

**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, with 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 Banking Operations (12 CFR Part 211), governs the foreign investments and activities of member banks, Edge and agreement corporations,¹ bank holding companies (BHCs), and certain investments by foreign organizations. Subpart C of Regulation K governs investments in export trading companies by eligible investors.² The FR K-1 information collection contains eleven attachments, discussed below, for the application and notification requirements in Subparts A and C of Regulation K. The Board requires these applications 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 applications are event-generated and provide the Federal Reserve with information necessary to evaluate each of the proposed transactions.

The Board revised the FR K-1 information collection to account for several reporting and recordkeeping provisions in sections 211.5, 211.8, 211.10, 211.11, and 211.13 of Regulation K that have not been previously cleared by the Board under the Paperwork Reduction Act (PRA). The Board did not create additional attachments to the FR K-1 to address these provisions.

The current estimated total annual burden for the FR K-1 is 903 hours, and would increase to 987 hours. The revisions would result in an increase of 84 hours. The form and instructions are available on the Board's public website at <https://www.federalreserve.gov/apps/reportforms/default.aspx>.

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. Section 25A of the FRA authorizes the establishment of Edge corporations and empowers these corporations to engage in activities both in the United States

¹ References to Edge corporations are inclusive of agreement corporations. An agreement corporation is a corporation that has entered into an agreement with the Board that it will not exercise any power that is impermissible for an Edge corporation. 12 CFR 211.5(g)(1).

² Eligible investors are BHCs, Edge and agreement corporations that are subsidiaries of bank holding companies but are not subsidiaries of banks, banker's banks, and foreign banking organizations. 12 CFR 211.32(d).

and abroad. Section 4(c)(13) of the BHC Act authorizes BHCs to invest in companies that do business abroad. Section 4(c)(14) of the BHC Act authorizes BHCs to invest in export trading companies.

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, (2) a notification procedure, under which a banking organization may make an investment after having given appropriate notice to the Board, and (3) a general consent procedure, under which a banking organization may make certain investments that may subsequently be reviewed during the examination process.

The various attachments to the FR K-1 instructions 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 information reported on the FR K-1 is not available from any other source.

Description of Information Collection

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

- Attachment A Notification to Establish Initial Foreign Branches of Member Banks, Edge Corporations, or Foreign Subsidiaries (Section 211.3(b)(2) of Regulation K) or 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),
- Attachment C Application to Establish, Acquire, or Change Control of an Edge Corporation (Section 211.5 of Regulation K) or for an Edge Corporation to Engage in Certain Domestic Activities (Section 211.6(b) 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 Application to Invest in Other Foreign Organizations (Sections 211.4(a)(8) and 211.9(g) of Regulation K) or to Engage in New Foreign Activities (Section 211.10(c) of Regulation K) for Member Banks, Edge or Agreement Corporations, and BHCs,

- Attachment I Notification to Invest in Other Foreign Organizations for Member Banks, Edge or 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.

Foreign Branches (Attachments A and B)

The notification to establish initial foreign branches of member banks, Edge corporations, or foreign subsidiaries, and the application for branches to engage in new activities (Attachment A) requires information about the location of the proposed branch and existing activities in the foreign country (notification only); information needed to assess the purpose of the branch, its proposed activities, projected growth, management (notification only), country exposure (notification only), and capitalization (notification only); and a discussion of relevant foreign law and approvals (notification only). Both the application and notification also require certain identifying information about the applying organization. For the notification, a summary of the bank's experience in international banking is also required for a member bank's first branch and for the second branch where the first was not a full-service branch.

The notification to establish additional foreign branches of member banks, Edge corporations, or foreign subsidiaries (Attachment B) 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 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, projected balance sheets and income statements, information on the proposed activities, any related requests for investment authority (Attachment H), and the ability to serve the convenience and needs of the community.

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 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 and associated newspaper notice about the application, how the branch would further the development of the applicant's international or foreign business, the type of business to be conducted and types of services to be offered, and the branch's ability to serve the convenience and needs of the community.

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 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 activities, a full description of activities not a of a banking or financial nature; certain financial information, including the source of funds, balance and income statements, and 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, who will be the other large investors, and any special shareholder relationships; detail certain management information and information about certain types of activities; 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 or agreement corporations, and BHCs, the applicant must provide the information described above, along with certain identifying information about the investment, total investment amount, other large investors and the applicant's ability to control the company; if applicable, any foreign regulation of 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 or 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 and, with prior approval by the Board, up to 20 percent of their capital and surplus in Edge corporation subsidiaries. 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 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 corporations, the total capital invested by the bank to date in each of its Edge corporations, total capital (including retained earnings) of each its Edge 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 briefer description of the proposed investment, financial information, and additional information for investments in joint ventures.

Respondent Panel

The FR K-1 panel comprises member banks, Edge and agreement corporations, BHCs, and, with regard to certain investments, foreign organizations. Subpart C of Regulation K governs investments in export trading companies.

Revisions to the FR K-1

The Board revised the FR K-1 information collection to account for the following reporting and recordkeeping provisions in sections 211.5, 211.8, 211.10, 211.11, and 211.13 of Regulation K that have not been previously cleared by the Board under the PRA. The Board did not create additional attachments to the FR K-1 to address these provisions.

- Section 25A of the FRA and the Board's Regulation K establish certain requirements for shareholders of Edge corporations. Section 211.5(c)(4) requires Edge corporations to

report to the Board any change in the status of a shareholder of the Edge corporation that results in a violation of section 25A of the FRA.

- Section 211.8(g)(3)(iii) of Regulation K requires a BHC to report to the Board its plans for divesting certain investments abroad made through debt-for-equity conversions.
- Section 211.10 of Regulation K lists activities permissible for BHCs to engage in abroad. Sections 211.10(a)(14)(i)(A) and (ii) and 211.10(a)(15)(ii) establish prior notice procedures for equity securities underwriting and dealing outside the United States, respectively. Relatedly, section 211.10(a)(15)(iv)(B) establishes a prior notice process for the use of internal hedging models when dealing in equity securities abroad.
- To enhance regulatory transparency and facilitate regulatory compliance, section 211.11 of Regulation K establishes a process for requesting an advisory opinion regarding the scope of activities permissible under Regulation K. Requests must be submitted in writing to the Board; contain a clear description of the proposed parameters of the activity, or the service or product, at issue; and contain a concise explanation of the grounds on which the submitter contends the activity is or should be considered by the Board to be permissible under Regulation K.
- Section 211.13 of Regulation K establishes certain supervisory expectations for U.S. banking organizations conducting international operations. Section 211.13(a)(1) requires foreign branches and subsidiaries to maintain effective systems of records, controls, and reports, such as reports on risk assets and reports on operations and controls. Relatedly, section 211.13(a)(2) requires U.S. banking organizations to maintain information about their joint venture investments, including transactions with the joint venture by the investor and its affiliates and audits and other reports on financial performance, risk exposure, management policies, operations, and controls.

Time Schedule for Information Collection

The FR K-1 information collections are event generated and submitted by the applying or notifying organization, in accordance with the requirements embodied in Regulation K, to the Federal Reserve Bank designated as responsible for that banking organization. Applicants are strongly encouraged to submit their applications electronically through the Federal Reserve System's web-based application E-Apps (<https://www.federalreserve.gov/supervisionreg/afi/afi.htm>).³ Attachment A is used in filing 30-day prior notifications while Attachment B is used for prior notifications pursuant to the 12 business days prior notification procedures.

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 transaction 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).

³ The application may alternatively be submitted in paper form.

Legal Status

The Board is authorized to collect the information required on the FR K-1 under sections 25 and 25A of the Federal Reserve Act (12 U.S.C. §§ 601-604(a) and 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. Section 25 also authorizes the Board to require reports concerning the condition of these entities. 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. 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. Section 4(c)(14) of the BHC Act authorizes BHCs to invest in export trading companies, subject to a notice requirement and disapproval by the Board. Section 5(c) of the BHC Act grants the Board reporting and examination authorities. The applications and notifications comprising FR K-1 are required to obtain a benefit.

Individual respondents may request that information submitted to the Board through the FR K-1 be kept confidential. If a respondent requests confidential treatment, the Board will determine whether the information is entitled to confidential treatment on a case-by-case basis. To the extent a respondent submits nonpublic commercial or financial information, which is both customarily and actually treated as private by the respondent, the respondent may request confidential treatment pursuant to exemption 4 of the FOIA (5 U.S.C. § 552(b)(4)). To the extent a respondent submits personal, medical, or similar files, the disclosure of which would constitute an unwarranted invasion of privacy, the respondent may request confidential treatment pursuant to exemption 6 of the FOIA (5 U.S.C. § 552(b)(6)). To the extent that the Board obtains information as part of the examination process, the information would be confidential pursuant to exemption 8 of the FOIA (5 U.S.C. § 552(b)(8)).

Consultation Outside the Agency

There has been no consultation outside the Federal Reserve System.

Public Comments

On May 5, 2021, the Board published an initial notice in the *Federal Register* (86 FR 23968) requesting public comment for 60 days on the extension, with revision, of the FR K-1. The comment period for this notice expired on July 6, 2021. The Board did not receive any comments. The Board adopted the extension, with revision, of the FR K-1 as originally proposed. On July 29, 2021, the Board published a final notice in the *Federal Register* (86 FR 40840).

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR K-1 is 903 hours, and would increase to 987 hours with the revisions. The reporting burden is based on the

average number of applications and notifications filed during a typical year. The disclosure burden associated with Attachment F reflects the amount of time required to fulfill the newspaper publication requirement for that attachment. The additional reporting and recordkeeping burden consists of existing burden related to several provisions not previously cleared under the PRA. 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 respondents⁴</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Current Reporting				
Attachments A and B	6	2	11.5	138
Attachments C, D, E, F, and G	13	2	9	234
Attachments H and I	10	3	15.5	465
Attachment J	2	1	10	20
Attachment K	1	1	20	20
Disclosure				
Attachment F	13	2	1	<u>26</u>
<i>Current Total</i>				903
Proposed Reporting⁵				
Attachments A and B	6	2	11.5	138
Attachments C, D, E, F, and G	13	2	9	234
Attachments H and I	10	3	15.5	465
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	0.25	0
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				
Attachment F	13	2	1	<u>26</u>
<i>Proposed Total</i>				987
<i>Change</i>				84

⁴ Of these respondents, none 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>.

⁵ The Federal Reserve has not received any reports related to the additional requirements in the last three years. The burden hours represent potential burden associated with these requirements.

The estimated total annual cost to the public for the FR K-1 is \$53,412, and would increase to \$58,381 with the revisions.⁶

Sensitive Questions

These collections of information contain no questions of a sensitive nature, as defined by OMB guidelines.

Estimate of Cost to the Federal Reserve System

The estimated cost to the Federal Reserve System of printing and mailing instructions 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 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/>.