

## Supporting Statement for Paperwork Reduction Act Submissions

### Multifamily Housing Mortgage and Housing Assistance Restructuring (Mark-to-Market) OMB Control Number 2502-0533

#### A. Justification

1. The Mark to Market Program is authorized under the Multifamily Assisted Housing Reform and Affordability Act of 1997 as extended by the Mark to Market Extension Act of 2001. The information collection is used to determine the eligibility of FHA-insured multifamily properties for participation in the Mark to Market (M2M) program and the terms on which such participation should occur. The program reduces Section 8 rents to market and restructures debt as necessary.

The information collection is also used to structure the closing of debt restructures that are finalized under the program, to track the post-closing performance of the restructures, and to evaluate the performance of the Agency's Participating Administrative Entities (PAEs) in undertaking restructures on the Agency's behalf as the Agency agent.

The program "FHA Multifamily Housing Mortgage and Housing Assistance Restructuring Program" was originally authorized by Title V of the Departments of Veterans Affairs and Housing and Urban Development and Independent Agencies Appropriations Act of 1998 (P.L. No. 105-65, 111 Stat. 1384, October 27, 1997). A copy of Title V is attached. Title V provides that HUD can implement a statutory permanent program directed at FHA-insured multifamily projects that have project-based Section 8 contracts with above-market rents. Currently, authority for this program sunsets September 30, 2014. Eligible properties that have Section 8 contracts expiring after the program authority sunsets may continue the restructure process provided that a binding commitment exists to allow a debt restructuring after sunset.

For many project owners, if the current level of Section 8 assistance is reduced and all else remains constant, the likelihood is that the property will be unable to continue to meet its financial obligations, including mortgage debt service payments. This could lead to mortgage defaults and possible displacement of thousands of low-income families and senior citizens nationwide. The purpose of the program, therefore, is to preserve low-income rental housing affordability while reducing the long-term costs of Federal rental assistance and minimizing the adverse effect on the FHA insurance funds.

2. In order to continue receiving benefits, entry into the program is required for all owners of Section 8 properties if the property's rents are above market rent levels. Owners of potentially eligible properties or their agents provide the required information directly to a contracted PAE through interviews and existing documentation. Submissions are reviewed by a contracted PAE (generally a State Housing Finance Agency or a Local Housing Agency). Owners benefit by being eligible to continue receiving Section 8 Housing Assistance Payments (HAP) from the Federal government. In most cases these payments can be reduced to levels resulting in savings to the Federal government. To continue receiving this benefit the owner must request renewal of the HAP contract 120 days prior to the expiration of the existing HAP contract. An owner may request the property be referred to HUD's Office of Affordable Housing Preservation (OAHP) for (1) reduction of rents to comparable market rents without restructuring ("Lite" restructuring) or (2) for reduction of rents to comparable market rents with a restructuring of the property's mortgage ("Full" restructuring).

Residents of properties that have been accepted into the program provide information to OAHP for the purpose of determining whether the PAE has undertaken its responsibilities to them in accordance with OAHP's guidelines. The PAE also provides residents with information on the program and the terms of any proposed restructure of the property. Third party mortgage lenders and their agents provide information to OAHP and/or the PAE in order to facilitate the closing of the debt restructure transaction. Some restructures provide for the establishment of a rehabilitation escrow account, which is used to fund rehabilitation work on

the property that is prescribed by the PAE and OAHP. After the closing of the restructure, third-party rehabilitation escrow administrators are required to report to OAHP on the progress of the rehabilitation work and to submit requests for OAHP's approval for changes in the scope of this work or to extend the period for completion of the rehabilitation. This ensures that rehabilitation escrow funds are spent appropriately and that required rehabilitation work is completed within the timeframes prescribed by OAHP.

During the course of a restructure, information must be provided to tenants and their feedback is considered with regard to the transaction. The information is provided primarily by HUD's PAE, and any burden attributed to that activity is contained in item 12 below. Information may be provided by tenants, but it is not solicited in any standard structure, and responses are voluntary. Therefore, no burden is attributed to tenants' response. Required information is as follows.

Residents of properties participating in the M2M program, and interested community groups, must be provided the opportunity for meaningful participation in the restructuring process. Notices of the First Tenant Consultation Meeting must be delivered directly or by mail to each tenant and other interested parties, and must be posted within the building and made available at the office. At that meeting, the PAE addresses tenant concerns about M2M, supplies the tenants with information about the M2M process, and provides residents with the opportunity to comment. Sign-in sheets are collected and maintained in the PAE's file. The Second Tenant Consultation Meeting provides tenants with the opportunity to offer comments on the draft Restructuring Plan. All tenant comments are addressed in the restructuring plan by indicating how they were responded to, or that they cannot be addressed, or that the concern was investigated and was without merit. Tenants and interested community groups must be given access to relevant documents in order to participate effectively in M2M restructurings. Within 10 calendar days after closing of the restructuring or expiration of the appeal rights, the PAE must provide notice to the tenants and other interested parties (using Form 9624.3.5) that either describes the closed transaction or indicates why the transaction will not be restructured. Owners are required to give a 12-month and a 120-day notice to tenants prior to opting out at the end of the Section 8 contract period.

### **Information collection – Owners.**

Form HUD-9624, Contract Renewal Request Form, Multifamily Section 8 Contracts, is used by owners to notify HUD of their desire to participate in the program.

#### Owner's Package.

Owner's Data Release Authorization Letter

Checklist of Related Party Agreements

Loan History Statement, and (for persons or entities with a substantial interest in the project) copies of bankruptcies; litigation; judgments; explanations of delinquencies, defaults, foreclosures, or deeds-in-lieu of foreclosure; and a description of any known environmental problems.

Evaluation of physical condition, either by obtaining one or adopting the PAE's.

Owner provides copy of Operating and Maintenance Plan addressing environmental issues, if needed.

Certification of Ownership Entity, with required attachments.

Additional Owner's Documentation that May Be Required.

Appeals. Any appeal must be in writing and be submitted to HUD within 30 days of receipt of the notification from the PAE or HUD. An owner may appeal the following determinations.

HUD's Restructuring Commitment.

HUD's rejection of the Restructuring Plan and Commitment.

HUD's determination that the property or the owner is ineligible for the M2M program.

HUD's determination that the Restructuring Process will be discontinued.

Request for Administrative Review. An owner may request an administrative review of a final decision of an appeal. Any request for administrative review must be in writing and be submitted to HUD within 30 days of receipt of the final determination.

#### Outyear Requirements.

In the case of multiple Section 8 contracts, or stages, where some or all contracts, or stages, expire after the closing of the Restructuring occurs ("outyear"), if the outyear contract or stage originated prior to

the enactment of MAHRA, the owner may request that the outyear contract or stage(s) remain in place without rescission of the Section 8 funds.

Recapture Agreement. If an outyear contract will remain in place, the owner is required to sign a Recapture Agreement that provides that excess Section 8 payments be applied to (a) the second mortgage, (b) the Reserve for Replacement account, or (c) other uses approved by HUD.

Rider to the Section 8 Contract. The owners of properties with outyear contracts must also execute a rider to the Section 8 contract (when they request restructuring), agreeing to cooperate in the restructuring process and other terms.

Documentation Required for Mark-to-Market.

Rehabilitation Escrow Deposit Agreement and/or Operating Deficit Escrow (when applicable)

Use Agreement is a covenant running with the land and must be in effect at least 30 years.

Restructuring Commitment reflects the terms and conditions of the Restructuring Plan approved by HUD.

Section 8 Housing Assistance Payments (HAP) Watchlist Contract and Rent Reduction Certification.

Owners whose HAP Contracts or HAP contract extensions expire, or who do not sign and return the Restructuring Commitment, must sign a Section 8 HAP Watchlist Contract and provide a new rent schedule in order to continue receiving funds.

Closing Documents. Execute closing documents.

Owner's Attorney. Issues Opinion of Owner's Counsel and (if applicable) FHA Opinion of Owner's Counsel.

**Information collection – Third party lenders, escrow agents, etc.**

Mortgagee Attorney

For modification of existing loan, existing mortgagee attorney prepares takeout financing documents. Standard business practice; no burden hours ascribed.

Closing Escrow Agent

Fax to HUD copies of final settlement statement, current property tax bill, M2M note, mortgages, 236 grant agreement (if applicable), IRS form W-9 and OAHF Transmittal and Certification of Interim/Final Settlement Statement and Closing. Provide recording instructions to the title company. Prepare and submit to PAE and HUD a disbursement statement and/or settlement statement reflecting the flow of funds through the closing escrow. Prepare and execute Transmittal and Certification and final settlement statement. Signs certification that final disbursement is correct. Standard business practice; no burden hours ascribed.

Existing Mortgagee or Loan Servicer provides PAE with information necessary to compare existing mortgage information to HUD's system. Prepares and assembles any information needed to explain or resolve any discrepancy. If applicable, executes loan modification and forwards to Closing Escrow Agent. If existing mortgage is to be paid off, executes and forwards to Closing Escrow Agent a release of mortgage; certification of current mortgage balance; if requesting Section 541(b) claim payment, prepares Section 541(b) claim and authorization letter and corporate resolution to allow claim to be paid through closing escrow; closes out all escrow balances and forwards to closing escrow agent or new lender; and deducts escrow balances from final payoff figure and provides breakout of netting from payoff to HUD the day of closing

Title Company provides preliminary title report; provides pro forma title policy prior to closing pursuant to HUD guidelines; records documents pursuant to closing escrow instructions; issues final title policy prior to Section 541(b) payment disbursed. Standard business practice; no burden hours ascribed.

**Information collection- Contractors (PAEs), their attorneys and other subcontractors**

PAEs Participating Administrative Entities under contract with HUD to perform underwriting and other services on HUD's behalf. There are only 3 PAEs, however there is some burden on their subcontractors so to the extent that an information collection potentially burdens more than 9 entities, it is included on this package.

PAE attorneys prepare loan documents and perform due diligence for PAEs as subcontractors

PCNA providers perform inspections and prepare reports as PAE subcontractors

3. The process for collecting information from tenants is not automated nor is the information collected electronically; it is collected from the tenants orally at the First and Second Tenant meetings referenced above. The process for collecting information from the owner is not automated nor is it collected electronically; it is obtained via a direct interview of the project owner/agent. The process for collecting information from the PAE is partially automated and is frequently collected electronically. OAHP has not extended the use of improved technology in collecting information from tenants and owners because from inception this program was intended to be a temporary program of limited duration. The program was originally scheduled to sunset in 2002 again in 2006 and again in 2011, when it was extended to 2014. Generally information from third-party lenders is submitted and collected electronically. Information from third-party rehabilitation escrow administrators is also submitted and collected electronically.
4. There will be no duplication of information. There is no similar information already available which could be used or modified for use for the purposes described in item 2 above.
5. This collection is not anticipated to burden small businesses, however, we attempted to minimize the burden on respondents by using standard forms wherever possible and by providing recommended sample formats but leaving exact format (narrative/description) of the required information up to the respondent.
6. The information cannot be collected less frequently.
7. There are no special circumstances that require the collection to be conducted in a manner which is inconsistent with the guidelines in 5 CFR 1320.8(d)
8. In accordance with 5 CFR 1320.8(d), the Agency's notice soliciting public comments, was announced in the Federal Register on Monday, June 25, 2012; Volume 77, No.122, Pages 37917). No comments were received.

The Agency consulted with the following Mark to Market PAEs and rehabilitation escrow administrators: Sue Pogozelski of CreditVest, Don Dively and Melanie Landig of Ontra, and Zach Sloven and Greg Klaas of Signet Partners via e-mail correspondence and conference calls regarding the availability of data, frequency of collection, reporting format and other issues relevant to the collection of information from these third parties.

9. There has been no decision to provide any payment or gift to respondents other than the payment of claims to mortgagees on behalf of the mortgagor as required by statute.
10. No assurance of confidentiality is provided.
11. No such sensitive questions are asked.
12. Estimated hour burden to the respondents: Authority for this program sunsets September 30, 2014. The number of potentially eligible projects (Section 8 properties with above-market rents that have not already gone through an M2M restructure) is declining due to the maturity of the program. The following chart shows the declining activity.

Form #	Form	Number of Respondents	Frequency of Response	Total Annual Responses	Hours Per Response	Total Annual Burden Hours	Hourly Rate	Total Estimated Cost
HUD 9624	HUD 9624 Request for Full Restructure	45	1	45	1	45.0	55.00	\$ 2,475.00
HUD 9624	HUD 9624 Request for Lite Restructure	15	1	15	1	15.0	55.00	\$ 825.00
	Request to Owner for related party agreements	45	1	45	1.5	67.5	55.00	\$ 3,712.50
	Request to Owner for financial history	45	1	45	1	45.0	55.00	\$ 2,475.00
	Evaluation of physical condition	45	1	45	1	45.0	55.00	\$ 2,475.00
OPG 4.1	Ownership certification	45	1	45	3	135.0	55.00	\$ 7,425.00
OPG 6.5	Determination to Discontinue Restructuring Process	3	1	3	3	9.0	55.00	\$ 495.00
OPG 7.16	Certification of Mortgagor Information	34	1	34	0.25	8.5	25.00	\$ 212.50
	Request to owner's Counsel for opinion	34	1	34	2	68.0	100.00	\$ 6,800.00
	Restructuring Commitment	9	1	9	2	18.0	55.00	\$ 990.00
	Green Restructuring Commitment	25	1	25	2	50.0	55.00	\$ 2,750.00
	M2M Use Agreement	9	1	9	1	9.0	55.00	\$ 495.00
	Green Initiative Use Agreement	25	1	25	1	25.0	55.00	\$ 1,375.00
	Section 236 Use Agreement	5	1	5	1	5.0	55.00	\$ 275.00
	Section 236 Rehab Grant Agreement	5	1	5	1	5.0	55.00	\$ 275.00
	Green Operating & Maintenance Plan	25	1	25	3	75.0	55.00	\$ 4,125.00
	Section 8 Recapture Agreement	1	1	1	1	1.0	55.00	\$ 55.00
HUD 9625	HUD 9625 OCAF Adjustment Worksheet	45	1	45	0.75	33.8	55.00	\$ 1,856.25
	Request for Mortgagee for mortgage loan history	45	1	45	1	45.0	25.00	\$ 1,125.00
OPG 7.6	Application for 541(b) payment	34	1	34	1	34.0	25.00	\$ 850.00
	Request to Mortgagee for document release	34	1	34	1	34.0	25.00	\$ 850.00
	Consent to Mortgage Restructuring Commitment	34	1	34	0.5	17.0	25.00	\$ 425.00
	Release of Mortgage	34	1	34	0.5	17.0	25.00	\$ 425.00
	Release of Regulatory Agreement	34	1	34	0.5	17.0	25.00	\$ 425.00
	Release of Security Agreement	34	1	34	0.5	17.0	25.00	\$ 425.00
OPG 9.10	REAT Multipurpose Form	24	1	24	1	24.0	45.00	\$ 1,080.00
OPG 9.11	REAT Multipurpose Form	24	1	24	1	24.0	45.00	\$ 1,080.00

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	Request to Rehab Escrow Administrator for detailed accounting of expenditures on completed Rehab	24	1	24	2	48.0	45.00	\$ 2,160.00
	Request to Rehab Escrow Administrator for submission of status updates on Resource Desk	24	12	288	0.5	144.0	45.00	\$ 6,480.00
	Accommodation Agreement - Debt Assgn - TPA Post Restr (Form/Apdx C)	9	1	9	0.5	4.5	45.00	\$ 202.50
	Accommodation Agreement - Debt Forgiveness - TPA Post Restr (Form/Apdx C)	1	1	1	0.5	0.5	45.00	\$ 22.50
	Agreement of Assignment of Debt to QNP (Form/Apdx C)	9	1	9	0.5	4.5	45.00	\$ 202.50
	Allonge - Debt Assignment From QNP (Form/Apdx C)	9	1	9	0.5	4.5	45.00	\$ 202.50
	Allonge - Debt Assignment to QNP (Form/Apdx C)	9	1	9	0.5	4.5	45.00	\$ 202.50
	Assignment of Debt from QNP (Form/Apdx C)	9	1	9	0.5	4.5	45.00	\$ 202.50
	Assumption & Modification of Use Agmt (Assignment) (Form/Apdx C)	9	1	9	0.5	4.5	45.00	\$ 202.50
	Assumption and Modification of Use Agreement - Forgiveness (Form/Apdx C)	1	1	1	0.5	0.5	45.00	\$ 22.50
OPG 11.1	OPG 11.1 PAE Rent Comparability Review Report to OAHP	45	1	45	10	450.0	45.00	\$ 20,250.00
OPG 3.1	OPG 3.1 Notice of Intent to Sell	13	1	13	0.5	6.5	55.00	\$ 357.50
OPG 3.2	OPG 3.2 Notice to Potential Purchasers	13	1	13	0.5	6.5	55.00	\$ 357.50
OPG 3.3	OPG 3.3 Notice of 1st Restructuring Plan Consultation/Tenant Meeting	45	1	45	1	45.0	55.00	\$ 2,475.00
OPG 3.4	OPG 3.4 Notice of 2nd Consultation/Tenant Meeting	45	1	45	1	45.0	55.00	\$ 2,475.00
OPG 4.10	OPG 4.10: Ownership Certification	45	1	45	3	135.0	45.00	\$ 6,075.00
OPG 4.11	OPG 4.11 F47 Clearance	30	1	30	3.5	105.0	45.00	\$ 4,725.00

Form #	Form	Number of Respondents	Frequency of Response	Total Annual Responses	Hours Per Response	Total Annual Burden Hours	Hourly Rate	Total Estimated Cost
	Certification							
OPG 4.12	OPG 4.12 F47 Reconciliation Form	15	1	15	4.5	67.5	45.00	\$ 3,037.50
OPG 4.2	OPG 4.2 Checklist of Related Party Agreements	45	1	45	0.5	22.5	45.00	\$ 1,012.50
OPG 4.3	OPG 4.3 Loan History Statement	45	1	45	1	45.0	45.00	\$ 2,025.00
OPG 4.4	OPG 4.4 Environmental Restrictions Checklist	60	1	60	0.5	30.0	45.00	\$ 1,350.00
OPG 4.7	OPG 4.7 Owner's Adoption of the PAE's PCA/Findings	45	1	45	0.5	22.5	45.00	\$ 1,012.50
OPG 4.8	OPG 4.8 PAE's Notice to Owner of Environmental Issues	45	1	45	1	45.0	45.00	\$ 2,025.00
OPG 5.4	OPG 5.4 Subsidy Layering Certification Standard M2M Transaction	44	1	44	0.5	22.0	45.00	\$ 990.00
OPG 5.5	OPG 5.5 Subsidy Layering Certification - Non-Standard M2M Transaction	1	1	1	0.5	0.5	45.00	\$ 22.50
OPG 7.11	OPG 7.11 Certification of Closing Attorney	35	1	35	0.5	17.5	100.00	\$ 1,750.00
OPG 7.12	OPG 7.12 HUD Held Restructuring Summary	5	1	5	0.5	2.5	100.00	\$ 250.00
OPG 7.13	OPG 7.13 Non-HUD Held / Non-PPC Closing Summary	1	1	1	0.5	0.5	45.00	\$ 22.50
OPG 7.14	OPG 7.14 Certification of Closing Attorney	40	1	40	0.5	20.0	100.00	\$ 2,000.00
OPG 7.21	OPG 7.21 Transmittal and Certification of Interim/Final Settlement Statement and Closing Escrow Instructions	40	1	40	1	40.0	45.00	\$ 1,800.00
OPG 7.22	OPG 7.22- Certification of (Full) TPA Documents and Request for Preliminary TPA Approval	15	1	15	4	60.0	100.00	\$ 6,000.00
OPG 7.23	OPG 7.23- Certification of (Full) TPA Documents and Request for Final Approval	10	1	10	2	20.0	100.00	\$ 2,000.00
OPG 7.25	OPG 7.25: Payment Information Form.	35	1	35	1	35.0	45.00	\$ 1,575.00
OPG 7.4	OPG 7.4 Claim Payment Checklist	40	1	40	1	40.0	45.00	\$ 1,800.00

Form #	Form	Number of Respondents	Frequency of Response	Total Annual Responses	Hours Per Response	Total Annual Burden Hours	Hourly Rate	Total Estimated Cost
OPG 7.8	OPG 7.8 Certification of Closing Attorney - FHA Insured	40	1	40	0.5	20.0	100.00	\$ 2,000.00
<b>Total</b>		<b>1658</b>		<b>1922</b>		<b>2412.3</b>		<b>\$ 123,063.75</b>

13. There are additional costs to the respondents due to OMB's new policy of treating Agency contractors as members of the public for public burden reporting purposes. Consequently, the category of Information from Participating Administrative Entities has been added and costs associated with the information collection have been reported in detail.

14. Estimated annualized cost to the federal government. The bulk of the restructuring work is done by the PAEs working under contract to HUD. Based on average costs, HUD projects the following costs:

<b>Total</b>	<b>1922 responses</b>		<b>\$27</b>		<b>\$51,894.00</b>
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15. This is a revision of a currently approved collection. There is an adjustment due to continued participation in the program resulting from the program being extended beyond its sunset of September 30, 2011, as well as an adjustment based on inclusion of information collected by PAEs, as instructed by guidance from OMB. Furthermore, updated data has allowed for more accurate calculations of burden hours.

16. The collection of this information is not intended to be published.

17. We are not seeking approval to not display the expiration date for OMB approval of the information collection.

18. There are no exceptions to the certification statement of OMB form 83-1.