

**Supporting Statement for the
Recordkeeping Requirements associated with
Reverse Mortgage Products Guidance for
Managing Compliance and Reputation Risks
(FR 4029; OMB No. 7100-NEW)**

Summary

The Board of Governors of the Federal Reserve System, under delegated authority from the Office of Management and Budget (OMB), proposes implement the Reverse Mortgage Products Guidance for Managing Compliance and Reputation Risks (FR 4029; OMB No. 7100-NEW). The Paperwork Reduction Act (PRA) classifies recordkeeping requirements of agency guidance as an information collection.¹

On December 16, 2009, the Federal Financial Institutions Examination Council (FFIEC), on behalf of its members: Office of the Comptroller of the Currency, the Office of Thrift Supervision, the Federal Reserve, the Federal Deposit Insurance Corporation, and the National Credit Union Administration (the agencies) published proposed guidance in the *Federal Register* for public comment titled Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks (the guidance).² The comment period expired February 16, 2010. The FFIEC received 18 comments; however no comments specifically addressed PRA estimates. On August 17, 2010, the agencies published a joint final notice in the *Federal Register* adopting the guidance largely as proposed.

The guidance is designed to help financial institutions ensure that their risk management and consumer protection practices adequately address the compliance and reputation risks raised by reverse mortgage lending. The guidance addresses the general features of reverse mortgage products, relevant legal requirements and consumer protection concerns raised by reverse mortgages. The guidance focuses on the need for banks, thrifts and credit unions to provide clear and balanced information to consumers about the risks and benefits of these products.

The agencies have identified areas of the guidance that fall under the definition of an information collection and these are discussed in further detail below. The Federal Reserve's total annual burden is estimated to be 864 hours for the 18 financial institutions that are likely to be subject to the guidance.³ There are no required reporting forms associated with the guidance.

¹ 44 U.S.C. § 3501 *et seq.*

² (74 FR 66652).

³ State member banks that originate proprietary reverse mortgages.

Background and Justification

Reverse mortgages are home-secured loans typically offered to elderly consumers. Institutions currently provide two basic types of reverse mortgage products: lenders' own proprietary reverse mortgage products and reverse mortgages offered under the Home Equity Conversion Mortgage (HECM) program.⁴ Both HECMs and proprietary products are subject to various laws governing mortgage lending including the Truth in Lending Act (TILA), the Real Estate Settlement Procedures Act (RESPA), the Federal Trade Commission Act (FTCA), and the fair lending laws. HECMs are also subject to an extensive regulatory regime established by HUD, including provisions for FHA insurance of HECM loans that protect both lenders and reverse mortgage borrowers.

Reverse mortgages enable eligible borrowers to remain in their home while accessing their home equity in order to meet emergency needs, supplement their incomes, or, in some cases, purchase a new home—without subjecting borrowers to ongoing repayment obligations during the life of the loan. The use of reverse mortgages could expand significantly in coming years as the U.S. population ages and more homeowners become eligible for reverse mortgage products. If prudently underwritten and used appropriately, these products have the potential to become an increasingly important credit product for addressing certain credit needs of an aging population.

However, reverse mortgages can be highly complex loan products, and it is particularly important to provide adequate information and other consumer protections. Typically, elderly borrowers are securing a reverse mortgage with their primary asset—their home. Thus, borrowers may depend on the reverse mortgage proceeds for the cash flow needed to pay for health care and other living expenses.

Reverse mortgages present substantial risks both to institutions and to consumers, and, as with any type of loan that is secured by a consumer's home, it is crucial that consumers understand the terms of the product and the nature of their obligations. While this guidance addresses consumer protection concerns that raise compliance and reputation risks, the agencies recognize that reverse mortgage products may present other risks, too, such as credit, interest rate, and liquidity risks, especially for proprietary reverse mortgage products lacking the insurance offered under the federal HECM program. For these reasons, it is critical that institutions manage the compliance and reputation risks associated with reverse mortgages. The guidance is intended to assist institutions in their efforts to manage these risks in light of the anticipated growth in this lending product.

Description of Information Collection

⁴ A HECM is a reverse mortgage product insured by the Federal Housing Administration (FHA), which is part of the U.S. Department of Housing and Urban Development (HUD), and subject to a range of federal consumer protection and other requirements. See 12 U.S.C. 1715z-20; 24 CFR part 206.

The guidance includes reporting, recordkeeping, and disclosure requirements applicable to both proprietary and HECM reverse mortgages. However, a number of the disclosure requirements are currently standard business practice for proprietary and HECM reverse mortgages and, therefore, under the PRA's usual and customary standard the requirements do not meet the definition of paperwork. There are also disclosure requirements currently covered under approved TILA-related information collections for proprietary and HECM reverse mortgages, and an approved HUD information collection⁵ for HECM reverse mortgages. Proprietary reverse mortgage products, however, are not subject to the consumer protection provisions of the HECM program, so these requirements would meet the PRA's definition of paperwork.

Proprietary Reverse Mortgages

Institutions offering proprietary reverse mortgages will be encouraged under the guidance to follow or adopt relevant HECM requirements for mandatory counseling, disclosures, affordable origination fees, restrictions on cross-selling of ancillary products, and reliable appraisals.

Proprietary and HECM Reverse Mortgages

Institutions offering either HECMs or proprietary reverse mortgages are encouraged to develop clear and balanced product descriptions and make them available to consumers shopping for a mortgage. They should set forth a description of how disbursements can be received and include timely information to supplement the TILA and other disclosures. Promotional materials and product descriptions should include information about the costs, terms, features, and risks of reverse mortgage products.

Institutions should adopt policies and procedures that prohibit directing a consumer to a particular counseling agency or contacting a counselor on the consumer's behalf. They should adopt clear written policies and establish internal controls specifying that neither the lender nor any broker will require the borrower to purchase any other product from the lender in order to obtain the mortgage. Policies should be clear so that originators do not have an inappropriate incentive to sell other products that appear linked to the granting of a mortgage. Legal and compliance reviews should include oversight of compensation programs so that lending personnel are not improperly encouraged to direct consumers to particular products.

Institutions making, purchasing, or servicing reverse mortgages through a third party should conduct due diligence and establish criteria for third party relationships and compensation. They should set requirements for agreements and establish systems to monitor compliance with the agreement and applicable laws and regulations. They

⁵ OMB Control Number (2502-0524)

should also take corrective action if a third party fails to comply. Third party relationships should be structured in a way that does not conflict with RESPA.

Time Schedule for Information Collection

The documentation required by the guidance is maintained by each institution; therefore, are not collected or published by the Federal Reserve System. These recordkeeping requirements are documented on occasion. Bank examiners would verify compliance with this recordkeeping requirement during examinations.

Sensitive Questions

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

Consultation Outside the Agency and Discussion of Public Comment

On December 16, 2009, the agencies published the proposed Guidance in the *Federal Register* (74 FR 66652) seeking public comment for 60 days. The comment period for this notice expired on February 16, 2010. The agencies received 21 comments; however, no comments specifically addressed PRA estimates. On August 17, 2010, the agencies published a joint final notice in the *Federal Register* (75 FR 50801) adopting the guidance largely as proposed.

Legal Status

The Board's Legal Division has determined that this information collection is authorized pursuant to section 18(f) of the Federal Trade Commission Act, which authorizes the Board to prescribe regulations regarding unfair or deceptive acts or practices by banks (15 U.S.C. § 57a(f), and section 105 of the Truth in Lending Act (TILA), which authorizes the Board to prescribe regulation to carry out the purposes of TILA (15 U.S.C. § 1604). Obligation to respond is voluntary. Records obtained as a part of an examination or supervision of a bank are exempt from disclosure under the Freedom of Information Act (FOIA) exemption (b)(8), for examination material (5 U.S.C. § 552(b)(8)). Additionally, records may also be exempt under (b)(4). Records would be exempt under (b)(4) if the records contained trade secrets and commercial or financial information obtained from a person and privileged or confidential and the disclosure of the information would cause substantial harm to the competitive position of the respondents (5 U.S.C. § 552 (b)(4)).

Estimate of Respondent Burden

The total annual guidance burden, for institutions regulated by the Federal Reserve, is estimated to be 864 hours, as shown in the table below. The Federal Reserve estimates that respondents would take on average 40 hours to implement policies and procedures and to provide training. On a continuing basis respondents would take on average 8 hours annually to maintain their policies and procedures. The recordkeeping guidance represents less than 1 percent of total Federal Reserve paperwork burden.

	<i>Estimated number of respondents</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
<i>Policy & Procedures</i>				
Implementation	18	1	40	720
On-going	18	1	8	<u>144</u>
<i>Total burden</i>				864

The cost to the public for this information collection is estimated to be \$51,667.⁶

Estimate of Cost to the Federal Reserve System

Since records are maintained at the financial institutions, the cost to the Federal Reserve System 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 (50% Financial Managers @ \$48, 10% Legal Counsel @ \$54, and 40% Chief Executives @ \$76). Hourly rate for each occupational group are the median hourly wages (rounded up) from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2008, www.bls.gov/news.release/ocwage.nr0.htm Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/