SUPPORTING STATEMENT
Appraisals for Higher-Price Mortgage Loans
(3064-0188)

INTRODUCTION

The Board, Bureau, FDIC, FHFA, NCUA, and OCC (collectively, the Agencies) are amending 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 resubmitting this information collection for OMB approval.

A. JUSTIFICATION

1. Circumstances and Need

This information collection relates to a notice of final 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. In addition, the Agencies 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 rule allows 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 rule requires a higher-risk mortgage loan creditor to obtain an additional written appraisal, at no cost to the borrower, under the following circumstances:

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

- 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.

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. <u>Use of the information:</u>

The information collection requirements in this rule are 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 rule requires 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 rule, a creditor is 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 is required to obtain an additional appraisal that meets the requirements

6 12 CFR 34.203(c).
7 See proposed 12 CFR 34.203(b)(1) and (d).
8 See proposed 12 CFR 34.203(b)(2).

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

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). Twenty-one comments were

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).

received. FDIC responded to the comments in the preamble of the final rule:

> **Public Comments on the Proposal**
> Several credit unions, banks, and an individual commenter believed that the definition of ‘‘higher-risk mortgage loan’’ did not adequately capture loans that were truly ‘‘high risk.’’ Several of these commenters stated that the definition should account not only for the cost of the loan, but also for other risk factors, such as debt to income ratio, loan amounts, and credit scores and other measures of a consumer's creditworthiness. A bank commenter believed that the interest rate thresholds in the definition were ambiguous and arbitrary and asserted that, for example, 1.5 percent was not an exceptionally high interest margin in comparison with interest margins for credit cards and other financing. A credit union commenter believed the rule would apply to consumers who were in fact a low credit risk.
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> Most commenters on the definition expressly supported using the existing term HPML rather than the new term ‘‘higher-risk mortgage loan.’’ Commenters including, among others, a mortgage company, bank, credit union, financial holding company, credit union trade association, and banking trade association, asserted that the use of two terms with similar meanings would be confusing to the mortgage credit industry. Some asserted that consumers would be confused by this as well. Some of these commenters noted that Regulation Z also already used the term ‘‘high-cost mortgage’’ with different requirements and believed this third term would further compound consumer and industry confusion. Of commenters who expressed a preference for the term that should be used, most recommended using the term HPML because this term has been used by industry for some time.
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> Some commenters on this issue also advocated making the rate triggers and overall definition the same for existing HPMLs and ‘‘higher-risk mortgages’’ regardless of the terms used. They argued that this would reduce compliance burdens and confusion and ease costs associated with developing and managing systems. One commenter believed that developing a single standard would also avoid creating unnecessary delay and additional cost for consumers in the origination process.
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> A few commenters acknowledged key differences between the statutory meaning of ‘‘higher-risk mortgage’’ and the regulatory term HPML, and suggested ways of harmonizing the two definitions. For example, these commenters noted that ‘‘higher-risk mortgages’’ do not include qualified mortgages, whereas HPMLs do. To address this difference, one commenter suggested, for example, that the appraisal requirements should apply to HPMLs as currently defined, except for qualified mortgages. Other commenters suggested that the basic definition of HPML be understood to refer solely to the rate thresholds and suggested that the exemption for qualified mortgages from the appraisal rules be inserted as a separate provision. They did not discuss how to address additional variances in the types of transactions excluded from HPML and ‘‘higher-risk mortgage,’’ respectively, such as the exclusion from the meaning of HPML but not the statutory definition of ‘‘higher-risk mortgage’’ for construction only and bridge loans.

> Other commenters also acknowledged that the current definition of HPML includes only two rate thresholds—one for first-lien mortgages (APR exceeds APOR by 1.5 percentage points) and the other for subordinate-lien mortgages (APR exceeds APOR by 3.5 percentage points). By contrast, the statutory definition of ‘‘higher-risk mortgage’’ has an additional rate tier for first-lien jumbo mortgages (APR exceeds APOR by 2.5 percentage points). The HPML requirements in Regulation Z apply a rate threshold of 2.5 percentage points above APOR to jumbo loans only for purposes of the requirement to escrow. The commenters who noted this distinction held the view that the ‘‘middle tier’’ threshold would not have a practical advantage for lenders or consumers. Instead, they recommended adopting a final rule with a single APR trigger of 1.5 percentage points above APOR for all first-lien loans.

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 Initial Appraisal Disclosure, the creditor is 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 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 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

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).

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 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