

SUPPORTING STATEMENT
RECORDKEEPING REQUIREMENTS ASSOCIATED WITH
REAL ESTATE APPRAISALS AND EVALUATIONS
(OMB No. 3064-0103)

INTRODUCTION

This submission is being made in connection with a Joint Notice of Proposed Rulemaking (NPRM) published in the *Federal Register*¹ amending current Part 323 of FDIC’s regulations² which implements a portion of Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (“FIRREA”). Title XI of FIRREA is designed to provide protection for federal financial and public policy interests by requiring real estate appraisals used in connection with federally related transactions to be performed in writing, in accordance with uniform standards, by an appraiser whose competency has been demonstrated and whose professional conduct will be subject to effective supervision.

Section 1110 of FIRREA mandates that the Federal financial institutions regulatory agencies (“Agencies”) prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under the jurisdiction of each agency. The majority of the provisions of Part 323 are specifically mandated by FIRREA and do not represent discretionary requirements.

The current rule contains thresholds, which were established by rulemaking in 1994.³ Under the current rule, all real estate-related financial transactions with a transaction value⁴ of \$250,000 or less, as well as certain real estate-secured business loans (qualifying business loans)⁵ with a transaction value of \$1 million or less, do not require appraisals.⁶ Instead, the financial institution may obtain an evaluation of the real property collateral that is consistent with safe and

¹ Real Estate Appraisals; Notice of Proposed Rulemaking, 82 FR 35478 (July 31, 2017). The NPRM was issued by the FDIC, the Office of the Comptroller of the Currency, Treasury and the Board of Governors of the Federal Reserve System. The FDIC is issuing this NPRM pursuant to its authority under 12 U.S.C. 1818, 1819 and 1831p-1.

² 12 CFR Part 323.

³ See 59 FR 29482 (June 7, 1994).

⁴ For loans and extensions of credit, the transaction value is the amount of the loan or extension of credit. For sales, leases, purchases, investments in or exchanges of real property, the transaction value is the market value of the real property. For the pooling of loans or interests in real property for resale or purchase, the transaction value is the amount of each such loan or the market value of each such real property, respectively. See CFR 323.2(m).

⁵ Qualifying business loans are business loans that are real estate-related financial transactions and that are not dependent on the sale of, or rental income derived from, real estate as the primary source of repayment. 12 CFR 323.3(a)(5).

⁶ See 12 CFR 323.3(a)(1) and (5).

sound banking practices. In addition, the evaluation must contain sufficient information and analysis to support the financial institution's decision to engage in the transaction.⁷

The NPRM would increase the threshold level at or below which appraisals would not be required for commercial real estate transactions from \$250,000 to \$400,000. For commercial real estate transactions with a value at or below the proposed threshold, the amended rule would require an institution to obtain an evaluation of the real property collateral in lieu of an appraisal as long as such evaluation is consistent with safe and sound banking practices and contains sufficient information and analysis to support the financial institution's decision to engage in the transaction, which is consistent with the current appraisal threshold requirement.

The change in threshold amounts described in this NPRM would not change the amount of burden under the Paperwork Reduction Act of 1995 (PRA); the recordkeeping burden required to document the review of an appraisal or an evaluation remains the same. However, the FDIC has reviewed its previous PRA submissions and has updated its methodology for calculating the burden. The FDIC is therefore requesting OMB approval to revise the currently approved collection of information, which expires on December 31, 2019.

A. JUSTIFICATION

1. Circumstances and Need

Title XI of FIRREA was enacted to protect federal financial and public policy interests in real estate related transactions. Many loans and other transactions entered into by federally insured financial institutions are collateralized by liens on real estate. While repayment ability stands as the primary criteria for determining creditworthiness, the value of collateral provides some protection against loss. Faulty, incompetent, or fraudulent appraisals of real estate have caused large loan losses, can contribute to the failure of financial institutions, and may result in losses to the Deposit Insurance Fund (DIF).

FIRREA directs FDIC and other Agencies to prescribe appropriate standards for the performance of real estate appraisals in connection with federally related transactions under its jurisdiction. It mandates that the regulations promulgated by the FDIC require, at a minimum, that appraisals conform to the standards of the Appraisal Standards Board of the Appraisal Foundation, and that they be in writing. Moreover, the statute specifically authorizes FDIC to require compliance with additional appraisal standards if such additional standards are required in order to properly carry out its statutory mission. FDIC has included additional standards in the rule to carry out the legislative intent that appraisals in federally related transactions provide accurate information that adequately reflects the market value of the real estate being appraised. The information collection activities attributable to the rule are a direct consequence of the statutory requirements and the legislative intent.

⁷ See 12 CFR 323.3(b).

2. Use of Information Collected

Each financial institution regulated by FDIC will use the information in connection with determining whether and upon what terms to enter into a federally related transaction, such as making a loan on commercial real estate or purchasing property for its operations. In addition, the FDIC will use this information in its examination of regulated institutions to ensure that extensions of credit made by the examined institution which are collateralized by real estate, and that permissible direct investments in real estate, are undertaken in accordance with safe and sound banking principles.

The use of this information will help ensure that regulated institutions are not exposed to risk of loss from inadequate appraisals. A regulated institution's failure to engage in the information collection activities included in the regulation will, in some cases, (1) result in a violation of the provisions of Title XI, (2) impede the FDIC in carrying out its statutory obligation to ensure that its regulated institutions conduct their activities in accordance with safe and sound banking principles, and (3) increase the risk of loss to the DIF.

3. Use of Technology to Reduce Burden

The use of improved information technology is not applicable to this collection of information since it only requires banks to maintain records of appraisals and evaluations that meet specific standards; no information in this collection is forwarded to the FDIC. The banks are free to utilize any technology they wish in order to lessen the burden of maintaining the appraisal and evaluation records.

4. Efforts to Identify Duplication

There is no regulatory duplication; each appraisal and/or evaluation is unique to the individual property appraised. No similar information is available to the regulated institution or the FDIC.

5. Minimizing the Burden on Small Banks

The burden for this collection of information has been reduced to the minimum possible under the governing statute and in keeping with FDIC's supervisory responsibilities. Only the information necessary for regulated institutions to make an informed decision and for the FDIC to fulfill its statutory responsibilities for all institutions, regardless of size, is requested. According to data reported as of March 31, 2017 in the Consolidated Reports of Condition and Income⁸ (Call Report), the FDIC supervises 3,744 depository institutions, of which 3,028 are

⁸ See https://www.ffiec.gov/pdf/FFIEC_forms/FFIEC031_201703_f.pdf.

defined as small banking entities by the terms of the Regulatory Flexibility Act.⁹ Of these 3,028 entities, 3,010 small entities reported holding some volume of real estate related financial transactions that meet the proposed rule's definition of a commercial real estate transaction.¹⁰ Therefore, 3,010 small entities could be affected by the proposed rule.

6. Consequences of Less Frequent Collection

The information is collected only as real estate related situations arise. Less frequent collection is inconsistent with the underlying statute and would not promote safety and soundness for individual banks or the banking system.

7. Special Circumstances

None.

8. Consultation with Persons Outside the FDIC

The NPRM was published in the *Federal Register* (82 FR 35478, July 31, 2017). The comment period on the NPRM in connection with the PRA closes on September 29, 2017.

9. Payment or Gift to Respondents

None.

10. Confidentiality

The appraisal reports and written evaluations will become part of the bank's loan file and as such no information is submitted directly to the FDIC. The FDIC would have access to the information during an examination or on site investigation that would be accorded the same degree of confidentiality provided to all other bank records.

11. Information of a Sensitive Nature

This collection contains no sensitive information.

⁹ 5 U.S.C. 601 *et seq.*

¹⁰ The proposed definition of "Commercial Real Estate Transaction" would largely capture the following four categories of loans secured by real estate in the Call Report (FFIEC 031; RCFD 1410), namely loans that are: (1) for construction, land development, and other land loans; (2) secured by farmland; (3) secured by residential properties with five or more units; or (4) secured by nonfarm nonresidential properties. However, loans that provide both initial construction funding and permanent financing and are reported as construction, land development, and other land loans during the construction phase would be excluded from the definition.

12. Estimate of Hour Burden and Annual Costs

It is estimated that there are 3,744 institutions affected by this rule. On average, each institution will process 141 loans per year. It will take a loan officer on average 5 minutes to document the file for an appraisal or evaluation associated with each loan.

Number of Respondents: 3,744

Number of Responses per Respondent: 141

Hours per Response: 5 minutes or .0833 hours

Total Burden Hours: 43,992 hours

Cost: 43,992 hours X \$68.65 per hour¹¹ = \$3,020,050.80

2017 Summary of Annual Burden and Internal Cost (3064-0103)						
	Type of Burden	Estimated Number of Respondents	Estimated Number of Responses	Estimated Time per Response	Frequency of Response	Total Annual Estimated Burden
Recordkeeping Requirements Associated with Real Estate Appraisals and Evaluations	Recordkeeping	3,744	141	0.0833	On Occasion	43,992
TOTAL HOURLY BURDEN						43,992
Internal Cost: Loan Officer	\$68.65					\$3,020,050.80
TOTAL INTERNAL COST						\$3,020,050.80

13. Capital, Start-Up and Maintenance Costs

None.

14. Estimated Annual Cost to the Federal Government

None.

15. Reason for Change in Burden

11 The FDIC estimates that the average hourly compensation for a loan officer is \$68.65 an hour. The hourly compensation estimate is based on published compensation rates for Credit Counselors and Loan Officers (\$43.40). The estimate includes the March 2017 75th percentile hourly wage rate reported by the BLS, National Industry-Specific Occupational Employment and Wage Estimates. The reported hourly wage rate is adjusted for changes in the CPI-U between May 2016 and March 2017 (1.83 percent) and grossed up by 155.3 percent to account for non-monetary compensation as reported by the March 2017 Employer Costs for Employee Compensation Data..

The 268,727 reduction in burden hours is the result of agency adjustment. While the NPRM would not change the amount of time that institutions spend complying with the Title XI appraisal regulation, the FDIC is now using 5 minutes, as opposed to the previously reported 45 minutes, as the average time required to document the file for an appraisal or an evaluation. This updated methodology for calculating the burden of the information collection is based on current information, FDIC experience and advances in technology.

16. Publication.

Not applicable. The information is not published.

17. Display of Expiration Dates

Not applicable.

18. Exceptions to Certification

None.

B. Statistical Methods

Not applicable.