

**Supporting Statement for 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)**

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), proposes to extend 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)¹ and its 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 Act and agreement corporations and, except for a federal branch or a federal agency² or a state branch that is insured by the Federal Deposit Insurance Corporation (FDIC), 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 3,640 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 Pursuant to the Anti-Drug Abuse Act of 1986, the federal banking agencies are required 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.⁴ The federal banking agencies have jointly issued 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 rules incorporate the minimum components of a BSA compliance program, as determined by the federal banking agencies, and as generally set forth in the BSA.⁶ The Board's regulations, which apply to state member banks,

¹ See 31 U.S.C. § 5311 et seq.

² The terms "federal agency" and "federal branch" have the same meanings as in section 1 of the International Banking Act of 1978 (12 U.S.C. § 3101). See 12 CFR 211.21.

³ See 31 U.S.C. § 5311.

⁴ Pub. L. No. 99-570, § 1359 (1986). The Federal banking agencies are the Board, FDIC, and Office of the Comptroller of the Currency (OCC). 12 U.S.C. § 1813(q).

⁵ Procedures for Monitoring Bank Secrecy Act Compliance, 52 FR 2858 (January 27, 1987). The rule was issued by the Board, FDIC, OCC, Federal Home Loan Bank Board, and National Credit Union Administration.

⁶ See 31 U.S.C. § 5318(h).

are codified at section 208.63 of Regulation H. In 2006, Regulation K was revised to add corresponding provisions for Edge Act and agreement corporations, and, except for a federal branch or a federal agency or a state branch that is insured by the FDIC, 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 the approval 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 delegate acting under the express authority of the foreign bank's board of directors.

Respondent Panel

The FR K panel comprises state member banks; Edge Act and agreement corporations; and U.S. branches, agencies, and representative offices of foreign banks supervised by the Board, except for a federal branch or a federal agency or a state branch that is insured by the FDIC.

Time Schedule for Information Collection

This information collection consists of recordkeeping requirements. The creation of a BSA compliance program is a mandatory one-time requirement. Subsequent changes to the program would be on occasion. This ongoing recordkeeping requirement is necessary for enforcement of the BSA and its implementing regulations.

Public Availability of Data

No data collected by this information collection is published.

⁷ See 71 FR 13934 (March 20, 2006). Regulations H and K also require that certain financial institutions implement a customer identification program (CIP). The information collection associated with the CIP for institutions subject to this requirement is cleared by the Financial Crimes Enforcement Network. See Customer Identification Programs for Banks (OMB No. 1506-0026).

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).

Legal Status

The FR K is authorized pursuant to section 8(s) of the Federal Deposit Insurance Act (FDIA), 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 (12 U.S.C. § 1818(s)).⁹ The FR K is mandatory.

Because the records required by the FR K will be retained at banking organizations, the Freedom of Information Act (FOIA) would only be implicated if the Board's examiners obtained a copy of the records as part of the examination or supervision of a banking institution. In that case, the records would be exempt from disclosure under exemption 8 of the FOIA, which protects examination materials from disclosure (5 U.S.C. § 552(b)(8)). To the extent that information retained in response to the FR K constitutes nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, it may also be kept confidential under exemption 4 of the FOIA (5 U.S.C. § 552(b)(4)). Exemption 4 protects "trade secrets and commercial or financial information obtained from a person [that is] privileged or confidential."

Consultation Outside the Agency

There has been no consultation outside the agency.

Public Comments

On December 10, 2021, the Board published an initial notice in the *Federal Register* (86 FR 70496) requesting public comment for 60 days on the extension, without revision, of the FR K. The comment period for this notice expires on February 8, 2022.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR K is 3,640 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.

⁹ Section 8(s) of the FDIA authorizes the Board to prescribe regulations covering 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)). See 12 U.S.C. §§ 1813(c)(3), 1818(b)(3), and 1818(b)(4).

FR K	<i>Estimated number of respondents¹⁰</i>	<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	906 ¹²	1	4	<u>3,624</u>
<i>Total</i>				3,640

The estimated total annual cost to the public for the FR K is \$215,306.¹³

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 estimated cost to the Federal Reserve System is negligible.

¹⁰ Of these respondents, 442 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 million in total assets), <https://www.sba.gov/document/support--table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions.

¹¹ This number represents the average number of state member banks, Edge Act and agreement corporations, and foreign banks operating U.S. branches, agencies, and representative offices supervised by the Board that were established each year from 2018 through 2020.

¹² This number represents the actual number of state member banks, Edge Act and agreement corporations, and foreign banks operating U.S. branches, agencies, and representative offices supervised by the Board that are open and active as of December 31, 2020.

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 \$20, 45% Financial Managers at \$73, 15% Lawyers at \$72, and 10% Chief Executives at \$95). 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 2020*, published March 31, 2021, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.