

Supporting Statement for the International Applications and Prior Notifications Under Subpart B of Regulation K (FR K-2; OMB No. 7100-0284)

Summary

The Federal Reserve proposes to extend, with revisions, the International Applications and Prior Notifications Under Subpart B of Regulation K (FR K-2; OMB No. 7100-0284). Foreign banks are required to obtain the prior approval of the Federal Reserve to establish a branch, agency, or representative office, or to acquire ownership or control of a commercial lending company in the United States or to change the status of any existing office in the United States. The Federal Reserve uses the information, in part, to fulfill its statutory obligation to supervise foreign banking organizations with offices in the United States.

These applications and notifications are event-generated and there is currently no reporting form for the FR K-2. The application requirements are contained in a directive to Reserve Bank staff dated March 5, 1992 (SR 92-6). The proposed FR K-2 would consist of a reporting form with filing instructions in addition to the informational requirements currently contained in SR 92-6. The proposed modified and enhanced form FR K-2 would clarify and streamline the information required in international applications and prior notifications and reduce the need for repeated requests for additional information after the application or notification has been filed.

The current annual burden for the FR K-2 is estimated to be 800 hours; the estimated burden for the proposed FR K-2 is expected to decrease to 700 hours. Attached is a copy of the proposed form and SR 92-6.

Background and Justification

The Foreign Bank Supervision Enhancement Act of 1991 (FBSEA), Subtitle A of Title II of the Federal Deposit Insurance Corporation Improvement Act of 1991, made changes to the authority given to the Federal Reserve under the International Banking Act of 1978 (IBA). The FBSEA provided the Federal Reserve with new authority to approve the establishment of U.S. offices by foreign banks and to regulate and supervise the U.S. operations of foreign banks. The Federal Reserve modified Regulation K in 1993 to incorporate these statutory changes.¹ Regulation K was revised again in November 2001.

Under the Economic Growth and Regulatory Paperwork Reduction Act of 1996, which was enacted on September 30, 1996, the Federal Reserve may approve an application to establish a branch or agency subject to certain conditions even if the Federal Reserve is unable to find that the foreign bank is subject to comprehensive consolidated supervision. Specifically, the Federal Reserve may approve an application by such foreign bank if: (i) the appropriate authorities in the home country of such foreign bank are working to establish arrangements for the consolidated supervision of such bank; and (ii) all other factors are consistent with approval.

¹58 *Federal Register* 6348 (January 28, 1993)

Description of Information Collection

In order to approve an application by a foreign banking organization to open a branch, agency, or commercial lending company in the United States, the Federal Reserve generally seeks to determine that the foreign bank is subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in its home country. In evaluating an application to establish a representative office, the Federal Reserve takes into account the standards that apply to the establishment of branches and agencies, but a finding of comprehensive consolidated supervision is not required.

To address the above factors, the applicant foreign bank is asked to describe the bank regulatory system that exists in its home country and, if different, the home country of any top tier foreign bank in the ownership chain. In particular, the applicant is asked to describe the powers and functions of the home country regulator(s), the frequency and scope of direct and indirect supervisory reviews or examinations, the role of external auditors, and whether the home country authorities supervise the applicant foreign bank on a consolidated basis, including affiliates and subsidiaries. If bank supervision in an applicant bank's home country previously has been reviewed by the Federal Reserve, the applicant may reference that application and provide any differences in the supervision of the applicant bank and any changes in supervision in the home country since it was reviewed by the Federal Reserve.

The applicant foreign bank also must provide a description of its worldwide organization, including a description of the manner in which it monitors and controls its worldwide activities, and an organization chart showing all subsidiaries of the foreign bank and its ultimate parent. The bank must also provide financial information, including balance sheets, income statements, asset quality and reserve information, and calculations of the bank's capital ratios.² Information regarding certain of the bank's senior officers, major shareholders, and proposed management of the U.S. office is also collected in order to be able to initiate name checks.

With regard to the proposed U.S. office or commercial lending company, the applicant foreign bank must describe the types of business to be conducted and the types of services to be offered. The applicant foreign bank must also describe how it will monitor the operations of the proposed office, and ensure compliance with U.S. laws and regulations. When the application is to establish a branch or agency or to acquire a commercial lending company, financial information, including pro forma and projected balance sheets and income statements of the proposed office are collected. Because of the limited activities of representative offices, financial information pertaining to the office itself is not generally required.

Further, the applicant and its ultimate parent(s) must provide adequate assurances that the Federal Reserve will have access to such information as the Federal Reserve deems necessary for

²While detailed financial information is required to establish a branch, agency or commercial lending company, the financial information collected in an application to establish a representative office is not as extensive.

it to determine and enforce compliance with applicable U.S. law. The applicant must describe any secrecy laws or other impediments that would restrict the ability of the applicant and its ultimate parent(s) to provide information to the Federal Reserve as needed. If such impediments exist, the applicant and its ultimate parent(s) need to explain how they will provide the Federal Reserve with adequate assurances of access to information.

Proposed Revisions

The current FR K-2 was developed in 1992 shortly after the passage of the FBSEA. Since that time, the Federal Reserve has gained significant experience in processing these types of applications and has over time expanded and modified the list of standard information that should be required in these types of applications and notifications. This expanded list would include information regarding the home country laws and regulations designed to deter and prevent money laundering, terrorist financing and other illicit activities, as well as the policies and procedures in place at the foreign bank to detect and prevent money laundering, terrorist financing, and other illicit activities.

Also, Regulation K has been modified to allow for more proposals to be processed under the prior notification procedures. SR 92-6 currently contains two attachments: one attachment related to information collected in applications to establish a branch, agency, or commercial lending company, and one attachment related to information collected in applications to establish a representative office. The form does not currently contain separate attachments outlining informational requirements for prior notifications. In order to add clarity, the proposed FR K-2 would have separate attachments as follows indicating the required information depending on the type of application or notification.

- Attachment A – Information Requested in Connection with Applications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(1) of Regulation K)
- Attachment B – Information Requested in Connection with Applications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(1) of Regulation K)
- Attachment C – Information Requested in Connection with Notifications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(2)(i)(A) of Regulation K)
- Attachment D – Information Requested in Connection with Notifications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(2)(i)(B)(1) – (3) of Regulation K)
- Attachment E – Commitments Required in Connection with Applications and Notifications by Foreign Banks to Establish Branches, Agencies, Commercial Lending Companies, or Representative Offices in the United States.

Filing Instructions

Filing Instructions would be added to the form to make the form consistent with other similar forms required of foreign banks. The Filing Instructions section would provide information on completing the form, financial holding companies, required commitments, tiered applicant organizations, description of the type of information required for financial analysis and for the home country supervision determination, newspaper publication requirement, confidentiality, supporting information, and compliance.

Attachment A – Information Requested in Connection with Applications by Foreign Banks to Establish Branches, Agencies, and Commercial Lending Companies in the United States (section 211.24(a)(1) of Regulation K)

This attachment collects essentially the same information that is collected in the first attachment to SR 92-6. The proposed Attachment A regroups and generally broadens certain questions to add clarity and reflect the experience gained from processing these types of applications since 1992. All of this information is necessary to analyze the proposal and determine whether statutory factors are met. The table below summarizes how the items on the new FR K-2 correspond to the items on SR 92-6.

Proposed FR K-2	Current SR 92-6	Proposed FR K-2	Current SR 92-6
Cover sheet	1 and 2	17 and 18	new
1 through 4	5 and 6	19 and 22	18
5	new	20	new
6, 7, 9, and 10	8, 9, 12, 16, and 17	21	3
8	new	23	new
11, 12, and 13	10, 11, and 14	N/A	13
14	7	N/A	15
15 and 16	4	N/A	19

Proposed cover sheet – the collected information in current items 1 and 2 would be moved to the cover sheet of the proposed application form.

Proposed questions 1 through 4 – these questions would be broadened and grouped in the Operations, Structure, and Ownership section.

Proposed question 5 – this new question would collect information on the significant subsidiaries of the foreign bank.

Proposed questions 6, 7, 9, and 10 - these questions would be reworded and grouped in the Operations, Structure, and Ownership section.

Proposed question 8 – this new question would collect information on how the foreign bank monitors and controls its worldwide operations.

Proposed questions 11, 12, and 13 – these questions would be reworded and grouped in the Proposed Office section.

Proposed question 14 – this question would be reworded to conform to the current standard form of financial information requested from foreign banks, including a requirement for information on loan loss reserves.

Proposed questions 15 and 16 – these questions would collect more specific and detailed information regarding the home country supervisory regime of the foreign bank. The questions would be broken down into more component parts to specifically address on-site examinations, off-site surveillance, the role of external auditors, transactions with affiliates, other prudential requirements, remedial authority, prior approval requirements, and other regulatory authorities.

Proposed questions 17 and 18 – these new questions would collect detailed information on the home country laws designed to deter or prohibit money laundering, terrorist financing, or other illicit activities.

Proposed questions 19 and 22 – these questions would be reworded and included in the Miscellaneous section.

Proposed item 20 – this question would collect the status of any other regulatory filings associated with the proposal.

Proposed question 21 - this question would be reworded and placed at the end of the form in the Miscellaneous section.

Proposed question 22 – this new question would collect information on commitments contained in Attachment E for the Applicant and its ultimate parent.

Proposed item 23 – this question would collect proof of newspaper publication.

Current questions 13, 15, and 19 - would be deleted as this information is no longer needed at the time of the application.

Attachment B – Information Requested in Connection with Applications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(1) of Regulation K)

This attachment collects essentially the same information that is collected in the second attachment to the SR 92-6. The proposed Attachment B regroups and generally broadens certain questions to add clarity and reflect the experience gained from processing these types of applications since 1992. This information is necessary to analyze the proposal and determine whether statutory factors are met. The table below summarizes how the items on the new FR K-2 correspond to the items on SR 92-6.

Proposed FR K-2	Current SR 92-6	Proposed FR K-2	Current SR 92-6
Cover sheet	1 and 2	12	7
1 through 4	5 and 6	13	4
5	new	14 and 15	new
6 and 7	8	16 and 19	12
8	new	17	13
9, 10, and 11	9, 10, and 11	18	3

Proposed cover sheet – the required information in current items 1 and 2 would be moved to the cover sheet of the proposed application form.

Proposed questions 1 through 4 – these questions would be reworded slightly and grouped in the Operations, Structure, and Ownership section.

Proposed question 5 – this new question would collect information on the significant subsidiaries of the foreign bank.

Proposed questions 6 and 7 - would be reworded and moved to the Operations, Structure, and Ownership section.

Proposed question 8 – this new item would collect a description of how the foreign bank monitors and controls its worldwide operations.

Proposed questions 9, 10, and 11 – these questions would be reworded and grouped in the Proposed Office section.

Proposed question 12 – this question would be reworded to conform to the current standard form of financial information requested from foreign banks.

Proposed question 13 – this question would collect more specific and detailed information regarding the home country supervisory regime of the foreign bank. The question would be broken down into more component parts to specifically address on-site examinations, off-site surveillance, the role of external auditors, and other prudential requirements. The question would collect less detailed information than the home country supervision question on Attachment A to reflect the lower supervision standard applicable to the establishment of a representative office.

Proposed questions 14 and 15 – these new questions would collect detailed information on the home country laws designed to deter or prohibit money laundering, terrorist financing, or other illicit activities.

Proposed questions 16 and 19 – these questions would be reworded and included in the Miscellaneous section.

Proposed question 17 – this question would be broadened and moved to the Miscellaneous section.

Proposed question 18 - this question would be reworded and placed at the end of the form in the Miscellaneous section.

Attachment C – Information Requested in Connection with Notifications by Foreign Banks to Establish Branches, Agencies, or Commercial Lending Companies in the United States (section 211.24(a)(2)(i)(A) of Regulation K)

Under the revisions to Regulation K that became effective in November 2001, a new prior notification procedure was added for certain offices. A foreign bank would use this attachment to provide prior notice in connection with the establishment of an additional office (other than a domestic branch outside the home state of the foreign bank) provided that the Federal Reserve has previously determined the foreign bank to be subject to comprehensive consolidated supervision or regulation on a consolidated basis by its home country supervisor. Given that this attachment would be used by foreign banks that have already been through the application process and have been determined to be subject to comprehensive consolidated supervision, and are currently part of the Federal Reserve's supervision program for foreign banking organizations, the informational requirements are substantially streamlined.

Proposed questions 1 through 3 – would collect updated or current information on the operations, structure and ownership of the foreign bank.

Proposed questions 4 through 6 – would collect information on the proposed office.

Proposed question 7 – would collect the standard financial information required.

Proposed questions 8, 9, and 10 - would collect updated information on home country supervision, anti-money laundering and other related measures, and the list of jurisdictions in which the notificant has material operations.

Proposed questions 11 and 12 - would collect information on the status of other regulatory filings and a statement from the home country supervisor of the applicant.

Proposed question 13 – would collect proof of newspaper publication.

Attachment D – Information Requested in Connection with Notifications by Foreign Banks to Establish Representative Offices in the United States (section 211.24(a)(2)(i)(B)(1) – (3) of Regulation K

Under the November 2001 revisions to Regulation K, a foreign bank may establish a representative office after providing 45 days prior written notification to the Federal Reserve under certain circumstances. These are: (1) the Federal Reserve has not yet determined the foreign bank to be subject to comprehensive consolidated supervision, but the foreign bank is subject to the BHC Act; (2) the Federal Reserve previously approved an application by the foreign bank to establish a branch or agency pursuant to the “actively working towards” standard set forth in section 211.24(c)(1)(iii) of Regulation K; or (3) the Federal Reserve previously has approved an application by the foreign bank to establish a representative office. Given that the attachment would only be used by foreign banks that have previously been through the applications process, or by banks that are currently being supervised by the Federal Reserve, and that the application would be to establish a representative office that can only engage in limited activities, the informational requirements are substantially streamlined.

Proposed questions 1 through 6 - would collect updated or current information on the operations, structure and ownership of the foreign bank. Proposed questions 5 and 6 contain special requirements for notificants that have been operating in the United States since prior to the enactment of FBSEA and have not been through the applications process. Information is collected on procedures for the monitoring and controlling of the foreign bank’s worldwide operations and biographical information on the proposed representative and the most senior decision-maker of the foreign bank.

Proposed questions 7 through 9 - would collect information on the proposed office to be established.

Proposed question 10 – would collect limited financial information.

Proposed questions 11, 12, and 13 – would collect updated information on home country supervision, anti-money laundering and other related measures, and the list of jurisdictions where the notificant has material operations. In the case of a notificant that has not previously provided such information to the Federal Reserve, reference is made to the questions on Attachment B.

Attachment E – Commitments Required in Connection with Applications and Notifications by Foreign Banks to Establish Branches, Agencies, Commercial Lending Companies, or Representative Offices in the United States

Foreign banks and their ultimate parent(s), if any, are required to provide the standard commitments in Attachment E in connection with applications filed under FBSEA. These commitments involve access to information and consent to jurisdiction.

Time Schedule for Information Collection

The applying or notifying organization submits the FR K-2 information collection in accordance with the application and notification requirements embodied in Subpart B of Regulation K to the Federal Reserve Bank with supervisory responsibility for that banking organization.³ Upon receipt of an application or notification, Board and Reserve Bank staff review the submission for completeness. The Federal Reserve is required to act on applications to establish a branch or agency within 180 days of receipt of the application unless such period is extended by an additional 180 days.

Information from the FR K-2 is not published.

Legal Status

The Board's Legal Division has determined that this collection of information is required to obtain or retain a benefit under sections 7 and 10 of the International Banking Act [12 U.S.C. 3105 and 3107] and Regulation K (12 C.F.R. 211.24(a)). The applying organization has the opportunity to request confidentiality for information that it believes will qualify for a Freedom of Information Act exemption.

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Sensitive Questions

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

³ If the foreign banking organization does not currently operate in the United States, the application is submitted to the Federal Reserve Bank in whose district the proposed office will be located.

Estimate of Respondent Burden

The current annual reporting burden for Subpart B requirements of Regulation K is estimated to be 800 hours based on the number of applications and notifications filed in 2001. The estimated reporting burden for the revised FR K-2 is expected to have a net decrease of 100 hours. This decrease is due to the proposed streamlining of the requirements and the clearer instructions. The clearer instructions should reduce the need for repeated requests for additional information after the application or notification has been filed.

	<i>Average number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
Current FR K-2	20	1	40	800
Proposed FR K-2	20	1	35	<u>700</u>
<i>Change</i>				(100)

Based on an hourly rate of \$50, the annual cost to the public is estimated to be \$35,000. Applications and notifications filed pursuant to Regulation K generally are prepared by attorneys and high-level business and financial personnel at foreign banking organizations.

Estimate of Cost to the Federal Reserve System

The cost to the Federal Reserve System of printing, mailing, and processing the FR K-2 is negligible.

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ATTACHMENT 1

PROPOSED FR K-2

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ATTACHMENT 2

SR 92-6