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DEPARTMENT OF THE TREASURY

OFFICE OF THE COMPTROLLER OF THE CURRENCY

Agency Information Collection Activities; Proposed Information Collection; Comment Request; Draft Bulletin: Risk Management Guidance for Higher Loan- to-Value Lending in Communities Targeted for Revitalization

AGENCY: Office of the Comptroller of the Currency (OCC), Treasury.

ACTION: Notice and request for comment.

SUMMARY: The OCC, as part of its continuing effort to reduce paperwork and respondent burden, invites the general public and Federal agencies to take this opportunity to comment on a new information collection, as required by the Paperwork Reduction Act of 1995 (PRA).

In accordance with the requirements of the PRA, the OCC may not conduct or sponsor, and the respondent is not required to respond to, an information collection unless it displays a currently valid Office of Management and Budget (OMB) control number. The OCC is soliciting PRA-related comment concerning a new information collection titled, “Draft Bulletin: Risk Management Guidance for Higher Loan-to-Value Lending in Communities Targeted for Revitalization” (draft guidance).

DATES: You should submit written comments by [INSERT 60 DAYS FROM DATE OF PUBLICATION IN FEDERAL REGISTER.]

ADDRESSES: Because paper mail in the Washington, DC area and at the OCC is subject to delay, commenters are encouraged to submit comments by e-mail, if possible.

Comments may be sent to: Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, Attention: 1557-NEW, 400 7th Street, SW., Suite 3E-218, Mail Stop 9W-11, Washington, DC 20219. In addition, comments may be sent by fax to (571) 465-4326 or by electronic mail to prainfo@occ.treas.gov. You may personally inspect and photocopy comments at the OCC, 400 7th Street, SW., Washington, DC 20219. For security reasons, the OCC requires that visitors make an appointment to inspect comments. You may do so by calling (202) 649-6700, or for persons who are deaf or hard of hearing, TTY, (202) 649-5597. Upon arrival, visitors will be required to present valid government-issued photo identification and to submit to security screening in order to inspect and photocopy comments.

All comments received, including attachments and other supporting materials, are part of the public record and subject to public disclosure. Do not enclose any information in your comment or supporting materials that you consider confidential or inappropriate for public disclosure.

FOR FURTHER INFORMATION CONTACT: Shaquita Merritt, Clearance Officer, (202) 649-5490, or for persons who are deaf or hard of hearing, TTY, (202) 649-5597, Legislative and Regulatory Activities Division, Office of the Comptroller of the Currency, 400 7th Street SW., Washington, DC 20219.

SUPPLEMENTARY INFORMATION:

Title: Draft Bulletin: Risk Management Guidance for Higher Loan-to-Value Lending in Communities Targeted for Revitalization.

OMB Control No.: 1557-NEW.

Type of Review: Regular.

Abstract: Under the draft guidance, national banks and federal savings associations wishing to establish a program for originating owner-occupied residential mortgage loans that exceed supervisory loan-to-value (SLTV) limits in communities targeted for revitalization should have policies and procedures approved by their Board of Directors (Board) that address the loan portfolio management, underwriting, and other relevant considerations for such loans. The draft guidance would advise that banks also should notify the appropriate OCC supervisory office in writing at least 30 days prior to originating residential loans pursuant to a Board-approved program or implementing any substantive change to a previously submitted program and provide a copy of the Board-approved policies and procedures to the OCC supervisory office.

Affected Public: Businesses or other for-profit.

Burden Estimates:

Estimated Number of Respondents: 20.

Estimated Burden per Respondent for the First Year: Drafting Policies - 200 hours; Documentation - 10 hours per quarter (i.e., 40 hours); Reporting - 10 hours.

Total Estimated Annual Burden: 5,000 hours.

Frequency of Response: On occasion.

Comments submitted in response to this notice will be summarized and included in the request for OMB approval of the information collection. All comments will become a matter of public record. Comments are invited on:

- (a) Whether the collection of information is necessary for the proper performance of the functions of the OCC, including whether the information has practical utility;
- (b) The accuracy of the OCC's estimate of the information collection burden;
- (c) Ways to enhance the quality, utility, and clarity of the information to be collected;
- (d) Ways to minimize the burden of the collection on respondents, including through the use of automated collection techniques or other forms of information technology; and
- (e) Estimates of capital or start-up costs and costs of operation, maintenance, and purchase of services to provide information.

Draft Guidance: The text of the draft guidance¹ is as follows:

**Draft Bulletin: Risk Management Guidance for Higher Loan-to-Value Lending in
Communities Targeted for Revitalization**

Summary

The Office of the Comptroller of the Currency (OCC) supports efforts by national banks and federal savings associations (collectively, banks) to assist in the revitalization, stabilization, or redevelopment (referred to in this bulletin individually and collectively as revitalization) of distressed communities through prudent residential mortgage lending. The OCC recognizes that banks and other parties have expressed concern that depressed housing values in certain distressed communities in the United States inhibit mortgage lending in these communities. One way in which banks can support revitalization efforts in distressed communities is by offering mortgage products for purchasing, or purchasing

¹ The OCC plans to issue this guidance in the form of a bulletin directed to national banks and federal savings associations.

and rehabilitating, one- to four-unit residential properties where the loan amount may exceed supervisory loan-to-value (SLTV) limits. This bulletin provides guidance for managing risks associated with originating certain residential mortgage loans that exceed SLTV limits.

Note for Community Banks

This guidance applies to all OCC-supervised banks wishing to establish a program for originating owner-occupied residential mortgage loans that exceed SLTV limits in communities targeted for revitalization.

Highlights

This bulletin provides guidance regarding the

- Circumstances under which banks may establish programs to originate certain owner-occupied residential mortgage loans that exceed SLTV limits.
- OCC's supervisory considerations regarding such programs.

As described in this bulletin, the OCC will actively monitor and evaluate the programs established by banks, including the performance of owner-occupied residential mortgage loans that exceed the SLTV limits. At least annually, the OCC will assess whether the programs are contributing to the revitalization of targeted communities and whether the banks are adequately controlling the risks associated with such higher loan-to-value (LTV) lending.

Background

Some U.S. communities continue to confront lagging home values. Financing difficulties caused by depressed housing markets are particularly pronounced in

communities that were significantly affected by the financial crisis and housing market decline.

As these communities 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. Local governments, government-affiliated entities, community-based organizations, financial institutions, and others have developed creative solutions for some of these challenges. These solutions include strategies for acquiring and rehabilitating properties in communities targeted for revitalization. Community groups, financial institutions, non-profit organizations, and state and local entities, including land banks, are working together to develop and implement innovative residential mortgage financing to bring needed lending to economically distressed areas. The efforts include providing second-lien loans to finance rehabilitation costs, interest-rate discounts, and down payment and closing cost assistance. The Federal Housing Administration, Fannie Mae, and Freddie Mac all currently offer rehabilitation financing.²

In addition to participating in these and other third-party efforts, banks have expressed a desire to participate in revitalization efforts of distressed communities by offering their own loan products. The value of the collateral in a distressed community, however, can present challenges to banks' residential lending in part because of current SLTV limits. Distressed sales, including short sales and foreclosures, often negatively affect home values in these communities. Further, in communities with minimal sales

² Programs include the Federal Housing Administration's Limited 203(k) Rehabilitation Mortgage Insurance Program, Fannie Mae HomeStyle Renovation, and Freddie Mac Construction Conversion and Renovation Mortgages.

activity, finding comparable property sales becomes challenging when appraisals or evaluations are required. Buyers of distressed properties can have particular difficulty securing adequate financing to cover the often substantial renovation costs required to make the properties habitable.

The OCC recognizes that supporting long-term community revitalization may necessitate responsible innovative lending strategies. One way in which banks can support revitalization efforts is through prudent lending within established exceptions to the SLTV limits for residential loans. Existing regulations and guidelines recognize that it may be appropriate, in individual cases, for banks to make loans in excess of the SLTV limits, based on support provided by other credit factors.³ The regulations and guidelines also recognize that banks may make prudent underwriting 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.⁴ These conditions include that the aggregate amount of all loans in excess of SLTV limits should not exceed 100 percent of total capital, that the boards of directors establish standards for reviewing and approving exception loans, and that written justification setting forth relevant credit factors accompany all approvals of exception loans.⁵ Credit factors for these purposes

³ For national banks, refer to 12 CFR 34, "Real Estate Lending and Appraisals," appendix A to subpart D, "Interagency Guidelines for Real Estate Lending Policies." For federal savings associations, refer to 12 CFR 160.101, "Real estate lending standards," appendix to 12 CFR 160.101, "Interagency Guidelines for Real Estate Lending Policies."

⁴ Id.

⁵ Id.

may include the borrower's capacity to adequately service the debt, the borrower's overall creditworthiness, and the level of funds invested in the property.⁶

The OCC believes that banks can offer residential mortgage loans in communities targeted for revitalization in a manner consistent with safe and sound lending practices. As described later in section I of this bulletin, such loans may include eligible loans in eligible communities originated in accordance with a board-approved program (referred to as a program in this bulletin). Important elements of any program are the bank's policies and procedures for complying with the ability-to-repay standard of Regulation Z⁷ and the bank's separate underwriting standards and approval processes for residential mortgage loans that exceed SLTV limits.

Lending under such a program may be in the best interest of the bank, individual borrowers, and the community. Additionally, the bank may receive Community Reinvestment Act consideration for SLTV exception loans depending on the specifics of the program. SLTV exception lending is not, however, without risk. The OCC will actively monitor and evaluate how a bank's program manages the risks, particularly to the bank and its borrowers, and the effect the program has on the community targeted by the bank's program. At least annually, the OCC also will evaluate the overall impact of programs offered by all banks in communities targeted for revitalization.

I. Program Criteria

A. Eligible Loan

⁶ Id.

⁷ The Dodd-Frank Wall Street Reform and Consumer Protection Act amended the Truth in Lending Act to require creditors to make a reasonable, good faith determination of a consumer's ability to repay a mortgage loan, absent specified exceptions. Refer to 15 USC 1639c. The Consumer Financial Protection Bureau issued a final rule amending Regulation Z to implement these ability to repay requirements, which became effective January 1, 2014. Refer to 78 Fed. Reg. 6621, January 30, 2013.

An eligible loan should be a permanent mortgage for the purchase of, or purchase and rehabilitation of, an owner-occupied residential property located in an eligible community. An eligible loan also should have an original loan balance of \$200,000 or less and be originated under a program developed pursuant to this bulletin.

The OCC recognizes that eligible loans will have an LTV ratio equal to or exceeding 90 percent without mortgage insurance or readily marketable, or other acceptable, collateral.

This bulletin does not apply to home equity loans, lines of credit, or refinancing loans.

B. Eligible Community

An eligible community should be one that has been officially targeted for revitalization by a federal, state, or municipal governmental entity or agency, or by a government-designated entity such as a land bank.

C. Board-Approved Policies and Procedures

Existing regulations and guidelines require that each bank adopt and maintain a general lending policy that establishes appropriate limits and standards for extensions of credit that are secured by liens or interests in real estate or that finance building construction or other improvements.⁸ Additionally, banks should have specific policies and procedures that are approved by the board of directors, or appropriately designated board committee, and that address loan portfolio management, underwriting, and other

⁸ For national banks, refer to 12 CFR 34, “Real Estate Lending and Appraisals,” appendix A to subpart D, “Interagency Guidelines for Real Estate Lending Policies.” For federal savings associations, refer to 12 CFR 160.101, “Real estate lending standards,” appendix to 12 CFR 160.101, “Interagency Guidelines for Real Estate Lending Policies.”

relevant considerations for eligible loans. These board-approved policies and procedures should include provisions that address the:

- Defined geographies of an eligible community where the bank will consider making eligible loans under the program⁹ and describe how the eligible loans are intended to support revitalization efforts in the eligible community (e.g., how the origination of eligible loans is expected to contribute to the normalization of a distressed housing market).
- Amount, and the duration, of the bank's financial commitment to the program.
- Limitation on the aggregate level of committed eligible loans as a percentage of tier 1 capital (as defined in 12 CFR 3.2), which should not exceed 10 percent.
- Characteristics of eligible loans, including loan structure, credit terms, interest rate and fees, and maximum loan size, which should not exceed \$200,000.
- Underwriting standards and approval processes for eligible loans, including appropriate documentation of relevant credit factors and document retention standards.
- Real estate appraisal and evaluation criteria applicable to eligible loans.¹⁰
- Credit administration requirements for eligible loans, including detailed guidelines regarding oversight of the rehabilitation process, such as controls over contracts, disbursements, inspections, and project management.

⁹ Banks should retain documentation indicating: (1) the eligible community is one 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, if any, that the governmental entity provides to the community.

¹⁰ For all mortgage loan transactions based on an appraisal, banks should select and engage appraisers with local market competency in valuing the property securing an eligible loan. Similarly, any evaluation, if applicable, should be credible and consistent with safe and sound banking practices. Given the unique underwriting considerations, banks should not use automated valuation models in connection with these programs.

- 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 in connection with eligible loans to clearly inform the borrower that:
 - 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 borrowers (e.g., assistance or grants for down payments, fees, and closing costs; at or below market interest rates; or rewards for long-term occupancy).
- Monitoring and internal reporting requirements sufficient to: (1) assess the performance, impact, trends, and success of the program; and (2) inform the board on at least a quarterly basis of the aggregate dollar amount, and percentage of tier 1 capital, of committed eligible loans in relation to the board-approved limitation.

D. Notice to the OCC

The bank should notify the appropriate OCC supervisory office in writing at least 30 days before the bank's first origination of an eligible loan pursuant to the program or

the bank's making of any substantive change to a previously submitted program.

Substantive changes may include the addition of a new eligible community, an increase in the financial commitment or duration of a program, or material changes to eligible loan characteristics or underwriting standards. Such notice should include:

- The date the bank's board (or appropriately designated board committee) approved the program's policies and procedures.
- A copy of the board-approved policies and procedures.

II. OCC Supervisory Considerations

A. Supervision of Individual Banks

After receiving the bank's notice to the OCC, examiners will evaluate the bank's program to assess whether it complies with the requirements of applicable laws and regulations and is consistent with safe and sound lending practices, this bulletin, and other relevant guidance. Examiners' assessment will include review of the:

- Financial commitment (as a dollar amount and a percentage of Tier 1 capital) and defined geographies for originating eligible loans.
- Characteristics of eligible loans and incentives, if available, to qualifying borrowers.
- Standards for the underwriting, collateral review, credit administration, and approval of eligible loans.
- Borrower notice(s).
- Monitoring and reporting procedures for eligible loans.
- Process for ensuring compliance with all applicable laws and regulations.

In connection with the evaluation of the bank's program, examiners may request clarification or changes to the bank's policies and procedures before the bank's first origination of an eligible loan pursuant to the program or the bank's making of any substantive change to a previously submitted program. Such requests may include clarification or changes to ensure the program is consistent with safe and sound lending practices.

During the course of subsequent supervisory activities, examiners also will monitor and evaluate the program. Examiners evaluations will include consideration of the:

- Bank's governance of the program and whether the program adequately manages the various risks.
- Performance of loans that exceed the SLTV limits and whether delinquent eligible loans are managed and accurately classified consistent with the OCC's existing guidance on delinquent loans and in compliance with applicable laws pertaining to loans in delinquency.¹¹
- Bank's internal reporting of program performance, impact, trends, and overall success.
- Process to establish and document community development consideration, if applicable, under the Community Reinvestment Act.

For banks found to have shortfalls or unsatisfactory governance or controls, examiners will communicate these findings to the bank and require remediation to

¹¹ Applicable laws may include (1) Regulation X, 12 CFR 1024, which provides mortgage servicing standards, including early intervention requirements and loss mitigation procedures and (2) Regulation Z, 12 CFR 1026, which establishes requirements for including delinquency-related information on the periodic statements required for residential mortgage loans.

continue the lending activity. In addition, examiners may review individual eligible loans to assess asset quality, credit risk, and consumer compliance.

B. Overall Evaluation of Programs

At least annually, the OCC will evaluate the overall impact of banks' programs in communities targeted for revitalization. The OCC's evaluations will consider, among other matters, whether the programs adequately control the various risks, the performance of loans that exceed the SLTV limits, and the effect such lending has had on the housing market and other economic indicators in communities targeted for revitalization.

Based on these evaluations, the OCC may amend or rescind this bulletin. Any decision by the OCC to materially amend or rescind this bulletin will apply only to the origination of new loans that exceed the SLTV limits. Any loans originated that are consistent with this bulletin, or any subsequent revisions thereof, when made will not be deemed to be unsafe and unsound solely because of any material amendment or rescission of this bulletin.

Dated: December 18, 2015

Stuart E. Feldstein
Director, Legislative and Regulatory Activities Division
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