

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with Loans Secured by
Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of
Regulation H (Reg H-2; OMB No. 7100-0280)**

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, without revision, the Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H (Reg H-2; OMB 7100-0280).

In general, the Flood Act and Regulation H provide that a lender shall not make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area unless the secured property is covered by flood insurance for the term of the loan. With respect to the recordkeeping and disclosure provisions, the regulation requires state member banks to:

- retain a completed copy of the Standard Flood Hazard Determination Form developed by the Federal Emergency Management Agency (standard FEMA form). The form is used by lenders to document their determination of whether improved property securing a loan is in a special flood hazard area;
- notify a borrower and servicer when loans secured by improved property are determined to be in a special flood hazard area and notify them whether flood insurance is available; and
- notify the Federal Emergency Management Agency (FEMA) of the identity of, and any change in, the servicer of a loan secured by improved property in a special flood hazard area.

The information collection, as defined by the PRA, under the flood hazard provisions of Regulation H are triggered by specific events in the lending process. The 874 state member banks supervised by the Federal Reserve are deemed “respondents” that must comply with these Regulation H requirements. The total annual burden associated with these requirements is estimated to be 43,298 hours for the 874 state member banks.¹

Background and Justification

Section 208.25 of Regulation H implements provisions of the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (1973

¹ While FEMA is responsible for accounting for the paperwork burden associated with lenders’ *completion* of the standard FEMA form, the Federal Reserve and other depository institution supervisory agencies account for the paperwork burden associated with the disclosure and recordkeeping requirements.

Act), as amended by the National Flood Insurance Reform Act of 1994 (1994 Reform Act).

The 1968 Act made federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if their community participates in the National Flood Insurance Program (NFIP). A special flood hazard area is an area within a floodplain having a one percent or greater chance of flooding in any given year. These areas are delineated on maps FEMA issues for individual communities. A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its special flood hazard areas to eliminate or minimize future flood damage.

The 1973 Act amended the NFIP by requiring each federal agency responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions to issue regulations to implement its provisions. Under these regulations, lenders must require flood insurance on improved real estate or mobile homes serving as collateral for a loan if the property is located in a special flood hazard area in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify borrowers that property is located in a special flood hazard area and that federal disaster assistance is available in the event of a flood.

The 1994 Reform Act comprehensively revised the federal flood insurance statutes with the intention of increasing compliance with the flood insurance requirements and increasing participation in the NFIP. The revisions were designed to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the federal government, taxpayers, and flood victims. The 1994 Reform Act specifically required the federal financial regulatory agencies to amend their regulations² and require lenders to:³

- use the standard form created by FEMA to determine whether property securing a loan is in a special flood hazard area;⁴
- notify borrowers and servicers when loans are secured by property in special flood hazard areas; and
- notify FEMA of the identity of, and any change in, the servicer of a loan.

² The 1994 Reform Act was implemented through a joint final rule by the Board, the Office of the Comptroller of the Currency, Federal Deposit Insurance Corporation, Office of Thrift Supervision, National Credit Union Administration, and Farm Credit Administration.

³ Pursuant to Section 208.25(d) of Regulation H, the flood insurance requirement does not apply to: (1) any state-owned property covered under a policy of self-insurance satisfactory to the director of FEMA, who publishes and periodically revises the list of states falling within this exemption; and (2) property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

⁴ Section 528 of the 1994 Reform Act directed FEMA to develop a standard form for determining whether a property is located in an area that FEMA has identified as one having special flood hazards and in which flood insurance under 44 CFR 65 is available. Section 528 also requires the Board and other regulatory agencies to require, by regulation, the use of the standard FEMA form. The Board adopted paragraph 208.25(f) of Regulation H to require state member banks to use and retain the standard form developed by FEMA when making their flood hazard area determination.

Description of Information Collection

The information collection under Regulation H's flood insurance requirements are as follows:

Recordkeeping Requirement - Records of compliance (Section 208.25(f)(2))

Regulation H requires a state member bank to retain a copy of the completed standard FEMA form. The records, which may be retained in hard copy or electronic form, must be kept for the entire period of time that the bank owns the loan.

Disclosure Requirement - Notice of special flood hazards and availability of federal disaster relief assistance (Section 208.25(i))

When a state member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, Regulation H requires that the bank mail or deliver a written notice to the borrower and to the servicer in all cases, indicating whether flood insurance is available under the NFIP for the collateral securing the loan. Specifically, the contents of the notice must include:

- a warning that the building or mobile home is or will be located in a special flood hazard area;
- a description of the flood insurance purchase requirements;
- a statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and
- a statement whether federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a federally declared disaster.

Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

Disclosure Requirement - Notices to FEMA of servicer and change in servicer (Section 208.25(j)(1) and (2))

When a state member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, Regulation H requires the bank to notify the director of FEMA (or the director's designee) in writing of the identity of the servicer of the loan. The regulation also requires a state member bank to notify the director of FEMA (or the director's designee) of any change in the servicer of a loan. (The director of FEMA has designated the insurance provider to receive the member bank's notice of servicer's identity.) These notices may be provided electronically if electronic transmission is satisfactory to the director of FEMA's designee.

Time Schedule for Information Collection

The recordkeeping and disclosure requirements of Regulation H that are imposed on state member banks are triggered by specific events in the lending process. The records are maintained at the state member banks and are not provided to the Federal Reserve. Regulation H requires that the notice of special flood hazards be mailed or delivered to (1) the borrower “within a reasonable time” before completion of the transaction and (2) to the servicer “as promptly as practicable” after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes (Section 208.25(i)(2)). In addition, Regulation H requires that the notice of change of servicer must be made within 60 days after the effective date of the change (Section 208.25(j)(2)).

Legal Status

The Board’s Legal Division has determined that the Board is authorized to impose the Regulation H Requirements pursuant to Section 12 of the Flood Disaster Protection Act of 1973, as amended (42 U.S.C. § 4012a) and section 1364 of the National Flood Insurance Act of 1968, as amended (42 U.S.C. § 4104a). The obligation of state member banks to comply with the Regulation H Requirements is mandatory. Because the Federal Reserve does not collect any information, no issue of confidentiality would normally arise. However, should the records required by the Regulation H requirements come into possession of the Board during an examination of a state member bank, those records would be protected from disclosure by exemption 8 of the Freedom of Information Act (FOIA). (5 U.S.C. § 552(b)(8)). Additionally, depending on the content of the records, the information could also potentially be protected from disclosure by FOIA exemptions 4 and 6. (5 U.S.C. §552(b)(4)&(6)).

Consultation Outside the Agency

On August 20, 2008, the Federal Reserve published a notice in the *Federal Register* (73 FR 49205) requesting public comment for 60 days on the extension, without revision, of this information collection. The comment period for this notice expired on October 20, 2008. The Federal Reserve did not receive any comments. On October 28, 2008, the Federal Reserve published a final notice in the *Federal Register* (73 FR 63983).

Sensitive Questions

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

Estimate of Respondent Burden

The estimated total annual burden for this information collection is 43,298 hours, as shown in the table below. The Federal Reserve has estimated (using as a proxy the Home Mortgage Disclosure Act data for 2007) that on average a state member bank

makes approximately 589 loans per year that are secured by real estate. For each of these loans, the state member banks must comply with the recordkeeping requirement by retaining a copy of the standard FEMA form used to determine if a loan is secured by property located in a special flood hazard area. Of these loans, the Federal Reserve also has estimated that each bank originates approximately 100 loans that are secured by property located in a special flood hazard area. For these loans, state member banks must comply with several disclosure requirements (notices of special flood hazards to borrowers and servicers and notices to FEMA of the servicer and any change of servicer).

The amounts in the following table reflect the burden estimated by the Federal Reserve System for the state member banks under its supervision. This burden represents less than 1 percent of total Federal Reserve System paperwork burden. Banks likely will add the required records to their existing usual and customary loan documentation.

	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated response time</i>	<i>Estimated annual burden hours</i>
<u><i>Recordkeeping</i></u>				
Retention of standard FEMA form	874	589	2.5 minutes	21,449
<u><i>Disclosures</i></u>				
Notice of special flood hazards to borrowers and servicers	874	100	5 minutes	7,283
Notice to FEMA of servicer	874	100	5 minutes	7,283
Notice to FEMA of change of servicer	874	100	5 minutes	7,283
<i>Total</i>				43,298

The total cost to the public is estimated to be \$2,669,322.⁵

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.

⁵ 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.