

**Supporting Statement for the
Recordkeeping Requirements Associated with Real Estate Appraisal Standards for
Federally Related Transactions Pursuant to Regulations H and Y
(FR H-4; OMB No. 7100-0250)**

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 Requirements Associated with the Real Estate Appraisal Standards for Federally Related Transactions Pursuant to Regulations H and Y (FR H-4; OMB No. 7100-0250). These requirements are specified in Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA) as set forth in the Board's Regulations H (12 CFR 208.18) and Y (12 CFR 225.61). These regulations require that, for federally related transactions, regulated institutions obtain real estate appraisals performed by certified or licensed appraisers in conformance with uniform appraisal standards. The estimated number of reporters under the regulation includes 878 state member banks (SMBs) and 612 bank holding company (BHC) nonbank subsidiaries that extend mortgage credit.¹ There is no formal reporting form, and the information is not submitted to the Federal Reserve. The estimated annual burden for these recordkeeping requirements is 94,943 hours.

Background and Justification

Title XI of FIRREA, 12 U.S.C. 3331 *et seq.*, directs the federal financial institutions regulatory agencies² to publish appraisal rules for federally related transactions within the jurisdiction of each agency. The purpose of the statute is “. . . to provide that federal financial and public policy interests in real estate related transactions will be protected by requiring that real estate appraisals utilized in connection with federally related transactions are performed in writing, in accordance with uniform standards, by individuals whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.”³

Section 1121 of FIRREA, 12 U.S.C. 3350(4), defines a federally related transaction as a real estate-related financial transaction that is regulated by or engaged in by a federal financial institutions regulatory agency and requires the services of an appraiser. In addition, a real estate-related financial transaction is defined as any transaction that involves: (i) the sale, lease, purchase, investment in or exchange of real property, including interests in property, or the financing thereof; (ii) the refinancing of real property or interests in real property; and (iii) the use of real property or interests in real property as security for a loan or investment, including mortgage-backed securities.

¹ As of the December 31, 2007, Consolidated Reports of Condition and Income (FFIEC 031 & 041; OMB No. 7100-0036) report and the December 31, 2007, the Financial Statements of U.S. Nonbank Subsidiaries of U.S. Bank Holding Companies (FR Y-11; OMB No. 7100-0244).

² The federal financial institutions regulatory agencies consist of: the Federal Reserve, the Office of the Comptroller of the Currency (OCC), the Federal Deposit Insurance Corporation (FDIC), the Office of Thrift Supervision (OTS), and the National Credit Union Administration (NCUA).

³ Section 1101, Title XI of FIRREA

In 1990, the agencies published regulations to meet the requirements of Title XI of FIRREA. The regulations identify which transactions require an appraiser, set forth minimum standards for performing appraisals, and distinguish those appraisals requiring the services of a state certified appraiser from those requiring a state licensed appraiser. The regulations further identify categories of real estate-related financial transactions that do not require the services of an appraiser and, accordingly, they are subject to neither Title XI of FIRREA nor those provisions of the agencies' regulations governing appraisals.

In 1991, as part of a burden reduction study mandated by the FDIC Act, the agencies determined that the appraisal requirements of Title XI could impose additional costs on both lenders and borrowers. The agencies decided that there were certain real estate-related transactions that Title XI appraisals imposed significant costs without promoting, to a significant extent, the safety and soundness of regulated institutions or furthering the purposes of Title XI of FIRREA. Therefore, in June 1994, the agencies amended their regulations to clarify and expand the circumstances under which certain real estate-related transactions would not require Title XI appraisals. Also, in October 1994, the agencies issued the Interagency Appraisal and Evaluation Guidelines (interagency guidelines) to provide further clarification to the regulations and to set forth prudent appraisal and evaluation policies and practices. In November 1998, the Board amended the Regulation Y real estate appraisal requirement for BHCs and their nonbank subsidiaries. The amendment permits a BHC, or its nonbank subsidiary that has the authority to underwrite or deal in mortgage-backed securities, to do so without demonstrating that the loans underlying the securities are supported by appraisals that at origination met the Board's appraisal regulation.

While the Board has not amended the regulation since 1998, the Federal Reserve and the other agencies have issued additional guidance and clarification to their appraisal regulations and the interagency guidelines. On November 19, 2008, the agencies issued proposed revisions to the interagency guidelines for public comment.⁴ The proposal incorporates several appraisal-related guidance documents⁵ that the agencies have issued over the past several years and provides clarification to the agencies' expectations for a regulated institution's compliance with the appraisal regulation. The comment period expired on January 20, 2009. The Federal Reserve received 77 comments that are currently under review. If the review of the comment letters results in changes to the information collection requirements, then a proposal to revise the information collection will be brought forth to the Board for review.

Description of Information Collection

For federally related transactions, Title XI of FIRREA requires SMBs and BHCs with credit-extending nonbank subsidiaries to use appraisals prepared in accordance with minimum appraisal standards in the regulation, including the Uniform Standards of Professional Appraisal Practice promulgated by the Appraisal Standards Board of the Appraisal Foundation. Generally, these standards prescribe the requirements for analyzing the value of real property as well as the

⁴ See 73 *Federal Register* 69647 (November 19, 2008)

⁵ Refer to SR letter 03-18, *Interagency Statement on Independent Appraisal and Evaluation Function*; SR letter 05-05, *FAQs on Interagency Statement on Independent Appraisal and Evaluation Function*; SR letter 05-14, *Interagency FAQs on Residential Tract Development Lending*; and SR letter 06-9, *Interagency Statement on the Revisions to the Uniform Standards of Professional Appraisal Practice*.

requirements for reporting such analysis and a value conclusion. An appraisal means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of an adequately described property as of a specific date(s), supported by the presentation and analysis of relevant market information.

SMBs and BHCs with credit-extending nonbank subsidiaries are expected to maintain records that demonstrate that appraisals used in their real estate-related lending activities comply with these regulatory requirements. While there is no obligation for a regulated institution to file appraisals with the Federal Reserve Board, institutions must have policies and procedures governing their appraisal function to ensure compliance with the appraisal regulation. As part of an on-site examination of an institution, examiners may collect information and data on a particular appraisal or an institution's appraisal policies and practices to assess the condition of the institution and its compliance with the appraisal regulation.

Time Schedule for Information Collection

Bank examiners test for compliance with the appraisal regulation during examinations of SMBs banks and inspections of BHCs' credit-extending nonbank subsidiaries. There is no formal reporting form and the information is not submitted to the Federal Reserve.

Consultation Outside of the Agency and Discussion of Public Comment

In developing its appraisal regulation, the Federal Reserve consulted with the OCC, FDIC, OTS, and NCUA. As required by Title XI, these agencies adopted substantially similar appraisal regulations for the financial institutions they supervise.

On March 4, 2009, the Federal Reserve published a notice in the *Federal Register* (74 FR 9401) requesting public comment for 60 days on the FR H-4 information collection. The comment period for this notice expired on May 4, 2009. The Federal Reserve did not receive any comments. On May 15, 2009, the Federal Reserve published a final notice in the *Federal Register* (74 FR 22928).

Sensitive Questions

This recordkeeping requirement contains no questions of a sensitive nature, as defined by OMB guidelines.

Legal Status

The Board's Legal Division has determined that the recordkeeping requirements set forth in the Board's Regulations H and Y for appraisal standards are required by law (12 U.S.C. Sections 3339). Further, the Board has the authority to collect information, including appraisals, during the examination of a state member bank (12 U.S.C. Section 248(a) and 483) and a bank holding company (12 U.S. C. section 1844(c)). Such documents would generally be exempt from disclosure under the Freedom of Information Act (FOIA) (5 U.S.C Section 552 (b) (4) and (b) (8)). Since the Federal Reserve does not collect this information, no issue of confidentiality under FOIA arises.

Estimate of Respondent Burden

The Federal Reserve estimates that these recordkeeping requirements affect 1,490 organizations supervised by the Federal Reserve. The annual frequency is an estimate of the number of real estate-related credit transaction that the average respondent extends in a year. This includes residential mortgages, multi-family mortgages, construction and development loans, and nonfarm/nonresidential real estate loans. Each federally related transaction is expected to average 15 minutes for reviewing and recordkeeping. The total annual burden is estimated to be 94,943 hours, as shown below, which represents less than 2 percent of the total Federal Reserve System paperwork burden.

	<i>Estimated number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
SMBs	878	160	0.25	35,120
BHC Subs	<u>612</u>	391	0.25	<u>59,823</u>
<i>Total</i>	1,490			94,943

The total cost to the public is estimated to be \$5,288,325.⁶

Estimate of Cost to the Federal Reserve System

The Federal Reserve System does not incur any direct costs as a result of this information collection.

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: 20% Administrative or Junior Analyst @ \$25, 70% Managerial or Technical @ \$55, 5% Senior Management @ \$100, and 5% Legal Counsel @ \$144. Hourly rate estimates for each occupational group are averages using data from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2007, <http://www.bls.gov/news.release/ocwage.nr0.htm> Occupations are defined using the BLS Occupational Classification System. <http://www.bls.gov/soc/>