

Supporting Statement
OMB Control Number 1557-NEW
Higher-Risk Mortgage Appraisals

A. Justification.

1. Circumstances that make the collection necessary:

This information collection relates to a notice of proposed rulemaking issued by the Agencies¹ pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act,² to amend Regulation Z³ by requiring appraisals for *higher-risk mortgages*. Section 1471 of the Dodd-Frank Act established a new Truth in Lending (TILA)⁴ section 129H, which contains appraisal requirements applicable to *higher-risk mortgages* and prohibits a creditor from extending credit in the form of a higher-risk mortgage loan to any consumer without meeting those requirements.

The Federal banking agencies and the NCUA have issued rules and guidance governing the appraisal requirements applicable to insured depository institutions and credit unions. Those rules implement the requirements of title XI of the Financial Institutions Reform Recovery and Enforcement Act of 1989. The requirement that creditors obtain appraisals for loans that meet the definition of a higher-risk mortgage loan changes the current appraisal requirements. The current rule, adopted by the Federal banking agencies and the NCUA, specifies that for loans for which the transaction value is \$250,000 or less—which encompasses a majority of residential mortgages—an insured institution is permitted to obtain an evaluation rather than an appraisal performed by a licensed or certified appraiser. Under section 129H, if a loan meets the definition of a higher-risk mortgage loan, an appraisal is required regardless of the size of the loan. The new provision also adds a second appraisal requirement under some circumstances.

Higher-risk mortgage is defined as a *residential mortgage loan*⁵ (*closed-end consumer credit transaction*) secured by a principal dwelling with an annual percentage rate (APR) that exceeds certain statutory thresholds. The loans would be *higher-risk mortgage loans* if the APR exceeds the average prime offer rate (APOR) by 1.5 percent for first-lien loans, 2.5 percent for first-lien jumbo loans, and 3.5 percent for subordinate lien loans.

The definition of *higher-risk mortgage* expressly excludes qualified mortgages⁶, as

1 The Office of the Comptroller of the Currency, the Board of Governors of the Federal Reserve System, the Bureau of Consumer Financial Protection, the Federal Housing Finance Agency, and the National Credit Union Administration.

2 Public Law 111-203, 124 Stat. 1376 (Dodd-Frank Act).

3 12 CFR 1026.

4 15 U.S.C. 1601 *et seq.*

5 *Residential mortgage loan* is defined as any consumer credit transaction that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling or on residential real property that includes a dwelling, other than a consumer credit transaction under an open-end credit plan.[15 U.S.C. 1602(cc)(5)]

6 *Qualified mortgages* are excluded from the definition of higher-risk mortgage loan. The Bureau defined *qualified mortgage* when it finalized the rule to implement the Dodd-Frank Act's ability-to-repay requirements in TILA section 129C in January 2013. It has been estimated that about 90 percent of first mortgage originations will meet

defined in TILA section 129C, as well as reverse mortgage loans that are qualified mortgages as defined in TILA section 129C.

The proposal would allow a creditor to make a higher-risk mortgage loan only if the following conditions are met:

- The creditor obtains a written appraisal;
- The appraisal is performed by a certified or licensed appraiser;
- The appraiser conducts a physical property visit of the interior of the property;
- At application, the applicant is provided with a statement regarding the purpose of the appraisal, that the creditor will provide the applicant a copy of any written appraisal, and that the applicant may choose to have a separate appraisal conducted at the expense of the applicant; and
- The creditor provides the consumer with a free copy of any written appraisals obtained for the transaction at least three business days before closing.

In addition, the proposal would require a higher-risk mortgage loan creditor to obtain an additional written appraisal, at no cost to the borrower, under the following circumstances:

- The higher-risk mortgage loan will finance the acquisition of the consumer's principal dwelling;
- The seller who is selling what will become the consumer's principal dwelling acquired the home within 180 days prior to the consumer's purchase agreement (measured from the date of the consumer's purchase agreement); and
- The consumer is acquiring the home for a higher price than the seller paid, although comment is requested on whether a minimum threshold price increase would be appropriate.

The additional written appraisal, from a different licensed or certified appraiser, generally must include an analysis of the difference in sale prices (*i.e.*, the sale price paid by the seller and the acquisition price of the property as set forth in the consumer's purchase agreement), changes in market conditions, and any improvements made to the property between the date of the previous sale and the current sale. This requirement is designed to address fraudulent property flipping by seeking to ensure that the value of the property being used as collateral for the loan legitimately increased.

In response to comments, the final rule makes several changes to the requirements, Generally these changes result in additional exemptions from the requirements and more flexibility for creditors

the qualified mortgage definition. In addition, the Agencies propose to rely on exemption authority granted by the Dodd-Frank Act to exempt reverse mortgage loans and loans secured by residential structures, such as many types of manufactured homes. The final rule also exempts financing for the initial construction of a home and a temporary or bridge loan with a term of 12 months or less.

First, the Agencies have included a threshold for determining whether an additional appraisal is required when the seller is selling the property 180 days or less from when he or she purchased the property. The final rule provides that an additional appraisal is not required if: The seller acquired the property 90 or fewer days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 10 percent; or the seller acquired the property 91 to 180 days prior to the date of the consumer's agreement to acquire the property and the price in the consumer's agreement to acquire the property exceeds the seller's acquisition price by more than 20 percent.

Second, the Agencies have included a number of exemptions from the additional appraisal requirement. These exemptions are similar to exemptions contained in the anti flipping rules issued by HUD for the Federal Housing Administration's loan program. The exemptions are for extensions of credit that finance the purchase of property: From a local, State or Federal government agency; from a person who acquired title to the property through foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure as a result of the person's exercise of rights as the holder of a defaulted mortgage loan; from a non-profit entity as part of a local, State, or Federal government program under which the non-profit entity is permitted to acquire title to single-family properties for resale from a seller who acquired title to the property through the process of foreclosure, deed-in-lieu of foreclosure, or other similar judicial or non-judicial procedure; from a person who acquired title to the property by inheritance or pursuant to a court order of dissolution of marriage, civil union, or domestic partnership, or of partition of joint or marital assets to which the seller was a party; from an employer or relocation agency in connection with the relocation of an employee; from a servicemember, as defined in 50 U.S.C. Appx. 511(1), who received a deployment or permanent change of station order after the servicemember purchased the property; located in an area designated by the President as a federal disaster area, if and for as long as the Federal financial institutions regulatory agencies, as defined in 12 U.S.C. 3350(6), waive the requirements in title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, as amended (12 U.S.C. 3331 *et seq.*), and any implementing regulations in that area; or located in a rural county, as defined in 12 CFR 1026.35(b)(2)(iv)(A), the CFPB's rule on escrows for higher priced mortgage loans..

2. Use of the information:

The information collection requirements in this proposed rule are found in paragraphs (b) (1), (b)(2), (b)(3), (c), and (d) of 12 CFR 34.203. In the final rule, the requirements are found in paragraphs (c)(1), (c)(2),(d), (e) and (f). This information is needed to protect consumers and promotes the safety and soundness of creditors making higher-risk mortgage loans. This information will be used by creditors to evaluate real estate collateral in higher-risk mortgage loan transactions and by consumers entering these transactions. The collections of information are mandatory for creditors making higher-risk mortgage loans. While this rule imposes

requirements on creditors, because of statutory exemptions and the exemptions from the requirements included in the final rule, staff at the agencies believe that the majority of loans will not be subject to these requirements.

The proposed rule would require that, within three days of application, a creditor provide a disclosure that informs consumers regarding the purpose of the appraisal, that the creditor will provide the consumer a copy of any appraisal, and that the consumer may choose to have a separate appraisal conducted at the expense of the consumer (Initial Appraisal Disclosure).⁷ The final rule clarifies that the disclosure requirement can be met by compliance with the disclosure requirement imposed by the Equal Credit Opportunity Act's implementing Regulation B, 12 CFR 1002.14 (a)(2). If a loan meets the definition of a higher-risk mortgage loan, then the creditor would be required to obtain a written appraisal prepared by a certified or licensed appraiser who conducts a physical visit of the interior of the property that will secure the transaction, and send a copy of the written appraisal to the consumer (Written Appraisal).⁸ To qualify for the safe harbor provided under the proposed rule, a creditor would be required to review the written appraisal as specified in the text of the rule and appendix A.⁹ If a loan is classified as a higher-risk mortgage loan that will finance the acquisition of the property to be mortgaged, and the property was acquired within the previous 180 days by the seller at a price that was lower than the current sale price, then the creditor would be required to obtain an additional appraisal that meets the requirements described above (Additional Written Appraisal).¹⁰

The Additional Written Appraisal must also analyze:

- The difference between the price at which the seller acquired the property and the price the consumer agreed to pay;
- Changes in market conditions between the date the seller acquired the property and the date the consumer agreed to acquire the property; and
- Any improvements made to the property between the date the seller acquired the property and the consumer agreed to acquire the property.¹¹ A creditor would also be required to send a copy of the additional written appraisal to the consumer.¹²

3. Consideration of the use of improved information technology:

Respondents may use any type of improved information technology they have available to meet the requirements of this regulation.

7 12 CFR 34.203(c).

8 See proposed 12 CFR 34.203(b)(1) and (d).

9 See proposed 12 CFR 34.203(b)(2).

10 See proposed 12 CFR 34.203(b)(3).

11 See proposed 12 CFR 34.203(b)(3)(iv).

12 12 CFR 34.203(d).

4. Efforts to identify duplication:

This information is not available elsewhere.

5. Methods used to minimize burden if the collection has a significant impact on substantial number of small entities:

Not applicable. This collection does not have a significant impact on a substantial number of small entities.

6. Consequences to the Federal program if the collection were conducted less frequently:

Less frequent collection would result in safety and soundness concerns.

7. Special circumstances necessitating collection inconsistent with 5 CFR Part 1320:

Not applicable. This collection is conducted in accordance with the guidelines in 5 CFR 1320.6.

8. Efforts to consult with persons outside the agency:

On September 5, 2012 the Agencies issued a notice of proposed rulemaking for comment. 77 FR 54722. The comment period closed on October 5, 2012 and the agencies received over 200 unique comment letters. None of the comment letters commented on the Paperwork Reduction Act.

9. Payment to respondents.

Not applicable. There is no payment to respondents.

10. Any assurance of confidentiality:

Not applicable. No assurance of confidentiality is made.

11. Justification for questions of a sensitive nature:

Not applicable. No questions of a sensitive nature are asked.

12. Burden estimate:

Initial Appraisal

Under the initial appraisal process for higher risk mortgage loans ,¹³ the creditor would be required to provide a short, written disclosure within three days of application. Because the disclosure may be classified as a warning label supplied by the Federal government, the Agencies are assigning it no burden for purposes of this PRA analysis.¹⁴

In addition, the Agencies contemplate that once the TILA-RESPA integrated disclosure forms are finalized, the initial appraisal-related disclosure will be given as part of those forms. As such, this disclosure should not impose additional costs on creditors.

Additional Appraisal for Higher Risk Mortgages

Under the additional written appraisal requirement, if a loan is classified as a higher-risk mortgage loan that will finance the acquisition of the property to be mortgaged, and that property was acquired within the previous 180 days by the seller at a price that was lower than the current sale price, then the creditor would be required to obtain an additional written appraisal containing additional analyses. The additional written appraisal would have to be prepared by a certified or licensed appraiser different from the appraiser performing the other written appraisal for the higher-risk mortgage loan, and a copy of the additional appraisal must be sent to the consumer. It would also be required to meet the standards of the other written appraisal for the higher-risk mortgage loan. Thus, in order to qualify for the safe harbor, the written appraisal would also have to be reviewed for completeness.

The estimated burden includes the time required to investigate and verify the need for a second appraisal and, where necessary, conduct the second written appraisal. It also includes the time required to review the instructions and legal guidance and train loan officers.

Estimated number of respondents: 1,399.

Total estimated annual burden: 44,768 hours.

13. Estimate of annualized costs to respondents:

None.

14. Estimate of annualized costs to the government:

None.

¹³The current appraisal process for all federally related transactions originated by national banks or Federal savings associations is codified in 12 CFR 34 and 12 CFR 164, respectively and has been approved under OMB control number 1557-0190.

¹⁴The public disclosure of information originally supplied by the Federal government to the recipient for the purpose of disclosure to the public is not included within the definition of “collection of information.” 5 CFR 1320.3(c)(2).

15. Changes in burden:

The 44,768 hour increase in burden is due to the fact that this is a new information collection.

16. Information regarding collections whose results are planned to be published for statistical use:

The OCC has no plans to publish the information for statistical use.

17. Display of expiration date.

Not applicable.

18. Exceptions to certification statement.

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.