

**Supporting Statement for the  
Interagency Guidance on Managing Compliance and  
Reputation Risks for Reverse Mortgage Products  
(FR 4029; OMB No. 7100-0330)**

**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 voluntary Interagency Guidance on Managing Compliance and Reputation Risks for Reverse Mortgage Products (FR 4029; OMB No. 7100-0330). The Federal Reserve is required under the Paperwork Reduction Act (PRA) to renew and reauthorize, every three years, information collections for financial institutions supervised by the Federal Reserve. The PRA classifies reporting, recordkeeping, and disclosure requirements such as those described in the reverse mortgage guidance as an “information collection.”<sup>1</sup> The requirements of the PRA apply to voluntary collections as well as mandatory collections.<sup>2</sup>

Reverse mortgages are home-secured loans typically offered to elderly consumers. Financial institutions currently provide two types of reverse mortgage products: the lenders’ own proprietary reverse mortgage products and reverse mortgages insured by the Department of Housing and Urban Development’s Federal Housing Administration (FHA). Reverse mortgage loans insured by the FHA are made pursuant to the guidelines and rules established by HUD’s Home Equity Conversion Mortgage (HECM) program.<sup>3</sup> HECM loans and proprietary reverse mortgages are also subject to the rules that implement consumer protection laws such as the Real Estate Settlement Procedures Act (RESPA) and the Truth in Lending Act (TILA).

In August 2010, the Federal Financial Institutions Examination Council (FFIEC), on behalf of its member agencies,<sup>4</sup> published a *Federal Register* notice adopting supervisory guidance titled “Reverse Mortgage Products: Guidance for Managing Compliance and Reputation Risks.”<sup>5</sup> The guidance is designed to help financial institutions with risk management and assist financial institutions’ efforts to ensure that their reverse mortgage lending practices adequately address consumer compliance and reputation risks.

The reverse mortgage guidance discusses the reporting, recordkeeping, and disclosures required by federal regulations and also discusses consumer disclosures that financial institutions typically provide as a standard business practice. These are not deemed to constitute “information collections” established pursuant to the supervisory guidance. However, the FFIEC agencies identified other areas of the guidance as “information collections” subject to the PRA’s requirements.

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<sup>1</sup> 44 U.S.C. § 3501 *et seq.*

<sup>2</sup> 44 U.S.C. § 3502(3); 5 C.F.R. 1320.3(c).

<sup>3</sup> See 12 U.S.C. § 1715z–20; 24 C.F.R. part 206.

<sup>4</sup> The Federal Reserve, the Federal Deposit Insurance Corporation, the National Credit Union Administration, the Office of the Comptroller of the Currency, and the Office of Thrift Supervision.

<sup>5</sup> 75 FR 50801.

The Federal Reserve accounts for the paperwork burden only for financial institutions that the Federal Reserve supervises.<sup>6</sup> It is estimated that the total annual burden associated with the guidance for Federal Reserve-supervised financial institutions is 816 hours.

## **Background and Justification**

Reverse mortgages enable eligible borrowers to remain in their homes while accessing their home equity in order to meet emergency needs, supplement their incomes, or, in some cases, purchase a new home – without subjecting borrowers to ongoing repayment obligations during the life of the loan. The use of reverse mortgages could expand significantly in coming years as the U.S. population ages and more homeowners become eligible for reverse mortgage products. If prudently underwritten and used appropriately, these products have the potential to become an increasingly important product for addressing certain credit needs of an aging population.

Reverse mortgages present substantial risks both to financial institutions and to consumers and, as with any type of home-secured loan, it is crucial that consumers understand the product terms and the nature of their obligations. In addition to consumer financial protection concerns that raise corresponding financial institution compliance and reputation risks, reverse mortgage products may present other risks, such as credit, interest rate, and liquidity risks, especially for proprietary reverse mortgage products lacking the insurance offered under the federal HECM program.

The 2010 reverse mortgages guidance is designed to help financial institutions ensure that their risk management and consumer financial protection practices adequately address the compliance and reputation risks raised by reverse mortgage lending. The guidance discusses the general features of reverse mortgage products, relevant legal requirements, and consumer financial protection concerns raised by reverse mortgages. The guidance focuses on the need for banks, thrifts, and credit unions to provide clear and balanced information to consumers about the risks and benefits of these products.

Both proprietary products and HECMs are subject to various laws governing mortgage lending including the Federal Trade Commission Act, RESPA, TILA, and fair lending laws. HECMs are also subject to an extensive regulatory regime established by HUD, including provisions for FHA insurance of HECM loans that protect both lenders and reverse mortgage borrowers. The guidance supplements those requirements by advising lenders about additional practices that should be implemented to manage the risks associated with reverse mortgage products.

## **Description of Information Collection**

The guidance describes reporting, recordkeeping, and disclosures for both proprietary and HECM reverse mortgages. A number of these disclosures are “usual and customary” business practices for proprietary and HECM reverse mortgages, and these would not meet the PRA’s

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<sup>6</sup> State member banks that originate proprietary reverse mortgages.

definition of “paperwork.” Other included disclosure requirements are currently mandated by RESPA or TILA for all reverse mortgage loans and information collections required by HUD’s rules for HECM loans.<sup>7</sup> Discussion of these requirements in the guidance is also not considered additional paperwork burden imposed by the guidance.

Proprietary reverse mortgage products, however, are not subject to HUD’s rules for HECM loans. To the extent that the interagency guidance applies HECM requirements to proprietary loans, this would meet the PRA’s definition of paperwork burden.

There are also additional provisions in the guidance that apply to both proprietary and HECM reverse mortgages that do not meet the “usual and customary” standard, are not covered by already approved information collections and, therefore, likewise meet the PRA’s definition of paperwork burden.

#### *Proprietary Reverse Mortgages*

Financial institutions offering proprietary reverse mortgages are encouraged under the guidance to follow or adopt relevant HECM requirements for mandatory counseling, disclosures, affordable origination fees, restrictions on cross-selling of ancillary products, and reliable appraisals.

#### *Proprietary and HECM Reverse Mortgages*

Financial institutions offering either proprietary or HECM reverse mortgages are encouraged to develop clear and balanced product descriptions and make them available to consumers shopping for a mortgage. They should set forth a description of how disbursements can be received and include timely information to supplement disclosures mandated by TILA and other disclosures. Promotional materials and product descriptions should include information about the costs, terms, features, and risks of reverse mortgage products.

Financial institutions should adopt policies and procedures that prohibit directing a consumer to a particular counseling agency or contacting a counselor on the consumer’s behalf. They should adopt clear written policies and establish internal controls specifying that neither the lender nor any broker will require the borrower to purchase any other product from the lender in order to obtain the mortgage. Policies should be clear so that originators do not have an inappropriate incentive to sell other products that appear linked to the granting of a mortgage. Legal and compliance reviews should include oversight of compensation programs so that lending personnel are not improperly encouraged to direct consumers to particular products.

Financial institutions making, purchasing, or servicing reverse mortgages through a third party should conduct due diligence and establish criteria for third-party relationships and compensation. They should set requirements for agreements and establish systems to monitor compliance with the agreement and applicable laws and regulations. They should also take

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<sup>7</sup> OMB Control No. 2502-0524.

corrective action if a third party fails to comply. Third-party relationships should be structured in a way that does not conflict with RESPA.

### **Time Schedule for Information Collection and Publication**

The information collection covered by the guidance is voluntary. Records are maintained by each financial institution; therefore, they are not directly collected or published by the Federal Reserve System.

### **Legal Status**

Previously, the Board's Legal Division determined that the Federal Reserve was authorized to issue this guidance pursuant to its authority under section 18(f) of the Federal Trade Commission Act, which authorized the Board to prescribe regulations regarding unfair or deceptive acts or practice by banks (15 U.S.C. § 57a(f)) and section 105 of the Truth in Lending Act, which authorized the Board to prescribe regulations to carry out the purposes of the Truth in Lending Act (15 U.S.C. § 1604). However, under the Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) much of the Federal Reserve's authority under these laws was transferred to the Consumer Financial Protection Bureau. Nonetheless, we continue to believe that the Board has the authority to issue this guidance pursuant to its authority under section 39 of the Federal Deposit Insurance Act (FDI Act), which generally authorizes the Federal Reserve to establish safety and soundness standards for depository institutions supervised by the Board (12 U.S.C. § 1381p-1(a)). Financial institutions' obligation under this guidance is voluntary.

Because the documentation required by the guidance is maintained by each institution, the Freedom of Information Act (FOIA) would only be implicated if the Federal Reserve's examiners retained a copy of this information as part of an examination or supervision of a bank. However, records obtained as a part of an examination or supervision of a bank are exempt from disclosure under FOIA exemption (b)(8), for examination material (5 U.S.C. § 552(b)(8)). In addition, the information may also be kept confidential under exemption 4 of the FOIA which protects commercial or financial information obtained from a person that is privileged or confidential (5 U.S.C. § 552(b)(4)).

### **Consultation Outside the Agency**

On June 23, 2015, the Federal Reserve published a notice in the *Federal Register* (80 FR 35953) requesting comment for 60 days on the FR 4029. The comment period for this notice expired on August 24, 2015. The Federal Reserve did not receive any comments. On September 11, 2015, the Federal Reserve published a final notice in the *Federal Register* (80 FR 54790).

### **Estimate of Respondent Burden**

As current market conditions have reduced the number of industry-wide financial institutions offering proprietary reverse mortgages to fewer than 10, the Federal Reserve is not

now seeking OMB approval for the HECM-like consumer protections applicable to such mortgages. The Federal Reserve is seeking to renew requirements, for HECM and proprietary reverse mortgages, related to policies and procedures. To the extent that policies and procedures are needed, they would be supplementary to existing lending policies and procedures. Costs associated with program review and maintenance should be minimal.

The total annual burden for the financial institutions subject to the guidance is estimated to be 816 hours. The Federal Reserve estimates that respondents would take an average of 40 hours to implement policies and procedures and 8 hours annually to maintain policies and procedures. These recordkeeping requirements represent less than one percent of total Federal Reserve paperwork burden.

<b>FR 4029</b>	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Implementation of Policies and Procedures	17	1	40	680
Review and Maintenance of Policies and Procedures	17	1	8	<u>136</u>
<i>Total</i>				816

The cost to the public for this information collection is estimated to be \$42,228.<sup>8</sup>

### **Sensitive Questions**

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

### **Estimate of Cost to the Federal Reserve System**

The cost to the Federal Reserve System is negligible.

<sup>8</sup> 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 \$17, 45% Financial Managers at \$63, 15% Lawyers at \$64, and 10% Chief Executives at \$87). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor and Statistics (BLS), *Occupational Employment and Wages May 2014*, published March 25, 2015, [www.bls.gov/news.release/ocwage.nr0.htm](http://www.bls.gov/news.release/ocwage.nr0.htm). Occupations are defined using the BLS Occupational Classification System, [www.bls.gov/soc/](http://www.bls.gov/soc/).