

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

Summary

The Board of Governors of the Federal Reserve System (Board), under authority delegated by the Office of Management and Budget (OMB), proposes to extend for three years, without revision, the Recordkeeping Requirements Associated with Regulation H (Real Estate Lending Standards Regulation for State Member Banks) (FR H-5; OMB No. 7100-0261).¹ This information collection includes a recordkeeping requirement associated with Regulation H - Membership of State Banking Institutions in the Federal Reserve System (12 CFR Part 208) that implements section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).² Pursuant to Regulation H, state member banks (SMBs) must adopt and maintain written real estate lending policies. Additionally, this information collection includes certain voluntary recordkeeping provisions in the Interagency Guidelines for Real Estate Lending Policies (Guidelines).³

The estimated total annual burden for the FR H-5 is 17,545 hours.

Background and Justification

Section 304 of the FDICIA requires the Board to adopt regulations prescribing standards for SMBs 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. The Board implemented section 304 by amending its Regulation H to require SMBs to adopt and maintain written real estate lending policies consistent with safe and sound banking practices.⁴ In addition, the Board, along with the Federal Deposit Insurance Corporation (FDIC) and Office of the Comptroller of the Currency (OCC), issued the Guidelines to assist institutions in the formulation and maintenance of a real estate lending policy.

Description of Information Collection

Pursuant to Regulation H, an SMB's real estate lending policies must establish loan portfolio diversification standards; prudent underwriting standards, including loan-to-value (LTV) limits; loan administration procedures; and loan documentation, approval, and internal

¹ There is no formal reporting form for this collection of information (the FR H-5 designation is for internal purposes only).

² Public Law 102-242, 105 Stat. 2236 (1991), codified at 12 U.S.C. § 1828(o).

³ See 12 CFR Part 208, Appendix C. The Board also issued additional clarification on the Guidelines in Supervision and Regulation Letter (SR) 93-11: [Real Estate Lending Standards \(federalreserve.gov\)](https://www.federalreserve.gov/real-estate-lending/standards/), in Interagency Guidance on High Loan-To-Value Residential Real Estate Lending ([federalreserve.gov](https://www.federalreserve.gov/real-estate-lending/guidance/)) attached to SR 99-26, and in SR 93-33: Clarification on Real Estate Lending Standard ([federalreserve.gov](https://www.federalreserve.gov/real-estate-lending/standards/)).

⁴ See 12 CFR 208.51.

reporting requirements. The policies must be appropriate to the size of the institution and the nature and scope of its operations.

The Guidelines set forth additional information that should be included in each SMB's real estate lending policies. Additionally, the guidelines state that lending policy exception reports will also be reviewed by examiners during the course of their examinations to determine whether the institutions' exceptions are adequately documented and appropriate in light of all of the relevant credit considerations. Additionally, the Guidelines provide that a bank's internal LTV limits generally should not exceed the supervisory LTV limits as set forth in the Guidelines. However, the Guidelines acknowledge that appropriate LTV limits vary not only among categories of real estate loans but also among individual loans. Therefore, the Guidelines state that it may be appropriate in individual cases to originate or purchase loans with LTV ratios in excess of the supervisory LTV limits, based on the support provided by other credit factors. Such loans should be identified in a SMB's records. Compliance with the Guidelines is voluntary, but section 208.51 of Regulation H states that an SMB's lending policies should reflect consideration of the Guidelines.

Because the real estate lending policies need to be maintained for as long as they are in force, SMBs likely will be required to retain them for more than three years. A shorter record retention period would not be sufficient because SMBs typically engage in real estate lending on an ongoing basis and real estate loans frequently have maturities longer than three years.

Respondent Panel

The FR H-5 panel comprises all SMBs.

Frequency

The FR H-5 is ongoing. The Board neither collects nor publishes the information required under the collection. Bank examiners verify compliance with the regulation during examinations of SMBs.

Public Availability of Data

There are no data related to this information collection available to the public.

Legal Status

The FR H-5 is authorized by section 304 of the FDICIA,⁵ which provides that "each appropriate Federal banking agency shall adopt uniform regulations prescribing standards for extensions of credit that are -- (A) secured by liens on interests in real estate; or (B) made for the purpose of financing the construction of a building or other improvements to real estate."⁶ The

⁵ 12 U.S.C. § 1828(o).

⁶ 12 U.S.C. § 1828(o)(1). The Board also has the authority to require reports from state member banks (12 U.S.C. §§ 248(a) and 324).

recordkeeping requirement contained in the Board’s Regulation H is mandatory. The recordkeeping provisions in the Guidelines are voluntary.

Because these records would be maintained at each banking organization, the Freedom of Information Act (“FOIA”) would only be implicated if the Board obtained such records as part of the examination or supervision of a banking organization. In the event the records are obtained by the Board as part of an examination or supervision of a financial institution, this information would be considered confidential pursuant to exemption 8 of the FOIA, which protects information contained in “examination, operating, or condition reports” obtained in the bank supervisory process.⁷ In addition, the information may also be kept confidential under exemption 4 for the FOIA, which protects commercial or financial information obtained from a person that is privileged or confidential, to the extent that it constitutes confidential commercial or financial information that is both customarily and actually treated as private by the institution.⁸

Consultation Outside the Agency

The Board consulted with FDIC and OCC in establishing this information collection. There has been no consultation outside the Federal Reserve System regarding the extension, without revision, of the information collection.

Public Comments

On July 19, 2023, the Board published an initial notice in the *Federal Register* (88 FR 46164) requesting public comment for 60 days on the extension, without revision, of the FR H-5. The comment period for this notice expires on September 18, 2023.

Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR H-5 is 17,545 hours. The number of respondents is based on the number of state member banks as of December 31, 2022. The burden estimate was produced using the standard Board burden calculation methodology. These recordkeeping requirements represent less than 1 percent of the Board’s total paperwork burden.

FR H-5	<i>Estimated number of respondents⁹</i>	<i>Estimated annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Maintain written real estate lending policies	701	1	5	3,505

⁷ 5 U.S.C. § 552(b)(8).

⁸ 5 U.S.C. § 552(b)(4).

⁹ Of these respondents required to comply with this information collection, 472 respondents are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$850 million in total assets), <https://www.sba.gov/document/support-table-size-standards>. There are no special accommodations given to mitigate the burden on small institutions.

Establish written real estate lending policies (de novo)	1	1	20	20
Recordkeeping for loans with LTVs that exceed supervisory limits and maintaining a system of review	701	1	20	<u>14,020</u>
<i>Total</i>				17,545

The estimated total annual cost to the public for the this collection is \$1,162,356.¹⁰

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

The estimated cost to the Federal Reserve System for collecting and processing this information collection is negligible.

¹⁰ 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 \$22, 45% Financial Managers at \$80, 15% Lawyers at \$79, and 10% Chief Executives at \$118). Hourly rates for each occupational group are the (rounded) mean hourly wages from the Bureau of Labor Statistics (BLS), Occupational Employment and Wages, May 2022, published April 25, 2023 <https://www.bls.gov/news.release/ocwage.t01.htm#>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.