
19. Certification for Paperwork Reduction Act Submissions

On behalf of the U.S. Department of Housing and Urban Development, I certify that the collection of information encompassed by this request complies with 5 CFR 1320.9.

Note: The text of 5 CFR 1320.9, and the related provisions of 5 CFR 1320/8(b)(3) appears at the end of the instructions. The certification is to be made with reference to those regulatory provisions as set forth in the instructions.

The following is a summary of the topics, regarding the proposed collections of information that the certification covers:

- (a) It is necessary for the proper performance of agency functions;
- (b) It avoids unnecessary duplication;
- (c) It reduces burden on small entities;
- (d) It uses plain, coherent, and unambiguous terminology that is understandable to respondents;
- (e) Its implementation will be consistent and compatible with current reporting and recordkeeping practices;
- (f) It indicates the retention periods for recordkeeping requirements;
- (g) It informs respondents of the information called for under 5 CFR 1320.8(b)(3):
 - (i) Why the information is being collected;
 - (ii) Use of the information;
 - (iii) Burden estimate;
 - (iv) Nature of response (voluntary, required for a benefit, or mandatory);
 - (v) Nature and extent of confidentiality; and
 - (vi) Need to display currently valid OMB control number;
- (h) It was developed by an office that has planned and allocated resources for the efficient and effective management and use of the information to collected (see note in item 19 of the instructions);
- (i) It uses effective and efficient statistical survey methodology; and
- (j) It makes appropriate use of information technology.

If you are unable to certify compliance with any of these provisions, identify the item below and explain the reason in item 18 of the Supporting Statement.

Signature of Program Official:

Date:

X
Michael F. Hill, Deputy Assistant Secretary for Operations, HR

Signature of Senior Officer or Designee:

Date:

X
Lillian Deitzer, Departmental Reports Management Officer,
Office of the Chief Information Officer

Supporting Statement for Paperwork Reduction Act Submissions
Use Restriction Agreement Monitoring and Compliance
OMB 2502-UA

A. Justification

1. This information collection is authorized by Section 250 of the National Housing Act, Section 223(f)(3) of the National Housing Act, and Section 219 of the 1999 Appropriations Act.

Section 250(a) of the National Housing Act states during any period which an owner of a multifamily rental housing project is required to obtain the approval of the Secretary for prepayment of the mortgage, the Secretary shall not accept an offer to prepay the mortgage on such project or permit a termination of an insurance contract pursuant to Section 229 of the Act unless: 1) the Secretary has determined that such project is no longer meeting a need for rental housing for lower income families in the area; 2) the Secretary (A) has determined that the tenants have been notified of the owner's request for approval of a prepayment; (B) has provided the tenants with an opportunity to comment on the owner's request; and (C) has taken such comments into consideration; and 3) the Secretary has ensured that there is a plan for providing relocation assistance for adequate, comparable housing for any lower income tenant who will be displaced as a result of the prepayment and withdrawal of the project from the program. Section 250(a)(1) can be satisfied if the owner of a subsidized project can show that the regulatory agreement executed by the owner as part of the mortgage insurance transaction is no longer needed by assuring that the building will continue to provide low-income housing in the absence of any regulatory agreement. In these cases, HUD will permit a prepayment in order to recapitalize the project only if the owner agrees to execute a Use Agreement that ensures that the project will continue to be maintained as rental housing for lower income families in the area until at least the date the original mortgage would have terminated had it not been prepaid. The Use Agreement provides the mechanism for ensuring that the building will continue to operate as low-income housing after the prepayment. It requires the project to maintain the same affordability and rental restrictions as those that were in place before the prepayment and minimize the threat of a negative impact on current and future low-income tenants. The owner must have the Use Agreement recorded against the property, and provide copies of that Use Agreement, when signed, to applicable State and local governments, and to the local public housing authority.

Owners must obtain the appropriate Use Agreement from their local HUD field office. HUD and the owner must execute the appropriate Use Agreement prior to or at closing of the prepayment (proof of recordation must be submitted to the local HUD Multifamily Hub or Program Center). Proof of recordation is a condition of HUD prepayment approval and release of the regulatory agreement.

Use Agreement Rent Restrictions

- 1) If a unit is covered by a Section 8 Housing Assistance Payments (HAP) Contract, rents will be determined in accordance with HAP Contract requirements, including any future changes that govern such contract. If a project's Regulatory Agreement requires the Owner to agree to accept any offer by the Secretary to renew the HAP contract so long as the mortgage covering the project is insured or held by the Secretary, the Use Agreement must include a provision requiring the owner to agree to accept any offer by the Secretary to renew the HAP contract (or any successor program) for the term of the Use Agreement.
- 2) For non-Section 8 units, the rent is restricted to an Initial Rent level, as adjusted by an Area Median Income Factor. The Initial Rent is to be set as follows:
 - a) If no rehabilitation or project improvements are planned, the Initial Rent should equal the current rent levels prior to prepayment.
 - b) If the owner is prepaying in order to refinance and complete a rehabilitation of the property, a rent increase based on the new financing may be considered and processed by the Project Manager. The rent increase should be processed in accordance with Chapter 7 of the 4350.1 and the proposal should include a detailed description of the planned rehabilitation. The budget based rent calculation may not be used where an immediate equity "takeout" is proposed or where the purchase price for the project is above market comparables.

- 3) In addition to providing a budget-based rent increase proposal, the owner must also submit a narrative of how tenants will be protected from any rent increases due to the proposed transaction. This narrative must address what subsidies, such as Section 8 Vouchers, LIHTC equity, and bond financing, will be provided as part of the transaction. Special care should be given to the use of other subsidies. The income limitations of the other subsidy programs might cause the involuntary displacement of existing residents, which is unacceptable.

For example, projects that will use LIHTC must meet use requirements under the LIHTC program. Specifically, on the day the units are “placed in service” under the LIHTC program, each tenant must be eligible for occupancy under the LIHTC income limits established for the project. To maximize the tax credit value, any tenant over the income limits on the day the project is “placed in service” may be requested to vacate the project. Therefore, to avoid displacement, it might be prudent for an owner to include less than 100% of the units under the LIHTC program, thereby giving the project room to retain tenants ineligible for LIHTC units. A detailed tenant income survey should be completed to permit everyone to know the impact of the proposed transaction on existing residents.

- 4) Initial Rents may not, under any circumstances, exceed 30% of 80% (95% for BMIRs) of median income, as adjusted for family and bedroom size.

All project specific information must be inserted into the Use Agreement where indicated. Once the Use Agreement has been completed, the Project Manager must forward it to the local Office of General Counsel for review.

Once Counsel has approved the final document, the owner should submit a fully executed copy of the Use Agreement along with an Attorney’s Opinion that the Use Agreement will be recorded in the first position, superior to all other liens.

Upon the receipt of these items, and approval of the prepayment by the Office of Multifamily Asset Management (Asset Management) in Headquarters, the Use Agreement can be executed by the Hub Director/Program Center Director.

After recording, the owner must provide the Field Office with a recorded copy of the Use Agreement within 2 business days. HUD will not issue a release of the regulatory agreement until all Use Agreement recording requirements have been satisfied.

Section 223(f)(3) of the National Housing Act authorizes the Secretary to insure or make commitments to insure refinanced mortgages. Specifically, Section 223(f)(3) states:

“For all insurance authorized by this subsection and provided pursuant to a commitment entered into after the date of enactment of the Housing and Community Development Act of 1980, the Secretary may not accept an offer to prepay or request refinancing of a mortgage secured by rental housing unless the Secretary takes appropriate action that will obligate the borrower (and successors in interest thereof) to utilize the property as a rental property for period of five years from the date on which the insurance was provided (twenty years in the case of any such mortgage purchased under section 305) unless the Secretary finds that:

- (A) the conversion of the property to a cooperative, or condominium form of ownership is sponsored by a bona fide tenants’ organization representing the majority of the households in the project;
- (B) continuance of the property as rental housing is clearly unnecessary to assure adequate rental housing opportunities for low- and moderate-income people in the community; or
- (C) continuance of the property as rental housing would have an undesirable and deleterious effect on the surrounding neighborhood.”

Section 219 of the 1999 Appropriations Act provides clarification of the owner’s right to prepay mortgages insured with the Department. Specifically, Section 219 states:

SEC. 219. (a) PREPAYMENT RIGHT.—Notwithstanding section 211 of the Housing and Community Development Act of 1987 or section 221 of the Housing and Community Development Act of 1987 (as in effect pursuant to section 604(c) of the Cranston-Gonzalez National Affordable Housing Act), subject to subsection (b), with respect to any project that is eligible low-income housing (as that term is defined in section 229 of the Housing and Community Development Act of 1987)—

(1) the owner of the project may prepay, and the mortgagee may accept prepayment of, the mortgage on the project, and (2) the owner may request voluntary termination of a mortgage insurance contract with respect to such project and the contract may be terminated notwithstanding any requirements under sections 229 and 250 of the National Housing Act.

(b) CONDITIONS.—Any prepayment of a mortgage or termination of an insurance contract authorized under subsection (a) may be made—

(1) only to the extent that such prepayment or termination is consistent with the terms and conditions of the mortgage on or mortgage insurance contract for the project; (2) only if the owner of the project involved agrees not to increase the rent charges for any dwelling unit in the project during the 60-day period beginning upon such prepayment or termination; and (3) only if the owner of the project provides notice of intent to prepay or terminate, in such form as the Secretary of Housing and Urban Development may prescribe, to each tenant of the housing, the Secretary, and the chief executive officer of the appropriate State or local government for the jurisdiction within which the housing is located, not less than 150 days, but not more than 270 days, before such prepayment or termination, except that such requirement shall not apply to a prepayment or termination that— (A) occurs during the 150-day period immediately following the date of the enactment of this Act; (B) is necessary to effect conversion to ownership by a priority purchaser (as defined in section 231(a) of the Low-Income Housing Preservation and Resident Ownership Act of 1990 (12 U.S.C. 4120(a)), or (C) will otherwise ensure that the project will continue to operate, at least until the maturity date of the loan or mortgage, in a manner that will provide rental housing on terms at least as advantageous to existing and future tenants as the terms required by the program under which the loan or mortgage was made or insured prior to the proposed prepayment or termination.

Copies of the statutory requirements are attached.

2. These forms will be used to ensure that affordable, low-income housing is preserved. Owners participate in a variety of HUD multifamily housing programs, which are unique and differ based on regulation and program structure. One of HUD's multifamily housing goals is to preserve low-income housing units. Therefore, HUD has developed Use Agreements, which are executed and recorded documents requiring the owner to continue to rent to low-income tenants in the event that the owner prepays the mortgage prior to the mortgage maturity date. Use Agreements have been developed for each multifamily housing program and are used when required. If HUD determines that a Use Agreement is required, the document is executed and recorded. The owner is bound by the Use Agreement and is required to continue to rent to low-income tenants throughout the term of the Use Agreement, which is normally until the original maturity date of the mortgage.

In addition, HUD will periodically monitor the Use Agreement to ensure owner compliance with the terms and conditions as agreed and executed with the Department. Incorporated in the Use Agreement Compliance and Monitoring form (HUD-90075) is a Tenant Survey, which will be used to determine the quality and satisfaction of services provided to tenants residing in the use restricted units. The owner is required to continue to maintain the use restricted units in decent, safe, and sanitary condition throughout the life of the Use Agreement. Monitoring Use Agreements will likely be performed by a HUD contractor due to limited staff resources and will be conducted using the HUD-90075.

3. Automation of this information collection is not feasible because the Use Agreements require the owner's original signature and must be recorded with the local jurisdiction.
4. There is no duplication of other sources for this information.
5. The impact on smaller entities is no greater than the impact on larger entities. The information collected during a Use Compliance Review is obtained to assess the owners' compliance with the Use Agreement requirements. For example, owners are required to maintain information on the recertification of tenants' income. The owner could

maintain this information in a database, or it could be maintained in paper form in the tenant's file. The requirement would be the same whether the entity is large or small because it's in the Use Agreement.

6. If this information were not collected or collected less frequently, HUD would not be allowed to ensure preservation of affordable multifamily housing units and owner compliance with the terms of the Use Agreement.
7. There are no special circumstances for respondents.
8. Information collected is conducted in a manner consistent with the guidelines of 5 CFR 1320.8 (d). The Notice announcing this collection of information appeared in the *Federal Register* on ...
9. There are no payments or gifts to respondents.
10. No assurance of confidentiality, statute, regulation, or agency policy is provided.
11. There are no questions of a sensitive nature.

12. Annual Burden Estimate:

Information Collection	Number of Respondents	Frequency of Response	Total Annual Responses	Burden Hours per Response	Total Annual Burden Hrs	Hourly Cost	Total Annual Cost
1. Execution of Use Agreement (Forms HUD-90060, HUD-90061, HUD-90065, HUD-90066, HUD-93140, HUD-93142, HUD-93143, HUD-93144, HUD-90067, HUD-90068, HUD-90069, HUD-90070, HUD-93150, and HUD-93155. The appropriate form used is based on type of project.)	227	1	227	1	227	\$25	\$5,675
2. Form HUD-90075 (HUD Use Agreement Compliance and Monitoring Review)	227	1	227	2	454	\$35	\$15,890
3. Tenant Survey (HUD-90075)	22,700	1	2270	.083	189		
Totals	23,154		2,724	3.083	870		\$21,565

Item 1 - Number of respondents is based on data obtained from HUD systems for potential prepayment transactions that may result in executing Use Agreements. The estimated burden hours are based on time for owner (or owner's staff) to review and execute the Use Agreement. Owners are not salaried employees and receive benefits based on a return on their investment; however the hourly costs is used as an estimate for owner's staff to prepare the document, if applicable.

Item 2 – These estimates are based on estimates in item 1; therefore, HUD's contractor would conduct monitoring reviews for each of the estimated number of Use Agreements (respondents) that were executed. The estimated burden hours include the time required for the contractor to conduct the on-site review, review tenant files, and obtain tenant comments. The hourly estimate for HUD's contractor was obtained from payscale.com for a Compliance Specialist paid by contract.

Item 3 – The estimates are based on 100 units per owner that may execute a Use Agreement with HUD and monitored by the contractor. Included in the contractor's review is a tenant survey; however it is estimated that although there are 22,700 respondents there will likely be only about 2,270 responses (10%). The Tenant Survey portion would only take about 5 minutes to complete. There is estimate provided for the hourly rate and total annual cost because tenants are not salaried and would only provide this information to assist HUD in ensuring owner compliance and/or improving current operations.

13. There are no additional costs to respondents.

14. Annual Cost to the Federal Government:

Information Collection	Number of Responses	Hours per Response	Total Annual Hours	Hourly Cost	Total Annual Cost
Use Agreement (applicable form) and form HUD-90075	454	1	454	\$32.00	\$14,528

Estimated hourly cost is based on the annual salary of a GS-13 Project Manager for reviewing the information.

15. This is a new collection. There are no program changes or adjustments.

16. The results of this collection will not be published.

17. HUD is not requesting approval to avoid displaying the expiration date.

18. There are no exceptions to the certification statement identified in Item #19 on form OMB 83-I, "Certification for Paperwork Reduction Act Submissions."

B. Collections of Information Employing Statistical Methods

This information collection does not employ statistical methods.