## **Comment Submitted by David Goldberg**

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## Comment

I do not believe that this proposed collection complies with the Paperwork Reduction Act and the Section 1365 of the National Flood Insurance Act of 1968 (NFIA) (42 U.S.C. 4104b). While FEMA is responsible for creating the Standard Flood Hazard Determination Form (SFHDF) under 42 U.S.C. 4104b(a), federal law actually charges the individual federal banking regulatory agencies, agency lenders, and government sponsored entities to adopt regulations requiring use of the form. See 42 U.S.C. 4104b(b). Nonetheless, this proposed collection charges the entire cost of the information collection to FEMA, rather than the agencies that impose the regulatory requirement to use the SFHDF. As a result, federal regulatory burden data incorrectly charges FEMA for the cost of the collection, rather than the agencies. In turn, these disincentives the various agencies from seeking the minimize the regulatory burden of the collection within the constraints of the law.

This structure is part of each agency's regulations. For instance, the FDIC"s regulations, states that, "An FDIC-supervised institution shall use the standard flood hazard determination form developed by the Administrator of FEMA when determining whether the building or mobile home offered as collateral security for a loan is or will be located in a special flood hazard area in which flood insurance is available under the Act." 12 CFR 339.6(a) Similarly, the Department of Veterans Affairs has adopted regulations requiring the use of the SFHDF to determine whether a property securing a VA loan is in a special flood hazard area. See 38 CFR 36.4705(a).

Clearly, the NFIA and the regulatory agencies' regulations require the use of the SFHDF, not FEMA.

This is a significant distinction because the Paperwork Reduction Act of 1995 (PRA) provides that "[a]n agency shall not conduct or sponsor the collection of information" without going through the approval process required under the act. 44 U.S.C. 3507(a)(1); 5 CFR 1320.5(a)(1) (The Office of Management and Budget's regulations implementing the PRA). Per OMB's regulations at 5 CFR 1320.3(d), "A Federal agency is considered to "conduct or sponsor" a collection of information if the agency collects the information, causes another agency to collect the information, contracts or enters into a cooperative agreement with a person to collect the information, or requires a person to provide information to another person, or in similar ways causes another agency, contractor, partner in a cooperative agreement, or person to obtain, solicit, or require the disclosure to third parties or the public of information by or for an agency."

As such, the PRA's compliance burden falls not on the agency that creates the form, but the agency that requires use of the form.

Nonetheless, FEMA has taken sole responsibility for not only developing the form, but also bearing the associated regulatory costs with requiring the use of the form, a cost that FEMA has not actually imposed, nor has any control over. This improper reporting skews federal regulatory burden reporting data. More importantly, it removes a powerful incentive from the federal regulatory and lending agencies to try and reduce the burden associated with the SFHDF within the constraints of the law.

Considering that this information collection touches of millions of real estate transactions each year and costs our nation millions of dollars in compliance costs, the Federal Government should take care to ensure total compliance with the PRA. As a result, FEMA should retract this proposed collection and each responsible agency should propose their own collection that reflects the regulatory costs and burdens imposed by their regulations.

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