organizations for member banks, Edge and agreement corporations, and BHCs (Attachment I) requires information on the name of the investor and the name and location of the investment, the amount of investment and percentage of ownership as a

result of the investment, source of funds, a description of proposed activities, abbreviated financial statements, and the status of foreign regulatory approvals. There are also miscellaneous informational requests depending on whether the investment is in a subsidiary, joint venture, de novo institution, or established company.

Invest in Excess of Ten Percent of Capital and Surplus in Edge Corporations (Attachment J)

Member banks may invest up to 10 percent of their capital and surplus in the capital stock of Edge and agreement corporations, or, with prior approval by the Board, up to 20 percent of their capital and surplus.¹⁰ The application to invest in excess of ten percent of capital and surplus in Edge corporations (Attachment J) requires the information set forth in section 211.5 of Regulation K, including the name of the applicant, the total amount of proposed additional investment in the Edge or agreement corporation and a brief description of the purpose of the proposed additional investment, information regarding the composition of the assets of the bank's existing Edge and agreement corporations, the total capital invested by the bank to date in each of its Edge and agreement corporations, total capital (including retained earnings) of each of its Edge and agreement corporations and foreign bank subsidiaries, and capital ratios for the bank that deconsolidate and deduct the aggregate investment in and assets of all Edge corporations and all foreign bank subsidiaries.

Investment in Export Trading Companies (Attachment K)

The notification to establish an export trading company (Attachment K) is essentially a modified version of Attachment H. It requires a brief description of the proposed investment and limited financial information, including balance sheets, income statements, and credit arrangements. For investments in joint ventures, the applicant is required to describe any investment contracts, indicate who will exercise effective control, provide information regarding other large investors, describe any special shareholder relationships, detail certain management information, and describe the extent to which the applicant's identity will be associated with the company.

FR K-1 Information Collection Regulatory Requirements

Reporting Requirements

Section 211.5(c)(4)

Edge and agreement corporations are required to report any change in status of a shareholder that causes a violation of section 25A of the FRA to the Board as soon as possible, and the entity is required to take such actions as the Board may direct.

¹⁰ 12 CFR 211.5(h)(1).

Section 211.8(g)(3)(iii)

A bank holding company is required to report to the Board on its plans for divesting an investment made under section 211.8(g) two years prior to the final date for divestiture.

Sections 211.10(a)(14)(i)(A), 211.10(a)(14)(ii), 211.10(a)(15)(ii), and 211.10(a)(15)(iv)(B)

An investor is required to provide a 30 days' prior written notice to engage, outside the United States, in underwriting and distributing equity securities, dealing in equity securities, or engaging in the use of an internal hedging model for such securities. These activities are subject to certain size limitations and limitations based on whether or not an investor is well-capitalized and well-managed.

Section 211.11

Any person may submit, in writing, a request to the Board for an advisory opinion regarding the scope of permissible activities under Regulation K, describing the proposed parameters of the activity, service, or product at issue and the justification for the same.

Recordkeeping Requirements

Section 211.13

Section 211.13 requires U.S. banking organizations that conduct activities abroad to generate and maintain records related to operational aspects of activities abroad. These banking organizations must have effective systems of records, controls, and reports to keep management informed of their activities and condition. These systems must provide information on risk assets, exposure to market risk, liquidity management, operations, internal controls, legal and operational risk, and conformance to management policies, and must be sufficient to permit an appraisal of credit quality and assessment of exposure of loss.

Disclosure Requirements

Section 211.5(f)

Section 211.5(f) of Regulation K establishes a requirement in connection with a notice to establish a new domestic branch for an Edge corporation to publish a newspaper notice in a newspaper of general circulation in the communities to be served.¹¹ This newspaper publication must provide an opportunity for the public to give written comment on the proposal to the appropriate Reserve Bank for at least 30 days after the date of publication. Section 211.5(f) requires that the notice of a proposed branch that an Edge corporation provides includes a copy of the published newspaper notice.

¹¹ 12 CFR 211.5(f).

Respondent Panel

The FR K-1 panel comprises member banks, Edge and agreement corporations, BHCs, and, with regard to certain investments, foreign organizations.

Frequency and Time Schedule

The FR K-1 information collection is event-generated and submitted (for reporting requirements), maintained (for recordkeeping requirements), or disclosed (for newspaper requirement) by the applying or notifying organization, in accordance with the requirements of Regulation K, to the Federal Reserve Bank designated as responsible for that organization.

Public Availability of Data

With regard to the FR K-1, the Board publishes certain information regarding the parties to and structure of the associated transactions described in submissions of the form in its H.2 release. The Board does not routinely publicly release information collected through the FR K-1. The Board may release non-confidential information included in the FR K-1 upon request pursuant to the Freedom of Information Act (FOIA).

Legal Status

The FR K-1 information collection is authorized under sections 25 and 25A of the FRA (12 U.S.C. §§ 601-604a, 611-631), and sections 4(c)(13), 4(c)(14), and 5(c) of the BHC Act (12 U.S.C. §§ 1843(c)(13), 1843(c)(14), and 1844(c)). Section 25 of the FRA authorizes the Board to approve applications to establish agreement corporations, establish foreign branches, and invest in foreign banks in accordance with regulations prescribed by the Board (12 U.S.C. §§ 601 and 603). Section 25 also authorizes the Board to require reports concerning the condition of these entities (12 U.S.C. §§ 601 and 602). Section 25A of the FRA authorizes the Board to approve the establishment of Edge corporations, to issue rules and regulations relating to these entities, and to require reports from these entities (12 U.S.C. §§ 611, 611a, and 625). In addition, in its agreement with the Board, an agreement corporation typically agrees to do everything necessary to facilitate the Board's examinations of the corporation and to make available to examiners all information which they may require,¹² which is consistent with a requirement to retain certain records. The Board also typically includes a provision in the agreement for an agreement corporation that requires the agreement corporation itself to provide reports to the Board upon the Board's demand.¹³ Section 4(c)(13) of the BHC Act authorizes the Board, by regulation or order, to determine that BHCs may invest in companies that do business abroad (12 U.S.C. § 1843(c)(13)). Section 4(c)(14) of the BHC Act authorizes BHCs to invest in export trading companies, subject to a notice requirement and review by the Board, as well as a limitation on the investment size (12 U.S.C. § 1843(c)(14)).¹⁴ Section 5(c) of the BHC Act grants the Board reporting and examination authorities (12 U.S.C. § 1844(c)).

¹² As stated *supra*, such agreements are authorized under section 25(8) of the FRA (12 U.S.C. § 603).

¹³ Such agreements are a condition of approval of the agreement corporation under section 25(8) of the FRA (12 U.S.C. § 603).

¹⁴ The statute sets out criteria based upon which the Board may disapprove a proposed investment.

The reporting, recordkeeping, and disclosure requirements comprising the FR K-1 are mandatory. The requirements related to notifications for certain investments are required to obtain a benefit.

The information required by section 211.5(f) of Regulation K to be publicly disclosed via newspaper notice is not considered confidential and therefore no issue of confidentiality arises with regard to that information.

The information collected by the FR K-1 form or other reports submitted pursuant to Subparts A or C of Regulation K and that the Board publishes in the H.2 release is not generally considered confidential, although respondents are permitted to request confidential treatment and that the Board refrain from publishing the information. If a respondent requests confidential treatment for the information that would otherwise be published in the H.2 release or the other information collected by the FR K-1 form or under other reporting requirements of Subparts A or C of Regulation K, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis.

Confidential treatment may be granted if the relevant information falls within the scope of an exemption from FOIA's disclosure requirements. Information submitted in reports to the Board may be exempt from disclosure under exemption 4, 6, or 8 of the FOIA (5 U.S.C. §§ 552(b)(4), (b)(6), and (b)(8), respectively). Exemption 4 covers confidential commercial or financial information that is customarily and actually treated as private by its owner and provided to the government under an assurance of privacy.¹⁵ To the extent a respondent firm does customarily and actually keep the information it submits to the Board confidential and the information falls within one of the schedules the Board has not indicated that it will publish, this information would be exempt from disclosure under exemption 4. Exemption 6 covers personnel and medical files and similar files the disclosure of which would constitute a clearly unwarranted invasion of privacy. To the extent a respondent submits personnel, medical, or similar files, then such information would be exempt from disclosure under exemption 6. Exemption 8 covers matters contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of an agency responsible for the regulation or supervision of financial institutions. As documents related to respondents' operations and condition prepared for the use of the Board, an agency responsible for the regulation and supervision of financial institutions, the information submitted to the Board in the FR K-1 would also be exempt from disclosure under exemption 8.

Information required to be maintained by the firm under the FR K-1 recordkeeping requirements contained in Regulation K is not submitted to the Board. As a result, no issue of confidentiality generally arises. To the extent that the Board obtains such information through an examination, then such information would be exempt from disclosure pursuant to exemption 8 of the FOIA, as documents contained in or related to examination, operating, or condition reports prepared by, on behalf of, or for the use of the Board, an agency responsible for the regulation and supervision of financial institutions.

¹⁵ See *Food Marketing Institute v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019).

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On April 29, 2024, the Board published an initial notice in the *Federal Register* (89 FR 33348) requesting public comment for 60 days on the extension, without revision, of the FR K-1. The comment period for this notice expired on June 28, 2024. The Board did not receive any comments. The Board adopted the extension, without revision, of the FR K-1 as originally proposed. On July 29, 2024, the Board published a final notice in the *Federal Register* (89 FR 60893).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR K-1 is 1,009 hours. The reporting burden is based on the average number of applications and notifications filed during a typical year. The disclosure burden reflects the amount of time required to fulfill the newspaper publication requirement for that attachment. The burden estimate was produced using the standard Board burden calculation methodology. These reporting, recordkeeping, and disclosure requirements represent less than 1 percent of the Board's total paperwork burden.

FR K-1	<i>Estimated number of respondents¹⁶</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Reporting¹⁷				
Attachments A and B	6	2	12	144
Attachments C, D, E, F, and G	13	2	9	234
Attachments H and I	10	3	16	480
Attachment J	2	1	10	20
Attachment K	1	1	20	20
Section 211.5(c)(4)	1	1	1	1
Section 211.8(g)(3)(iii)	1	1	1	1
Sections 211.10(a)(14)(i)(A), 211.10(a)(14)(ii), 211.10(a)(15)(ii), and 211.10(a)(15)(iv)(B)	1	1	8	8
Section 211.11	1	1	5	5
Recordkeeping				
Section 211.13	70	1	1	70
Disclosure				
Section 211.5(f)	13	2	1	<u>26</u>
<i>Total</i>				1,009

The estimated total annual cost to the public for the FR K-1 is \$70,479.¹⁸

Sensitive Questions

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

¹⁶ Of these respondents, none are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets). Size standards effective March 17, 2023. See <https://www.sba.gov/document/support-table-size-standards>.

¹⁷ The Federal Reserve has not received any reports related to the additional reporting requirements in the last three years. The burden hours represent potential burden associated with these requirements where a placeholder of one respondent is present.

¹⁸ Total cost to the responding public is estimated using the following formula: total burden hours, multiplied by the cost of staffing, where the cost of staffing is calculated as a percent of time for each occupational group multiplied by the group's hourly rate and then summed (30% Office & Administrative Support at \$23, 45% Financial Managers at \$84, 15% Lawyers at \$85, and 10% Chief Executives at \$124). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), *Occupational Employment and Wages, May 2023*, published April 3, 2024, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System for collecting and processing the FR K-1 is \$45,000 per year.