

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

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes to extend for three years, with revision, 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; 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.

The FR K-2 reporting form consists of a cover sheet and the following five attachments for the application and notification requirements embodied in Subpart B of Regulation K:

- 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.

The Federal Reserve proposes to replace the existing confidentiality paragraph in the General Instructions and respondents would be required to make a certification regarding information contained in the application. In addition, the Federal Reserve proposes to revise wording in one of the questions related to the proposed office in Attachments A and B. The change would reflect an amendment to Regulation K that specifically requires U.S. branches, agencies, and other offices (including representative offices) of foreign banks to comply with the Bank Secrecy Act and related regulations. Finally, the Federal Reserve proposes to request an e-mail address on the cover page of FR K-2. The total annual reporting burden is estimated to be 630 hours. Given the technical nature of the proposed revisions, there would be no change to the

current annual burden associated with this information collection. A copy of the proposed application and notification form is attached.

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, expanded 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, 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.²

Prior to the 2002 revisions, the FR K-2 application requirements were contained in a directive to Reserve Bank staff dated March 5, 1992 (SR 92-6). The revisions consisted of implementing a reporting form with filing instructions in addition to the informational requirements contained in SR 92-6. The reporting form clarified and streamlined the information required in international applications and prior notifications and reduced the need for repeated requests for additional information after the application or notification has been filed.

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. The applicant foreign bank also must

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

² In deciding whether to approve an application under this lesser standard, the Federal Reserve also considers whether the foreign bank has adopted and implemented procedures to combat money laundering and shall take into account whether the home country supervisor is developing a legal regime to address money laundering.

provide a complete organization chart, financial information, and information regarding certain of the bank's senior officers, major shareholders, and proposed management of the U.S. office.

With regard to the proposed U.S. office, the applicant foreign bank must describe the types of business to be conducted and the types of services to be offered. 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 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.

Proposed Revisions

Cover Page and Confidentiality

The Federal Reserve proposes to replace the existing confidentiality section. The proposed confidentiality section would state that an Applicant may invoke more than two types of Freedom of Information Act (FOIA) exemptions in an effort to prevent applications data from being disclosed to the public. The current reporting form suggests that an applicant may only assert exemptions 4 and 6 against disclosure.³ In addition, respondents would be required to make a certification, consistent with other recently approved applications,⁴ regarding the correctness of the information contained herein and information pertaining to individuals contained in the application. The certification would describe the nature of the information being submitted (for example, personal information regarding an individual or individuals) and how the submitted information may be treated under FOIA (for example, consent of the applicant and the individual(s) would be presumed in the absence of a timely submitted request for confidential treatment). The Federal Reserve believes that receiving the certification at the time of submission would facilitate the disclosure of relevant information to the public and reduce the processing delays that result from uncertainties about what information is eligible for disclosure under FOIA.

Also, the Federal Reserve proposes to request the e-mail address of the contact person on the cover page of FR K-2. Currently, the applicant or notificant provides name, title, address, and telephone number of person(s) to whom inquiries may be directed.

³ Exemption 4 relates to trade secrets and commercial or financial information received from a person which is privileged or confidential. Exemption 6 relates to personal information affecting an individual's privacy.

⁴The International Applications and Prior Notifications under Subparts A and C of Regulation K (FR K-1; OMB No. 7100-0107) and the Bank Holding Company application and notification forms (OMB No. 7100-0121): the Application for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-3), the Notification for Prior Approval to Become a Bank Holding Company or for a Bank Holding Company to Acquire an Additional Bank or Bank Holding Company (FR Y-3N), and the Notification for Prior Approval to Engage Directly or Indirectly in Certain Nonbanking Activities (FR Y-4).

Attachments A and B of Reporting Instructions

To reflect the amendment made to Regulation K on March 15, 2006, and the resulting addition of section 211.24(j) to Regulation K, the Federal Reserve proposes changes to Question 13 of Attachment A and Question 11 of Attachment B to specifically require U.S. branches, agencies, commercial lending companies, and representative offices of foreign banks to establish and maintain procedures reasonably designed to ensure and monitor compliance with the Bank Secrecy Act and the regulations issued thereunder. Currently, Question 13 in Attachment A requires an applicant to describe measures to be taken to ensure that the proposed office is not used for illicit purposes, including money laundering and terrorist financing, but does not specifically seek compliance with the Bank Secrecy Act and related regulations. Question 11 in Attachment B also makes no reference to compliance with the Bank Secrecy Act and related regulations.

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.⁵ Upon receipt of an application or notification, the Federal Reserve reviews 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 mandatory under sections 7, 10, and 13 of the International Banking Act (12 U.S.C. 3105, 3107, and 3108). The applying or notifying 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

On July 1, 2008, the Federal Reserve published a notice in the *Federal Register* (73 FR 37455) requesting public comment for sixty days on the extension, with revision, of the applications and notifications. The comment period for this notice expires on September 2, 2008.

⁵ 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.

Sensitive Questions

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

Estimate of Respondent Burden

The current annual reporting burden for Subpart B requirements of Regulation K is estimated to be 630 hours based on the average number of applications and notifications filed in the last three years. This represents less than 1 percent of total reporting burden for the Federal Reserve System.

	<i>Average number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
FR K-2	18	1	35	630

The total annual cost to the public for this application is estimated to be \$38,840.⁶

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.

⁶ 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% Clerical @ \$25, 45% Managerial or Technical @ \$55, 15% Senior Management @ \$100, and 10% Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics, *Occupational Employment and Wages*, news release.