

**Supporting Statement for the
Recordkeeping and Disclosure Requirements Associated with
Loans Secured by Real Estate Located in Flood Hazard Areas
Pursuant to Section 208.25 of Regulation H (Reg H-2; OMB No. 7100-0280)**

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, with revision, the Recordkeeping and Disclosure Requirements Associated with Loans Secured by Real Estate Located in Flood Hazard Areas Pursuant to Section 208.25 of Regulation H (Reg H-2; OMB 7100-0280). The Paperwork Reduction Act (PRA) classifies recordkeeping or disclosure requirements of a regulation as an information collection.

In general, the federal flood insurance statutes and Regulation H provide that a lender shall not make, increase, extend, or renew a loan secured by a building or mobile home located in a special flood hazard area unless the secured property is covered by flood insurance for the term of the loan. With respect to the recordkeeping and disclosure provisions, the regulation requires state member banks to:

- retain a completed copy of the Standard Flood Hazard Determination Form developed by the Federal Emergency Management Agency (standard FEMA form). The form is used by lenders to document their determination of whether improved property securing a loan is in a special flood hazard area;
- notify a borrower and servicer when loans secured by improved property are determined to be in a special flood hazard area and notify them whether flood insurance is available;
- notify a borrower of the borrower's obligation to obtain flood insurance if the lender determines at any time during the term of the loan that the improved property securing the loan is not covered by adequate flood insurance. If the borrower fails to obtain the flood insurance within 45 days of this notification, the state member bank or its servicer must purchase insurance and may charge the borrower for the cost of the premiums; and,
- notify the Federal Emergency Management Agency (FEMA) of the identity of, and any change in, the servicer of a loan secured by improved property in a special flood hazard area.

The information collection requirements under the flood hazard provisions of Regulation H are triggered by specific events in the lending process.

The Office of the Comptroller of the Currency (OCC), Board of Governors of the Federal Reserve System (Board), Federal Deposit Insurance Corporation (FDIC), the Farm Credit Administration (FCA), and the National Credit Union Administration (NCUA) (collectively, the agencies) are amending their regulations regarding loans in areas having special flood hazards to implement certain provisions of the Homeowner Flood Insurance Affordability Act of 2014 (HFIAA), which amends some of the changes to the Flood Disaster Protection Act of 1973 mandated by the Biggert-Waters Flood Insurance Reform Act of 2012 (Biggert-Waters).

Specifically, the July 2015 final rule¹ requires the escrow of flood insurance payments on residential improved real estate securing a loan, consistent with the changes set forth in HFIAA. The July 2015 final rule also incorporates an exemption in HFIAA for certain detached structures from the mandatory flood insurance purchase requirement. Furthermore, the July 2015 final rule implements the provisions of Biggert-Waters related to the force placement of flood insurance.

The 850 state member banks supervised by the Federal Reserve are deemed respondents that must comply with these Regulation H requirements. The total current annual burden associated with these requirements is estimated to be 33,221 hours for the 850 state member banks.² The Federal Reserve estimates that the proposed revisions would impose a net burden increase of 32,867 hours.

Background and Justification

Section 208.25 of Regulation H implements provisions of the National Flood Insurance Act of 1968 (1968 Act) and the Flood Disaster Protection Act of 1973 (FDPA), as amended by the National Flood Insurance Reform Act of 1994 (1994 Reform Act).

The 1968 Act made federally subsidized flood insurance available to owners of improved real estate or mobile homes located in special flood hazard areas if their community participates in the National Flood Insurance Program (NFIP). A special flood hazard area is an area within a floodplain having a 1 percent or greater chance of flooding in any given year. These areas are delineated on maps FEMA issues for individual communities. A community establishes its eligibility to participate in the NFIP by adopting and enforcing floodplain management measures to regulate new construction and by making substantial improvements within its special flood hazard areas to eliminate or minimize future flood damage.

The FDPA amended the 1968 Act by requiring each federal agency responsible for the supervision, approval, regulation, or insuring of banks, savings and loan associations, or similar institutions to issue regulations to implement its provisions. Under these regulations, lenders must require flood insurance on improved real estate or mobile homes serving as collateral for a loan if the property is located in a special flood hazard area in a participating community. To implement statutory amendments enacted in 1974, the regulations required lenders to notify borrowers when loans are secured by property located in a special flood hazard area and whether federal disaster assistance is available in the event of a flood.

The 1994 Reform Act comprehensively revised the federal flood insurance statutes with the intention of increasing compliance with the flood insurance requirements and increasing participation in the NFIP. The revisions were designed to provide additional income to the National Flood Insurance Fund and to decrease the financial burden of flooding on the federal

¹ See 80 FR 43216 (July 21, 2015).

² While FEMA is responsible for accounting for the paperwork burden associated with lenders' *completion* of the standard FEMA form, the Federal Reserve and other depository institution supervisory agencies account for the paperwork burden associated with the disclosure and recordkeeping requirements.

government, taxpayers, and flood victims. The 1994 Reform Act specifically required the federal financial regulatory agencies to amend their regulations³ and require lenders to:⁴

- use the standard form created by FEMA to determine whether property securing a loan is in a special flood hazard area;⁵
- notify a borrower of the borrower's obligation to obtain flood insurance if the lender determines at any time during the term of the loan that the improved property securing the loan is not covered by adequate flood insurance. If the borrower fails to obtain the flood insurance within 45 days of this notification, the state member bank or its servicer must purchase insurance and may charge the borrower for the cost of the premiums; and
- notify FEMA of the identity of, and any change in, the servicer of a loan.

Description of Information Collection

The information collection requirements under the Regulation H flood insurance are as follows:

Recordkeeping Requirement - Records of compliance (Section 208.25(f)(2))

Regulation H requires a state member bank to retain a copy of the completed FEMA standard flood hazard determination form. The records, which may be retained in hard copy or electronic form, must be kept for the entire period of time that the bank owns the loan.

Disclosure Requirement - Notice of special flood hazards and availability of federal disaster relief assistance (Section 208.25(i))

When a state member bank makes, increases, extends, or renews a loan secured by a building or a mobile home located or to be located in a special flood hazard area, Regulation H requires that the bank mail or deliver a written notice to the borrower and to the servicer in all cases, indicating whether flood insurance is available under the NFIP for the collateral securing the loan. Specifically, the contents of the notice must include:

- a warning that the building or mobile home is or will be located in a special flood hazard area;
- a description of the flood insurance purchase requirements;

³ The 1994 Reform Act was implemented through a joint final rule by the Board, the OCC, FDIC, Office of Thrift Supervision, NCUA, and FCA.

⁴ Pursuant to Section 208.25(d) of Regulation H, the flood insurance requirement does not apply to (1) any state-owned property covered under a policy of self-insurance satisfactory to the director of FEMA, who publishes and periodically revises the list of states falling within this exemption; and (2) property securing any loan with an original principal balance of \$5,000 or less and a repayment term of one year or less.

⁵ Section 528 of the 1994 Reform Act directed FEMA to develop a standard form for determining whether a property is located in an area that FEMA has identified as one having special flood hazards and in which flood insurance under 44 C.F.R. 65 is available. Section 528 also requires the Board and other regulatory agencies to require, by regulation, the use of the standard FEMA form. The Board adopted paragraph 208.25(f) of Regulation H to require state member banks to use and retain the standard form developed by FEMA when making their flood hazard area determination.

- a statement, where applicable, that flood insurance coverage is available under the NFIP and may also be available from private insurers; and
- a statement whether federal disaster relief assistance may be available in the event of damage to the building or mobile home caused by flooding in a federally declared disaster.

Notice to the servicer may be made electronically or may take the form of a copy of the notice to the borrower.

Disclosure Requirement - Notices to FEMA of servicer and change in servicer (Section 208.25(j)(1) and (2))

When a state member bank makes, increases, extends, renews, sells, or transfers a loan secured by a building or mobile home located or to be located in a special flood hazard area, Regulation H requires the bank to notify the Administrator of FEMA (or the Administrator's designee) in writing of the identity of the servicer of the loan. The regulation also requires a state member bank to notify the Administrator of FEMA (or the Administrator's designee) of any change in the servicer of a loan. (The Administrator of FEMA has designated the insurance provider to receive the member bank's notice of servicer's identity.) These notices may be provided electronically if electronic transmission is satisfactory to the Administrator of FEMA's designee.

Disclosure Requirement – Forced placement of flood insurance (Section 208.25(g))

When a state member bank determines, during the term of a loan secured by property located in a special flood hazard area, that the property is not adequately covered by flood insurance, the bank is required to notify the borrower that the borrower should obtain flood insurance at the borrower's expense. If the borrower fails to obtain flood insurance within 45 days after this notification, then the bank must purchase insurance on the borrower's behalf and may charge the borrower for the insurance.

Proposed Revisions

The agencies issued a July 2015 final rule to amend their regulations to implement certain provisions enacted in HFIAA and Biggert-Waters. The July 2015 final rule sets forth a new exemption to the mandatory flood insurance purchase requirement for any structure that is a part of a residential property, but is detached from the primary residential structure and does not serve as a residence.

The July 2015 final rule also requires regulated lending institutions, or servicers acting on their behalf, to escrow premiums and fees for flood insurance for any loan secured by residential improved real estate or a mobile home that is made, increased, extended, or renewed on or after January 1, 2016, unless the institution or the loan is excepted from the escrow requirement. Except as may be required under applicable State law, a regulated lending institution would not be required to escrow if it has total assets of less than \$1 billion and, as of the date of enactment of Biggert-Waters, July 6, 2012, was not required by Federal or State law to escrow taxes or

insurance for the term of the loan and did not have a policy of uniformly and consistently escrowing taxes and insurance. Moreover, the July 2015 final rule implements the following additional exceptions from the escrow requirement, as amended by HFIAA for (1) loans that are in a subordinate position to a senior lien secured by the same property for which flood insurance is being provided; (2) loans secured by residential improved real estate or a mobile home that is part of a condominium, cooperative, or other project development, provided certain conditions are met; (3) loans that are extensions of credit primarily for a business, commercial, or agricultural purpose; (4) home equity lines of credit; (5) nonperforming loans; and (6) loans with terms not longer than 12 months.

The July 2015 final rule also implements the requirement under HFIAA that regulated lending institutions not excepted from the escrow requirement offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016. Regulated lending institutions must mail or deliver information to borrowers about the option to escrow by June 30, 2016. The agencies' final rule also requires regulated lending institutions that no longer qualify for the small lender exception to offer and make available to a borrower the option to escrow flood insurance premiums and fees.

The July 2015 final rule includes new and revised sample notice forms and clauses. Specifically, the final rule amends the current Sample Form of Notice of Special Flood Hazards and Availability of Federal Disaster Relief Assistance, set forth as Appendix A in the agencies' respective regulations, to add language concerning the escrow requirement, the exemption from the mandatory flood insurance purchase requirement for certain detached structures, the availability of private flood insurance coverage, and other technical changes. The July 2015 final rule also includes an additional sample clause, Sample Clause for Option to Escrow for Outstanding Loans, as Appendix B, to assist institutions in complying with the requirement to inform borrowers of outstanding loans about their option to escrow flood insurance premiums and fees.

Furthermore, consistent with Biggert-Waters, the July 2015 final rule amends the force placement of flood insurance provisions to clarify that a lender or its servicer has the authority to charge a borrower for the cost of flood insurance coverage commencing on the date on which the borrower's coverage lapsed or became insufficient. The final rule also stipulates the circumstances under which a lender or its servicer must terminate force-placed flood insurance coverage and refund payments to a borrower. It also sets forth the documentary evidence a lender must accept to confirm that a borrower has obtained an appropriate amount of flood insurance coverage.

The escrow and option to escrow provisions in this final rule, as well as the revisions to Appendix A and new Appendix B, will become effective on January 1, 2016, consistent with HFIAA. All other provisions implemented in the July 2015 final rule will become effective on October 1, 2015.

Time Schedule for Information Collection

The recordkeeping and disclosure requirements of Regulation H that are imposed on state member banks are triggered by specific events in the lending process. The records are maintained at the state member banks and are not provided to the Federal Reserve. Regulation H requires that the notice of special flood hazards be mailed or delivered to (1) the borrower “within a reasonable time” before completion of the transaction and (2) to the servicer “as promptly as practicable” after the bank provides notice to the borrower and in any event no later than the time the bank provides other similar notices to the servicer concerning hazard insurance and taxes (section 208.25(i)(2)). In addition, Regulation H requires that the notice of change of servicer must be made within sixty days after the effective date of the change (section 208.25(j)(2)).

Furthermore, the July 2015 final rule amended Regulation H to require state member banks that are not excepted from the escrow requirements to offer and make available to a borrower the option to escrow flood insurance premiums and fees for loans that are outstanding as of January 1, 2016, by June 30, 2016. A state member bank that no longer qualifies for the small lender exception from the escrow requirements must offer and make available to a borrower the option to escrow flood insurance premiums and fees by September 30 of the year that it loses its exception.

Legal Status

The Board’s Legal Division has determined that Reg H-2 is authorized pursuant to section 102 of the FDPA, as amended (42 U.S.C. § 4012a) and section 1364 of the 1968 Act, as amended (42 U.S.C. § 4104a). The obligation of state member banks to comply with these Regulation H requirements is mandatory. Because the Federal Reserve does not collect any information, no issue of confidentiality would normally arise. However, should the records required by the Regulation H requirements come into possession of the Federal Reserve during an examination of a state member bank, those records would be protected from disclosure by exemption 8 of the Freedom of Information Act (FOIA) (5 U.S.C. § 552(b)(8)).

Consultation Outside the Agency

The Board consulted with the other agencies on the rulemaking. In addition, the agencies have coordinated and consulted with the Federal Financial Institutions Examination Council (FFIEC), as required by certain provisions of the flood insurance statutes.⁶ The Agencies have adopted substantially similar flood insurance regulations for the financial institutions they supervise.

On October 30, 2013, the agencies jointly issued a proposed rule in the *Federal Register* (78 FR 65108) to implement certain provisions of Biggert-Waters. In March 2014, the President signed into law the HFIAA, which amends some of the changes made by Biggert-Waters to the FDPA. On October 30, 2014, the agencies jointly issued a proposed rule (79 FR 64518) to

⁶ See 42 U.S.C. § 4012a(b)(1). Four of the five agencies (OCC, Board, FDIC, and NCUA) are members of the FFIEC.

implement the provisions in HFIAA over which they have jurisdiction. The comment period for this notice expired on December 29, 2014. The agencies did not receive any comments regarding the PRA implications of this regulation. On July 21, 2015, the agencies published the final rule in the *Federal Register* (80 FR 43216) and is effective on January 1, 2016.

Estimate of Respondent Burden

The amounts in the following table reflect the burden estimated by the Federal Reserve System for the state member banks under its supervision. These recordkeeping and disclosure requirements represent less than 1 percent of total Federal Reserve System paperwork burden.

Current	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Recordkeeping				
Retention of standard FEMA form (Section 208.25(f)(2))	850	420	2.5 minutes	14,875
Disclosures				
Notice of special flood hazards and availability of federal disaster relief assistance (Section 208.25(i))	850	84	5 minutes	5,950
Notice to FEMA of servicer (Section 208.25(j)(1))	850	84	5 minutes	5,950
Notice to FEMA of change of servicer (Section 208.25(j)(2))	850	42	5 minutes	2,975
Notice to borrowers of lapsed mandated flood insurance (Section 208.25(g))	850	17	5 minutes	1,204
Purchase of flood insurance on the borrower's behalf (Section 208.25(g))	850	4	15 minutes	850
Notice to borrowers of lapsed mandated flood insurance due to remapping (Section 208.25(g))	850	8	5 minutes	567
Purchase of flood insurance on the borrower's behalf due to remapping (Section 208.25(g))	850	4	15 minutes	850
<i>Total</i>				<u>33,221</u>

Proposed	<i>Number of respondents</i>	<i>Annual frequency</i>	<i>Estimated average time per response</i>	<i>Estimated annual burden hours</i>
Recordkeeping				
Retention of standard FEMA form (Section 208.25(f)(2))	850	404	2.5 minutes	14,308
Disclosures				
Notice of special flood hazards and availability of federal disaster relief assistance (Section 208.25(i))	850	81	5 minutes	5,738
Notice to FEMA of servicer (Section 208.25(j)(1))	850	81	5 minutes	5,738
Notice to FEMA of change of servicer (Section 208.25(j)(2))	850	41	5 minutes	2,904
Notice to borrowers of lapsed mandated flood insurance (Section 208.25(g))	850	16	5 minutes	1,133
Purchase of flood insurance on the borrower's behalf (Section 208.25(g))	850	4	15 minutes	850
Notice to borrowers of lapsed mandated flood insurance due to remapping (Section 208.25(g))	850	8	5 minutes	567
Purchase of flood insurance on the borrower's behalf due to remapping (Section 208.25(g))	850	4	15 minutes	850
One-time notice for any designated loan outstanding on January 1, 2016 (Section 208.25(e))	850	1	40 hours	<u>34,000</u>
	<i>Total</i>			66,088
	<i>Change</i>			32,867

With the proposed revisions the total cost to the public is estimated to increase from \$1,719,187 to \$3,420,054.⁷

Sensitive Questions

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

Estimate of Cost to the Federal Reserve System

Since the Federal Reserve does not collect any information, the cost to the Federal Reserve System is negligible.

⁷ 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. Occupations are defined using the BLS Occupational Classification System, www.bls.gov/soc/.