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 Regulation H, subpart E (12 CFR 208.50-208.51) and Regulation Y, subpart G (12 CFR 225.61-225.67). 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 824 state member banks (SMBs) and 613 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 annual burden for these recordkeeping requirements is estimated to be 41,982 hours.

Background and Justification

Title XI of FIRREA, 12 U.S.C. 3331 et seq., directs the federal financial institutions regulatory agencies[2] 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

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[1] As of the December 31, 2010, Consolidated Reports of Condition and Income (FFIEC 031 & 041; OMB No. 7100-0036) report and the December 31, 2010, 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), and the National Credit Union Administration (NCUA).

[3] Section 1101, Title XI of FIRREA

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.

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, 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 for which 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. On December 10, 2010, after notice and comment, the agencies issued the revised *Interagency Appraisal and Evaluation Guidelines*.[4] These guidelines incorporate several appraisal-related guidance documents[5] that the agencies have issued over the past several years and provide clarification to the agencies' expectations for a regulated institution's compliance with the appraisal regulation.

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

[4] See 75 *Federal Register* 77450 (December 10, 2010).
[5] While several previously issued guidance documents were rescinded with the issuance of the revised guidelines, several appraisal-related guidance documents were retained, including SR letter 05-05, "FAQs on Interagency Statement on Independent Appraisal and Evaluation Function;" and SR letter 05-14, "Interagency FAQs on Residential Tract Development Lending."

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 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 onsite 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, and NCUA. As required by Title XI, these agencies adopted substantially similar appraisal regulations for the financial institutions they supervise. These agencies are currently addressing appraisal-related provisions in the Dodd-Frank Act, which may necessitate future rulemakings. In the event that the agencies amend their appraisal regulations, the Federal Reserve will consider the recordkeeping requirements arising from any proposed amendment to its appraisal regulation.

On February 1, 2012, the Federal Reserve published a notice in the *Federal Register* (77 FR 5015) requesting public comment for 60 days on the FR H-4 information collection. The comment period for this notice expired on April 2, 2012. The Federal Reserve did not receive any comments. On April 10, 2012, the Federal Reserve published a final notice in the *Federal Register* (77 FR 21560).

Sensitive Questions

This recordkeeping requirement contains no questions of a sensitive nature, as defined by Office of Management and Budget (OMB) guidelines.

Legal Status

The Board's Legal Division has determined that the recordkeeping requirements associated with the real estate appraisal standards for federally related transactions, set forth in the Board's Regulation H, subpart E (12 CFR 208.50-208.51) and Regulation Y, subpart G (12 CFR 225.61-225.67) are authorized pursuant to FIRREA (12 U.S.C. Section 3339). Since the information collection is not collected by the Federal Reserve, no issue of confidentiality under the Freedom of Information Act (FOIA) arises. However, if the Federal Reserve were to collect a copy of the appraisal report during an examination, the documents could be exempt from disclosure under FOIA (5 U.S.C Section 552(b)(4) and (b)(8)).

Estimate of Respondent Burden

The Federal Reserve estimates that these recordkeeping requirements affect 1,437 organizations supervised by the Federal Reserve. The annual frequency is an estimate of the number of real estate-related credit transactions 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 41,982 hours, as shown below. These recordkeeping requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

	Estimated number of respondents	*Annual frequency*	*Estimated average hours per response*	*Estimated annual burden hours*
SMBs (208.50 – 208.51)	824	148	0.25	30,488
BHC Subsidiaries (225.61 – 225.67)	613	75	0.25	11,494
Total	1,437			41,982

The total cost to the public is estimated to be $1,884,992.[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% Office & Administrative Support @ $16, 70% Financial Managers @ $50, 5% Legal Counsel @ $54, and 5% Chief Executives @ $80). 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 2010, www.bls.gov/news.release/ocwage.nr0.htm Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/