

**Supporting Statement for the  
Recordkeeping Requirements Associated with the  
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 the Real Estate Lending Standards Regulation for State Member Banks (FR H-5; OMB No. 7100-0261). This information collection includes a recordkeeping requirement contained in the Board's Regulation H that implements section 304 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA).<sup>1</sup> Pursuant to Regulation H, state member banks (SMBs) must adopt and maintain a written real estate lending policy. Additionally, this information collection includes certain voluntary recordkeeping provisions in the *Interagency Guidelines for Real Estate Lending Policies* (Guidelines).<sup>2</sup>

The estimated total annual burden for the FR H-5 is 18,870 hours. There is no formal reporting form for this collection of information (the FR H-5 designation is for internal purposes only).

**Background and Justification**

Section 304 of 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.<sup>3</sup> In addition, the Board, along with the Federal Deposit Insurance Corporation (FDIC) and the 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 policy must establish loan portfolio diversification standards; prudent underwriting standards, including loan-to-value (LTV) 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 Guidelines.

The Guidelines set forth additional information that should be included in each SMB's real estate lending policy. 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,

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<sup>1</sup> Public Law 102-242, 105 Stat. 2236 (1991).

<sup>2</sup> See 12 CFR Part 208, Appendix C.

<sup>3</sup> See 12 CFR 208.51(a).

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.

### **Respondent Panel**

The FR H-5 respondent panel comprises all SMBs.

### **Time Schedule for Information Collection**

The FR H-5 information collection 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**

The Board does not publicly release any information collected pursuant to this information collection.

### **Legal Status**

The H-5 is authorized by section 304 of the FDICIA,<sup>4</sup> 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.”<sup>5</sup> The recordkeeping requirement contained in the Board's Regulation H is mandatory. The recordkeeping provisions in the Guidelines are voluntary, as the Guidelines are nonbinding guidance.

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 may 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.<sup>6</sup> 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.<sup>7</sup>

### **Consultation Outside the Agency**

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<sup>4</sup> 12 U.S.C. § 1828(o).

<sup>5</sup> 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).

<sup>6</sup> 5 U.S.C. § 552(b)(8).

<sup>7</sup> 5 U.S.C. § 552(b)(4).

The Board consulted with the Federal Deposit Insurance Corporation and the Office of the Comptroller of the Currency 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 August 21, 2020, the Board published an initial notice in the *Federal Register* (85 FR 51716) requesting public comment for 60 days on the extension, without revision, of the FR H-5. The comment period for this notice will expire on October 20, 2020.

## Estimate of Respondent Burden

As shown in the table below, the estimated total annual burden for the FR H-5 is 18,870 hours. As of December 31, 2019, 754 SMBs were required to maintain written real estate lending policies and keep records of loans that exceed supervisory LTV limits. There were no *de novo* SMBs in the past three years that would have been required to create a real estate lending policy statement. However, to avoid potentially underestimating the burden on *de novo* SMBs, the Board has estimated that one respondent per year will be required to create a new policy. In addition to recordkeeping, banks will also spend time on ongoing maintenance of a compliance monitoring system, including reviewing policies and procedures related to implementation. These recordkeeping requirements represent less than 1 percent of the Board's total paperwork burden.

<b>FR H-5</b>	<i>Estimated number of respondents<sup>8</sup></i>	<i>Annual frequency</i>	<i>Estimated average hours per response</i>	<i>Estimated annual burden hours</i>
Maintain a policy statement	754	1	5	3,770
Policy statement ( <i>de novo</i> )	1	1	20	20
Recordkeeping for loans with LTVs that exceed supervisory limits and maintaining a system of review	754	4	5	<u>15,080</u>
<i>Total</i>				<u>18,870</u>

<sup>8</sup> Number of respondents is based on information from the *Changes in Number and Charters of Insured Banks Report* ([http://fedweb.frb.gov/fedweb/bsr/surveil/surveil\\_chrtchg.shtm](http://fedweb.frb.gov/fedweb/bsr/surveil/surveil_chrtchg.shtm)), prepared by the Surveillance, Financial Trends and Analysis section of the Board's S&R division. For the Aggregate Report, the number of respondents is the number of SMBs as of Fourth Quarter 2019. Of these respondents, 506 are considered small entities as defined by the Small Business Administration (i.e., entities with less than \$600 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.

The estimated total annual cost to the public for this collection of information is \$1,086,912.<sup>9</sup>

### **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 recordkeeping requirement is negligible.

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<sup>9</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 \$19, 45% Financial Managers at \$71, 15% Lawyers at \$69, and 10% Chief Executives at \$96). 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 2018*, published March 29, 2019, <https://www.bls.gov/news.release/ocwage.t01.htm>. Occupations are defined using the BLS Standard Occupational Classification System, <https://www.bls.gov/soc/>.