

Supporting Statement
Description: Risk Management Guidance for Higher Loan-to-Value Lending
Programs in Communities Targeted for Revitalization
OMB Control No. 1557-NEW

A. Justification.

1. Circumstances that make the collection necessary:

Communities across America continue to confront lagging home values, particularly those significantly affected by the financial crisis and the housing market decline. As these areas work to stabilize home ownership and home values, the rehabilitation of abandoned or distressed housing stock is an important component of broader efforts to strengthen communities. However, obtaining mortgage loan financing has been a major challenge for buyers in many of these communities, including because of depressed home values. National banks and federal savings associations (collectively “banks”) already are working with various third parties to support rehabilitation and stabilization efforts in distressed communities and have expressed a desire to further support such efforts through their own mortgage lending programs. However, these banks also have expressed concern about how to do so within the existing regulatory framework and supervisory expectations.

Existing regulations and guidance recognize that it may be appropriate in individual cases for banks to make mortgage loans in excess of the supervisory loan to value (SLTV) limitations, based on support provided by other credit factors.¹ These credit factors may include the capacity of the borrower to adequately service the debt as well as the borrower’s overall creditworthiness. The regulations and guidelines also recognize that banks may make prudently underwritten exceptions for creditworthy borrowers whose needs do not fit within the banks’ general lending policies, including SLTV limits, on a loan-by-loan basis under certain conditions. The Office of the Comptroller of the Currency (OCC) has undertaken efforts to clarify these existing standards and its supervisory expectations.

As part of these efforts, the OCC has developed guidance for banks setting forth: (i) the circumstances under which banks may establish a program to originate certain owner-occupied residential mortgage loans where the loan-to-value (LTV) ratio at origination exceeds 100 percent; and (ii) the OCC’s supervisory considerations regarding such programs. The guidance defines a “program loan” and an “eligible community.” Further, the guidance provides, in part, that banks should have policies and procedures approved by the Board of Directors (Board), or an appropriately designated committee, that address the loan portfolio management, underwriting, and other relevant considerations for program loans, and sets out specific elements that the policies and

¹ See 12 CFR Part 34; Interagency Guidelines for Real Estate Lending Policies; Appendix A to Subpart D of Part 34 – Interagency Guidelines for Real Estate Lending; 2010 Interagency Appraisal and Evaluation Guidelines, 75 Fed. Reg. 77450, 77460 (Dec. 10, 2010).

procedures should include. Additionally, the guidance provides that banks should notify the appropriate OCC supervisory office in writing at least 30 days prior to the date the bank intends to begin originating residential loans pursuant to an approved program, or implementing any substantive change to a previously submitted program, and provide a copy of the approved policies and procedures.

The guidance supports efforts by banks to participate in revitalization efforts in distressed communities by offering mortgage loan products for purchasing, or purchasing and rehabilitating, one-to-four unit residential properties. Increasing the availability of credit in distressed communities is a vital component of broader efforts to stimulate the local housing market and encourage positive economic growth.

2. Use of the information:

The OCC will use the information submitted by a bank to assess whether the bank's program is consistent with safe and sound lending practices and the requirements of applicable laws regulations, guidelines, and guidance (including the guidance discussed herein).

The guidance states that banks should have specific policies and procedures approved by the board of directors, or appropriately designated committee, that address the loan portfolio management, underwriting, and other relevant considerations for program loans. These approved policies and procedures should include provisions that address the:

- defined geographies of eligible community(s) where the bank will consider making program loans and a description of how the program loans are intended to support revitalization efforts in the eligible community (e.g., how origination of program loans is expected to contribute to the normalization of a distressed housing market).
- Amount, and duration, of the bank's financial commitment to the program.
- limitation on the aggregate level of committed program loans as a percentage of tier 1 Capital, which should not exceed 10 percent.
- loan characteristics, including loan structure, credit terms, interest rate and fees, and maximum loan size, which should not exceed \$200,000.
- underwriting standards and approval processes, including appropriate documentation of relevant credit factors and document retention standards.
- real estate appraisal and evaluation criteria applicable to program loans.
- credit administration requirements for program loans, including detailed guidelines regarding oversight of the rehabilitation process, including controls over contracts, disbursements, inspections, and project management.
- compliance with all applicable laws and regulations, including the "Ability to Repay" and other requirements of 12 CFR 1026, anti-discrimination laws, and section 5 of the Federal Trade Commission Act.
- content, form, and timing of notice(s) the bank will provide to clearly inform the borrower that

- the market value of a property securing a higher LTV loan is less than the loan amount at origination.
- the market value of a rehabilitated property likely will be less than the original loan amount upon completion of the rehabilitation.
- the market value may continue to be less than the original loan amount thereafter and for the duration of the loan.
- there may be financial implications if the borrower seeks to sell the property after rehabilitation and the sale price of such rehabilitated property is less than the outstanding loan balance at the time of such sale, and explain the implications.
- incentives that may be available to qualifying program home buyers (e.g., assistance or grants for down payments, fees, and closing costs; at or below market interest rates; or rewards for long-term occupancy) and home buyer education or other counseling that may be provided by or through the bank or its third-party partners.
- monitoring and internal reporting requirements sufficient to: (1) assess the program performance and trends; and (2) inform the board, or appropriately designated committee, on at least a quarterly basis of the aggregate dollar amount, and percentage of tier 1 capital, of committed program loans in relation to the program limitation.

Banks should retain documentation indicating: (1) the eligible community is one that is targeted for revitalization by a government entity or agency; (2) the specific revitalization criteria used by the government entity or agency; and (3) the type of financing and other support that the governmental entity or agency provides to the community. The general expectation is that the bank will maintain the referenced documentation for the life of the loan program or, if the program is amended, the time period during which the defined geographies were part of the program, plus a reasonable time period after termination or amendment of a program, typically one OCC examination cycle for the bank.

A bank should notify the appropriate OCC supervisory office in writing at least 30 days before the bank intends to begin originating program loans or the bank's making of any substantive change to a previously submitted program (e.g., the addition of a new eligible community, an increase in the financial commitment or duration of a program, or material changes to the loan characteristics or underwriting standards). Such notice should include:

- the date the bank's board (or appropriately designated committee) approved the program's policies and procedures.
- a written copy of the board-approved policies and procedures for the new program.

3. Consideration of the use of improved information technology:

Banks may use any improved information technology that allows them to meet the requirements of the collection. A bank could make its program submission in writing, by email, or in other forms that are typical for supervisory communications (e.g., fax).

4. Efforts to identify duplication:

The information is unique and not duplicative of any other information already collected.

5. If the collection of information impacts small businesses or other small entities, describe any methods used to minimize burden:

Banks of all sizes may use the guidance. The OCC has requested the minimum amount of information necessary to undertake its assessment and the collection should be no more burdensome on small banks than large banks. Further, the collection is not mandatory.

6. Consequences to the Federal program if the collection were conducted less frequently:

The information will be collected at the minimum level of frequency. A less frequent collection could undermine banks' commitment to lending in economically distressed areas because of uncertainty about how to do so within existing legal requirements and supervisory expectations.

7. Special circumstances that would cause an information collection to be conducted in a manner inconsistent with 5 CFR Part 1320:

The information collection will be conducted in a manner consistent with 5 CFR part 1320.

8. Efforts to consult with persons outside the agency:

60-day FRN

The OCC issued a 60-day Federal Register notice regarding the collection on December 24, 2015, 80 FR 80458.

The OCC received five comment letters on the information collection requirements contained in the bulletin, one from a group of three trade associations, two from community advocacy and homeownership non-profit organizations, one from a non-profit research and policy organization, and one from an individual.

The trade associations believed that the required processes explained in the proposed bulletin would be disproportionately burdensome for a *de minimus* volume of activity and that it would be impractical and unnecessary for banks to get board or committee approval of detailed policies in addition to quarterly reporting.

The OCC notes that existing regulations and guidelines permit a bank to make loans in excess of the supervisory loan-to-value ratio on an individual basis under specified conditions. The OCC is revising the bulletin to clarify that it applies to residential mortgage loans where the loan-to-value ratio at origination exceeds 100 per

cent. Accordingly, some loans that exceed the supervisory loan-to-value (SLTV) ratio will be outside the scope of the bulletin. Additionally, the OCC is amending the bulletin to clarify that approval of the program policies and procedures should be by the board or “appropriately designated committee.”

The trade associations stated that the information currently provided to banks’ internal risk management structures should be sufficient to oversee this lending. The commenters asserted that the reporting requirements should provide OCC with sufficient data to track performance without requiring banks to make data system changes that would be time-consuming and not cost-effective.

The OCC does not intend that banks will be required to change their data systems in order to offer a program under the bulletin. In describing the supervision of individual banks, the draft bulletin referred to consideration of “bank’s internal reporting.” After considering the comments suggesting concern about the OCC’s anticipated data needs, the OCC has revised the bulletin to reiterate its intent to rely on bank-maintained data and to clarify that the supervisory focus will be on information about program performance and trends.

The trade association commenters also stated that excessive burdensome requirements undermine the goal of the proposed bulletin, which is to support bank efforts to make loans with LTVs greater than 90% in communities targeted for revitalization. They requested clarification that the OCC’s annual review is of the overall guidance set forth in the proposed bulletin, not individual bank programs. They believe the OCC should rely on regular exam cycles to determine the program’s continued viability and not subject the participating banks to another layer of supervision.

As noted above, the OCC is revising the bulletin to clarify that it applies to residential mortgage loans where the loan-to-value ratio at origination exceeds 100 per cent. In response to comments suggesting confusion about the annual review, the OCC revised the bulletin to clarify that the overall evaluation of programs that will occur at least annually will focus on banks’ programs as a whole. Finally, the OCC is revising the bulletin to clarify that for the supervision of individual banks, examiners will monitor and evaluate a program offered by a bank during scheduled supervisory activities, which should not add an additional layer of supervision.

One non-profit community advocacy group explained that through its experience working with financial institutions, clients, and community development organizations, it has determined that the burden of implementing this policy would be minimal. They suggested that if the OCC’s policy contained in the draft bulletin avoids the unintended consequences of harming portfolio lending,² then there would be no burdens associated with this action.

A second non-profit community advocacy group noted the processes to be developed by the banks to facilitate the goals of the draft bulletin should make the

² Portfolio lending is lending retained for the lender’s own investment purposes.

analysis/approval processes of the institutions' policies commensurate with the risk of the mortgages and the small volume of lending likely to take place in each individual institution.

The non-profit research and policy organization believed that the proposed collection of information is necessary for the proper performance of the functions of the OCC and that the information has practical utility.

The individual commenter stated that the collection of information has no practical utility in terms of supporting long-term community revitalization because it sets new, unjustified constraints on lending that contravene the White House-led Neighborhood Revitalization strategy.

The OCC believes that the bulletin encourages responsible, innovative lending and strikes an appropriate balance between the desire to encourage mortgage financing in distressed communities and the risks such financing may present to banks and mortgage loan borrowers. The programs contemplated by the bulletin offer market-based solutions by private lenders, and, therefore, should not contravene the White House's Neighborhood Revitalization Initiative, which involves federal programs.

30-Day FRN

On June 20, 2016, the OCC issued a 30-day notice soliciting comment on the information collection, 81 FR 39998. Two comments were received, one from a partnership of community advocacy groups, financial institutions, and nonprofit organizations; and one from an individual.

The individual commenter stated that the OCC's instructions to community banks wishing to fund loans for neighborhood revitalization are excessive, which will deter higher LTV lending in communities needing revitalization and result in few banks adopting high LTV programs and the funding of very few loans. The commenter believed that the more prescriptive a lending program is, the fewer the number of consumers will be eligible. The commenter felt that the OCC's approach to high LTV lending would inhibit the creation of robust revitalization programs. The commenter suggested that limiting the amount of bank capital exposed to high LTV loans would be the best way of ensuring safety and soundness; and instructing banks to assume a high probability of default and a high loss given default, and requiring them to limit their aggregate exposure under these assumptions to a small percent of capital, would allow revitalization programs to be customized to the needs of local communities and the programs would meet the needs of more consumers.

The OCC does not believe that the policy and procedure provision, which the commenter refers to as "instructions," are excessive or overly prescriptive. The provisions outlined in the bulletin are intended to address risks to *both* institutions and borrowers and to balance those risks with bank efforts to participate in revitalization efforts in distressed communities.

The policy and procedures include a limit on the amount of capital that will be exposed to higher LTV loans, which the commenter recognized is an important safety and soundness control. However, the OCC does not believe that a capital-based limitation should be the sole safety and soundness consideration. Accordingly, the policy and procedure discussion includes other provisions intended to address risks that programmatic Higher LTV lending may pose to OCC institutions (e.g., underwriting, credit administration, and reporting standards). These institution-focused provisions generally are consistent with existing standards that apply when an institution makes individual exceptions to the supervisory loan-to-value limits.

Additionally, in response to the unique risks programmatic higher LTV lending may pose to consumer borrowers, the policy and procedure provisions also include a customer notice provision designed to highlight for the borrower that there may be a negative relationship between the amount of his or her loan and the market value of the property, even after rehabilitation. However, the guidance does not establish any particular credit parameters or otherwise direct the credit requirements for any institution's lending program. Accordingly, the guidance should not affect the number of consumers that will be eligible should a bank elect to establish a program pursuant to the guidance.

Similarly, the OCC does not believe that the program outlined in the guidance will inhibit robust revitalization programs. The discussion of "program loan" and "eligible community" in the guidance is intended to offer basic parameters while retaining flexibility for institutions to establish a program within a particular geography. For instance, the guidance does not specify a finite list of eligible communities. Instead, it suggest that in order to be an "eligible community," there be targeted revitalization efforts at some government level.

Finally, the OCC does not believe that the guidance will deter responsible higher LTV lending. In fact, the comment from the partnership of community advocacy groups, financial institutions, and nonprofit organizations stated that the proposed guidance would "enable banks to offer innovative mortgage financing." This letter offered its "strong support" for the proposal and noted that it supports the OCC's oversight and monitoring of the policies and procedures set out in the guidance.

9. Payment or gift to respondents:

None.

10. Any assurance of confidentiality:

The information is kept private to the extent permitted by law.

11. Justification for questions of a sensitive nature:

Not applicable. No personally identifiable information is collected.

12. Burden estimate:

Estimated Number of Respondents: 20.

Estimated Burden per Respondent: Drafting Policies 200 hours; Document Performance 10 hours per quarter (i.e., 40 hours); Reporting 10 hours.

Total Estimated Burden: 5,000 hours.

13. Estimate of total annual startup and annual capital costs to respondents (excluding cost of hour burden in Item #12):

Not applicable.

14. Estimate of annualized costs to the Federal government:

Not applicable.

15. Change in burden:

The increase in burden is because this is a new collection.

16. Information regarding collections whose results are to be published for statistical use:

The agencies have no plans to publish the information for statistical purposes.

17. Reasons for not displaying OMB approval expiration date:

Not applicable. The agencies will display the OMB approval expiration date.

18. Exceptions to the certification statement:

None.

B. Collections of Information Employing Statistical Methods.

Not applicable.