SUPPORTING STATEMENT
Appraisals for Higher-Risk Mortgage Loans
(3064-NEW)

INTRODUCTION

The Board, Bureau, FDIC, FHFA, NCUA, and OCC (collectively, the Agencies) are proposing to amend Regulation Z, which implements the Truth in Lending Act (TILA), and the official interpretation to the regulation. The proposed revisions to Regulation Z would implement a new TILA provision requiring appraisals for "higher-risk mortgages" that was added to TILA as part of the Dodd-Frank Wall Street Reform and Consumer Protection Act. Under the new TILA provision for mortgages with an annual percentage rate that exceeds the average prime offer rate by a specified percentage, creditors are required to obtain an appraisal or appraisals meeting certain specified standards, provide applicants with a notification regarding the use of the appraisals, and give applicants a copy of the written appraisals used. The FDIC is seeking OMB approval for this new information collection.

A. JUSTIFICATION

1. Circumstances and Need

This information collection relates to a notice of proposed rulemaking issued by the Agencies[1] pursuant to the Dodd-Frank Wall Street Reform and Consumer Protection Act,[2] to amend Regulation Z[3] 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.

Higher-risk mortgage is defined as a *residential mortgage loan* secured by a principal dwelling with an annual percentage rate (APR) that exceeds the average prime offer rate (APOR) for a comparable transaction as of the date the interest rate is set:

- By 1.5 or more percentage points, for a first lien residential mortgage loan with an original principal obligation amount that does not exceed the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of

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*.

such interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454);

- By 2.5 or more percentage points, for a first lien residential mortgage loan having an original principal obligation amount that exceeds the amount for the maximum limitation on the original principal obligation of a mortgage in effect for a residence of the applicable size, as of the date of such interest rate set, pursuant to the sixth sentence of section 305(a)(2) of the Federal Home Loan Mortgage Corporation Act (12 U.S.C. 1454); and
- By 3.5 or more percentage points for a subordinate lien residential mortgage loan.

The definition of *higher-risk mortgage* expressly excludes qualified mortgages, as defined in TILA section 129C, as well as reverse mortgage loans that are qualified mortgages as defined in TILA section 129C.

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.[5]

Qualified mortgages are excluded from the definition of higher-risk mortgage loan. The Bureau will define *qualified mortgage* when it finalizes the proposed rule issued by the Board to implement the Dodd-Frank Act's ability-to-repay requirements in TILA section 129C. In addition, the Agencies propose to rely on exemption authority granted by the Dodd-Frank Act to exempt reverse mortgage loans and loans secured solely by residential structures, such as many types of manufactured homes.

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.

5 15 U.S.C. 1602(cc)(5).

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 the following information:

- 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.

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. 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.

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).[6] 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).[7] To qualify for the safe harbor provided under the proposed rule, a

6 12 CFR 34.203(c).
7 See proposed 12 CFR 34.203(b)(1) and (d).

creditor would be required to review the written appraisal as specified in the text of the rule and appendix A.[8] 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).[9]

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.[10] A creditor would also be required to send a copy of the additional written appraisal to the consumer. [11]

3. Use of Technology to Reduce Burden

Institutions are free to use whatever methods are the least burdensome to them for recording and retaining the necessary information for FDIC review.

4. Efforts to Identify Duplication

Similar information is not available from any other single source.

5. Minimizing Burden on Small Entities

The information required is the minimum necessary for the FDIC to determine the effect of these higher risk mortgages relating to the safety and soundness of the bank.

6. Consequences of Less Frequent Collections

The collection of information is required only when higher risk mortgages are sought.

7. Special Circumstances

8 See proposed 12 CFR 34.203(b)(2).
9 See proposed 12 CFR 34.203(b)(3).
10 See proposed 12 CFR 34.203(b)(3)(iv).
11 12 CFR 34.203(d).

None.

8. Consultation with Persons Outside the FDIC

A “first” Federal Register notice seeking public comment for a 60-day period was published on September 5, 2012 (77 FR 54722). No comments were received.

9. Payment or Gift to Respondents

None.

10. Confidentiality

The information will be kept private to the extent provided by law

11. Information of a Sensitive Nature

None.

12. Estimate of Annual Burden

Under the proposed Initial Appraisal Disclosure, 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.[12] In addition, the Agencies contemplate that once the TILA-RESPA integrated disclosure forms are finalized, the appraisal-related disclosure will be given as part of those forms. As such, this disclosure should not impose additional costs on creditors.

The estimated burden for the proposed Written Appraisal requirements includes the burden the creditor bears to review for completeness the written appraisal in order to satisfy the safe harbor criteria set forth in the proposed rule and to send a copy of the written appraisal to the consumer.

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

12 The 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).

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 provided in the proposed rule, the written appraisal would also have to be reviewed for completeness.

The Agencies estimate that respondents would take, on average, 15 minutes per appraisal to comply with the proposed disclosure requirements under the Written Appraisal requirement. The agencies estimate further that respondents would take, on average, 15 minutes per high risk mortgage to investigate and verify the need for a second appraisal; and then an additional 15 minutes to comply, where necessary, with the proposed disclosure requirements of the Second Written Appraisal. For the small fraction of loans requiring a second appraisal, the burden is similar to the prior information collection.

Respondents will also have to review the instructions and legal guidance associated with the proposed rule and train loan officers regarding the proposed rule. The FDIC's one-time costs are 10,284 hours. The estimated one-time burden is calculated assuming a fixed burden per institution to review the regulations and fixed burden per estimated loan officer in training costs.

The following respondent count reflects all institutions estimated to originate high risk mortgages.

A. Review and provide copy of full interior appraisal

Estimated number of respondents: 2571

Estimated responses per respondent: 24

Estimated time per response: 0.25 hours

Total annual burden hours: 5142 hours

B. Investigate and verify requirement for second appraisal

Estimated number of respondents: 2571

Estimated responses per respondent: 15

Estimated time per response: 0.25 hours

Average annual burden hours: 9641 hours

C. Conduct and provide second appraisal

Estimated number of respondents: 2571

Estimated responses per respondent: 1

Estimated time per response: 0.25 hours

Average annual burden hours: 643 hours

13. Capital, Start-up, Operating, and Maintenance Cost Burden

None.

14. Estimated Annual Cost to Federal Government

None

15. Reason for Change in Burden

This is a new collection of information.

16. Publication

No publication will be made of this information.

17. Display of Expiration Date

Not applicable.

18. Exceptions to Certification

None.

B. STATISTICAL METHODS

Not Applicable