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## 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.

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Signature of Program Official:

Date:

X  
Michael Winiarski, Office of Management, HROA

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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

## Multifamily Contractor's/Mortgagor's Cost Breakdowns and Certifications

OMB Control Number 2502-0044

(HUD-2205-A, HUD-2328, and HUD-92330-A)

### A. Justification

1. Regulations published in 24 CFR 200.50 require the mortgagor and mortgagee to execute a building loan agreement approved by the Commissioner, that sets forth the terms and conditions under which progress payments may be advanced during construction, and prior to initial endorsement of the mortgage for insurance.

Section 227 of the National Housing Act (Section 126 of the Housing Act of 1954, Public Law 560, 12 U.S.C. 1715r), applicable portions of which are attached for reference, prohibits the insurance of multifamily mortgages on new or rehabilitated multifamily housing unless the mortgagor agrees to certify "actual costs" upon completion of the physical improvements on the mortgaged project prior to final endorsement of the mortgage. Cost certification requirements apply to the general contractor when an identity of interest exists between the general contractor and the mortgagor, or when the mortgagor is a nonprofit entity and a cost plus contract has been used.

Regulations published in 24 CFR 200.95 and 200.96 require that the mortgagor's certificate of actual cost, in a form prescribed by the Commissioner, shall be submitted upon completion of the physical improvements to the satisfaction of the Commissioner and before final endorsement, except that in the case of an existing project that does not require substantial rehabilitation and where the commitment provides for completion of specified repairs after endorsement, a supplemental certificate of actual cost will be submitted covering the completed cost of repairs. The certificate shall show the actual cost to the mortgagor, after deduction of any kickbacks, rebates, trade discounts, or other similar payments to the mortgagor, or to any of its officers, directors, stockholders, partners, or other entity member ownership, of construction and other costs, as prescribed by the Commissioner. An independent Certified Public Accountant or independent public accountant shall verify the Certificate of Actual Cost in a manner acceptable to the Commissioner. Upon the Commissioner's approval of the mortgagor's certification of actual cost such certification shall be final and incontestable except for fraud or material misrepresentation on the part of the mortgagor.

2. Form HUD-2328 is used to represent the contractors and/or mortgagors firm costs and services as a basis for disbursing dollar amounts when insured advances are requested. The contractor and/or mortgagor prepare the HUD-2328 as a requirement for issuance of a firm commitment. The firm replacement cost of the project also serves as a basis for disbursement of dollar amounts when insured advances are requested. The contractor uses form HUD-2328 to establish a schedule of values of construction items on which the monthly advances or mortgage proceeds are based. The information regarding completed work items are used by the Field Office to ensure that payments from the mortgage proceeds are made for work actually completed in a satisfactory manner. The work must be inspected and approved by a Field Office Inspector. If the collection of information was not conducted, disbursement of mortgage proceeds could not be monitored.

The contractor uses form HUD-92330-A to convey actual costs incurred in the completion of construction in a standardized format for cost certification. Form HUD-92330-A uses the Uniform System of Cost Accounting to classify construction trade items, and accounting classifications that are identical to those in the Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-2328. In addition to assuring that the mortgage proceeds have not been used for purposes other than construction costs, Form HUD-92330A further protects the interest of the Department by directly monitoring the accuracy of the itemized trades in Form HUD-2338, and also serves as project data to keep Field Office cost data banks and cost estimates current and accurate. If the collection of information were not conducted there would be no way to accurate

method to assure that mortgage proceeds have not been used for purposes other than the payment of legitimate construction costs and expenses.

Form HUD-2205-A pertains to the Section 223(f) Program, which involves the purchase or refinance of an existing project. Form HUD-2205-A is used for Section 223(f) Program only. This information is required for a general contractor when a identity of interest exists between the general contractor and the mortgagor or when the mortgagor is a non-profit entity and a cost plus contract has been used. The information is used to determine the actual cost of improvements equaled or exceeded the proceeds of the loan and the amount by which the proceeds of loan exceeded actual costs. Costs are project specific and general and modified information is not acceptable.

3. The collection of information does not involve the use of automation. HUD and the Office of Housing are undergoing a transformation of the IT infrastructure which will dictate the type of automated systems that will be developed. It is imperative that the automatic system developed adequately address concerns for confidentiality (due to the nature of data reported) and the need and ability to capture E-signatures. Until the IT transformation has materialized, it is difficult to establish a viable electronic intake process that will be sustained.

Previous estimates include a limited lender inquiry. However, the Office of Multifamily Housing Development obtained an updated MAP lender's report and the increase in numbers is reflective of the burden hours.

4. Development and construction cost varies with each project. General or modified information is not acceptable. No other forms exist which can be acceptable. No other existing forms can be substituted to obtain the required information for mortgage proceeds distribution and cost certification.
5. The Department minimizes the burden on small businesses by requiring the collection of information only once. Form HUD-2328 is used at the start of construction. Form HUD-92330-A is used prior to the close of construction.
6. The collection of information occurs only once for each multifamily housing project. The Department could not comply with the provisions of the law and Federal regulations if the collection were eliminated.
7. There are no special circumstances that apply to this information collection.
8. In accordance with 5 CFR 1320.8(d), this information collection soliciting public comments was announced in the *Federal Register* on August 12, 2009 /Vol. 74, No. 154 /pages 40606-07, no comments received.
9. No gifts or payments, other than remuneration to contractors, are provided to respondents.
10. The Privacy Act of 1974 provides an assurance of confidentiality to the respondents. Form HUD-2328 is the contractor's estimate of construction cost. On bid proposals, the bid amount, which may be on this form, is subject to public bid opening. Forms HUD-92330-A and HUD-2205-A are for the Department's use only and respondents are assured that the material is held in confidentiality unless a release order is issued under the Freedom of Information Act.
11. No questions of a sensitive nature apply.

12. Estimates of the respondents burden and costs:

Information Collection	Number of Respondents	Frequency of Response	Responses Per Annum	Burden Hour Per Response	Annual Burden Hours	Hourly Cost	Total Annual Cost
HUD-2328	350	1	350	11	3850	\$35.00	\$134,750
HUD-92330-A	350	1	350	5	1750	\$41.00	\$71,750
HUD-2205-A	80	1	80	3	240	\$37.32	\$10,560
<b>Totals</b>	<b>350</b>		<b>780</b>	<b>19</b>	<b>5840</b>		<b>\$217,060</b>

**Form HUD-2328:**

It is estimated that there will be approximately 350 respondents who will submit form HUD-2338 once at the firm commitment stage of development processing.

**Form HUD-92230-A:**

The estimated number of respondents is 350. This is based on the number of respondents to HUD-2328.

**Form HUD-2205-A**

The estimated number of respondents is 80 based on 2008 fiscal year.

13. There are no additional costs associated with this collection of information.

14. **Cost to the Federal Government** is based on an hourly rate of \$39.83 (Grade 12/Step 5 annual salary of \$82,845). There are no operational expenses.

Information Collection	Number of Responses	Frequency of Response	Responses Per Annum	Burden Hour Per Response	Annual Burden Hours	Hourly Cost Per Response	Annual Cost
HUD-2328	350	1	350	4	1400	\$39.83	\$55,762
HUD-92330-A	350	1	350	8	2800	\$39.83	\$111,524
HUD-2205-A	80	1	80	4	320	\$39.83	\$12,746
<b>Totals</b>	<b>350</b>		<b>780</b>	<b>16</b>	<b>4520</b>	<b>\$119.49</b>	<b>\$180,032</b>

15. This is an extension of a currently approved collection. HUD conducted a review of the MAP lenders which reflects the burden hours. Previous estimates include a limited lender inquiry. However, the Office of Multifamily Housing Development obtained an updated lender’s report and the increase in numbers is reflective of the burden hours.

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

17. The OMB expiration dates will be displayed on the appropriate forms.

18. There are no exceptions to the Certification Statement identified in item 19 of the OMB 83-I.

**B. Collection of Information Employing Statistical Methods.**

This collection of information does not employ statistical methods.

