

**Supporting Statement for the
Recordkeeping Requirements Associated with the
Real Estate Lending Standards Regulation for State Member Banks
(Reg H-5; OMB No. 7100-0261)**

Summary

The Board of Governors of the Federal Reserve System (Board), 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 Lending Standards Regulation for State Member Banks (Reg H-5; OMB No. 7100-0261). This information collection is a mandatory recordkeeping requirement contained in the Board's Regulation H (12 CFR 208.51) that implements section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). State member banks must adopt and maintain a written real estate lending policy. Also, banks must identify their loans in excess of the supervisory loan-to-value limits and report (at least quarterly) the aggregate amount of the loans to the bank's board of directors. There is no formal reporting form and the information is not submitted to the Federal Reserve. The total annual burden is estimated to be 17,000 hours.

Background and Justification

Section 304 of FDICIA requires each of the federal banking agencies¹ to adopt uniform regulations prescribing standards for extensions of credit secured by liens on or interest in real estate or made for the purpose of financing the construction of a building or other improvements in real estate, regardless of whether a lien has been taken on the property. In establishing these standards, the agencies considered the risk posed to the deposit insurance funds by such extensions of credit, the need for safe and sound operation of insured depository institutions, and the availability of credit.

On December 2, 1992, the agencies adopted uniform real estate lending standards regulations. These regulations require depository institutions to adopt and maintain written real estate lending policies that are consistent with safe and sound banking practices. The institution's lending policies must establish: loan portfolio diversification standards; prudent underwriting standards, including loan-to-value limits; loan administration procedures; and loan documentation, approval and reporting requirements. The policies must be appropriate to the size of the institution and the nature and scope of its operations. The lending policies should also reflect consideration of the *Interagency Guidelines for Real Estate Lending Policies* (Guidelines) that the agencies established as an appendix to the regulation. These regulatory requirements became effective on March 19, 1993. The institution's board of directors must review, at least annually, the real estate lending policies.

While the Board has not amended its regulation since its adoption, the agencies have issued guidance on real estate lending standards, including:

¹ Board of Governors of the Federal Reserve System (Board); Office of the Comptroller of the Currency (OCC), Treasury; the Federal Deposit Insurance Corporation (FDIC); and Office of Thrift Supervision (OTS), Treasury; (collectively, the agencies)

- October 1999 - *Interagency Guidance on High Loan-to-Value Residential Real Estate Lending* (SR letter 99-26) reminds banks of the risk posed by high loan-to-value (LTV) residential loans and clarifies the supervisory LTV limits in the Guidelines.
- May 2005 - *Interagency Credit Risk Mitigation Guidance for Home Equity Lending* (SR letter 05-11) promotes sound risk management practices for banks' home equity lending programs.
- September 2006 - *Interagency Guidance on Nontraditional Mortgage Product Risks* (SR letter 06-15) reminds banks that such lending activity should comply with the underwriting standards in the agencies' Guidelines.
- December 2006 - *Interagency Guidance on Concentrations in Commercial Real Estate Lending* (SR letter 07-1) reminds banks with high CRE loan concentrations of the importance of sound risk management practices.
- July 2007 - *Interagency Statement on Subprime Mortgage Lending* (SR letter 07-12) reinforces the underwriting standards of the agencies' Guidelines.
- October 2009 – *Interagency Statement on Prudent Commercial Real Estate Loan Workouts* (SR letter 09-7) promotes supervisory consistency and enhances the transparency of CRE workout transactions so that supervisory policies and actions do not inadvertently curtail the availability of credit to sound CRE borrowers.
- April 2012 – *Federal Reserve Policy Statement on Rental of Residential Other Real Estate Owned Properties (OREO)* (SR Letter 12-5) reminds banks that regulations and policies permit the rental of OREO properties as part of an orderly disposition strategy.
- June 2012 – *Questions and Answers for Federal Reserve – Regulated Institutions Related to the Management of Other Real Estate Owned (OREO)* (SR Letter 12-10) conveys various questions and answers with the intent of clarifying existing policies and promoting prudent practices regarding the management of OREO.

Description of Information Collection

Each state member bank must maintain written internal real estate lending policies. These policies may be incorporated into the bank's overall lending policies and must address the requirement of the Board's regulation and guidelines as described above. Further, the bank's own internal LTV limits may not exceed the supervisory LTV limits as set forth in the Board's guidelines. The guidelines permit a bank to originate or purchase loans with LTV ratios in excess of the supervisory limits, based on the support provided by other credit factors. For such loans, the bank must identify the loan in its records as being in excess of the supervisory LTV limits (referred to as high LTV loans). The aggregate amount of high LTV loans is to be reported (aggregate report) at least quarterly to the bank's board of directors and may not exceed 100 percent of the bank's total capital.

Time Schedule for Information Collection

The Federal Reserve System neither collects nor publishes the information. Bank examiners verify compliance with the real estate lending standards regulation and guidelines during examinations of state member banks.

Legal Status

The Board's Legal Division has determined that section 304 of FDICIA (12 U.S.C. § 1828 (o)) authorizes the Federal Reserve to require the recordkeeping requirements associated with the Board's Regulation H (12 CFR 208.51). Since the information is not collected by the Federal Reserve, no issue of confidentiality under the Freedom of Information Act arises. However, information gathered by the Federal Reserve during examinations of state member banks would be deemed exempt from Freedom of Information Act (FOIA) disclosure by exemption 8 of FOIA. (5 U.S.C. § 552(b)(8)). In addition, exemptions (b)(4) and (b)(6) of FOIA, (5 U.S.C. § 552(b)(4) and (b)(6)) also may exempt from disclosure certain data (specifically, individual loans identified as in excess of supervisory loan-to-value limits) collected in response to these requirements if gathered by the Federal Reserve, depending on the particular circumstances. These additional exemptions relate to confidential commercial and financial information, and personal information, respectively. Applicability of these exemptions would have to be determined on a case-by-case basis.

Consultation Outside the Agency

All of the Board's rulemaking activities under Regulation H are subject to the notice and comment requirements of the Administrative Procedure Act. 5 U.S.C. § 551 et seq.

On July 24, 2014, the Federal Reserve published a notice in the *Federal Register* (79 FR 43045) requesting public comment for 60 days on the extension, without revision, of the Recordkeeping Requirements Associated with the Real Estate Lending Standards Regulation for State Member Banks. The comment period for this notice expires on September 22, 2014. The Federal Reserve did not receive any comments. On October 1, 2014, the Federal Reserve published a final notice in the *Federal Register* (79 FR 59263).

Sensitive Questions

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

Estimate of Respondent Burden

As of June 2013, 850 state member banks were required to provide an aggregate report to the bank's board of directors. There were no *de novo* state member banks in the past three years that would have been required to create a real estate lending policy statement. However, the number of respondents may reach or exceed 10.² To avoid potentially underestimating the burden, the Federal Reserve has increased the number of respondents to one. The annual recordkeeping burden for real estate lending standards is estimated to be 17,000 hours. These

² Reports with fewer than 10 respondents per year are not subject to the Paperwork Reduction Act (PRA); however, because the reporting requirements pertain to all State Member Banks, the proposal is processed following PRA procedures.

recordkeeping requirements represent less than 1 percent of the total Federal Reserve System paperwork burden.

| | <i>Estimated number of respondents³</i> | <i>Estimated annual frequency</i> | <i>Estimated average hours per response</i> | <i>Estimated Total annual burden hours</i> |
|--|--|---|---|--|
| Aggregate Report to the Board of Directors | 849 | 4 | 5 | 16,980 |
| Policy Statement (<i>de novo</i>) | 1 | 1 | 20 | <u>20</u> |
| <i>Total</i> | | | | 17,000 |

The annual cost to state member banks is estimated to be \$865,300⁴

Estimate of Cost to the Federal Reserve System

The cost to the Federal Reserve System associated with this recordkeeping requirement is minimal because there are no reporting forms and the information is not submitted to the Federal Reserve.

³ Of the 850 respondents required to comply with this information collection, 630 are considered a small entity as defined by the Small Business Administration (i.e., entities with less than \$550 million in total assets).

<http://www.sba.gov/content/table-small-business-size-standards>

⁴ Total cost to the public was estimated using the following formula: percent of staff time, multiplied by annual burden hours, multiplied by hourly rates (30% Office & Administrative Support at \$18, 45% Financial Managers at \$61, 15% Lawyers at \$63, and 10% Chief Executives at \$86). Hourly rate for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), Occupational Employment and Wages 2013, www.bls.gov/news.release/ocwage.nr0.htm. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/