

Paperwork Reduction Act Submission

Please read the instruction before completing this form. For additional forms or assistance in completing this forms, contact your agency's Paperwork Reduction Officer. Send two copies of this form, the collection instrument to be reviewed, the Supporting Statement, and any additional documentation to: Office of Information and Regulatory Affairs, Office of Management and Budget, Docket Library, Room 10102, 725 Seventeenth St. NW, Washington, DC 20503.

1. Agency/Subagency Originating Request: U.S. Department of Housing and Urban Development Office of General Counsel		2. OMB Control Number: a. 2510-0010 b. <input type="checkbox"/> None	
3. Type of information collection: (check one) a. <input type="checkbox"/> New Collection b. <input type="checkbox"/> Revision of a currently approved collection c. <input checked="" type="checkbox"/> Extension of a currently approved collection d. <input type="checkbox"/> Reinstatement, without change , of previously approved collection for which approval has expired e. <input type="checkbox"/> Reinstatement, with change , of previously approved collection for which approval has expired f. <input type="checkbox"/> Existing collection in use without an OMB control number For b-f, note item A2 of Supporting Statement instructions.		4. Type of review requested: (check one) a. <input checked="" type="checkbox"/> Regular b. <input type="checkbox"/> Emergency - Approval requested by c. <input type="checkbox"/> Delegated 5. Small entities: Will this information collection have a significant economic impact on a substantial number of small entities? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No 6. Requested expiration date: a. <input checked="" type="checkbox"/> Three years from approval date b. <input type="checkbox"/> Other (specify)	
7. Title: Opinion by Counsel to the Mortgagor (FHA)			
8. Agency form number(s): (if applicable) HUD- 91725, 91725-INST, HUD-91725-CERT			
9. Keywords: Housing, mortgage insurance, loans, insurance, mortgagor, mortgagee, closing			
10. Abstract: The opinion is required to provide assurance to HUD and the mortgagee in multifamily rental and health care facility mortgage insurance transactions.			
11. Affected public: (mark primary with "P" and all others that apply with "X") a. Individuals or households e. Farms b. P Business or other for-profit f. Federal Government c. Not-for-profit institutions g. State, Local or Tribal Government		12. Obligation to respond: (mark primary with "P" and all others that apply with "X") a. Voluntary b. P Required to obtain or retain benefits c. Mandatory	
13. Annual reporting and recordkeeping hour burden: a. Number of respondents 800 b. Total annual responses 800 Percentage of these responses collected electronically 0 c. Total annual hours requested 800 d. Current OMB inventory 800 e. Difference (+,-) f. Explanation of difference: 1. Program change: 2. Adjustment:		14. Annual reporting and recordkeeping cost burden: (in thousands of dollars) a. Total annualized capital/startup costs 0 b. Total annual costs (O&M) 0 c. Total annualized cost requested 0 d. Current OMB inventory 0 e. Difference 0 f. Explanation of difference: 1. Program change: 2. Adjustment:	
15. Purpose of Information collection: (mark primary with "P" and all others that apply with "X") a. X Application for benefits e. Program planning or management b. Program evaluation f. Research c. General purpose statistics g. P Regulatory or compliance d. Audit		16. Frequency of recordkeeping or reporting: (check all that apply) a. <input checked="" type="checkbox"/> Recordkeeping b. <input type="checkbox"/> Third party disclosure c. <input checked="" type="checkbox"/> Reporting: 1. <input checked="" type="checkbox"/> On occasion 2. <input type="checkbox"/> Weekly 3. <input type="checkbox"/> Monthly 4. <input type="checkbox"/> Quarterly 5. <input type="checkbox"/> Semi-annually 6. <input type="checkbox"/> Annually 7. <input type="checkbox"/> Biennially 8. <input type="checkbox"/> Other (describe)	
17. Statistical methods: Does this information collection employ statistical methods? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No		18. Agency contact: (person who can best answer questions regarding the content of this submission) Name: Millicent B. Potts Phone: 202-402-5255	

19. Certification for Paperwork Reduction Act Submissions

On behalf of this Federal Agency, 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). Appear 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: Camille E. Acevedo Camille E. Acevedo, Associate General Counsel for Legislation and Regulations	Date: 8/31/12
--	----------------------

Signature of Senior Officer or Designee: X Colette Pollardr, Departmental Reports Management Officer Office of Investment Strategies, Policy, and Management, Office of the Chief Information Officer	Date:
--	-------

Supporting Statement for Paperwork Reduction Act Submissions

A. Justification

- 1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.**

Under the various sections of Title II of the National Housing Act, the Secretary of the Department of Housing and Urban Development (HUD) is authorized to insure mortgage loans upon certain multifamily rental housing projects and health care facilities (nursing homes, extended care facilities, board and care homes and hospitals). The Secretary is also authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of Title II. (See 12 USC 1715b). Generally, the mortgages are defined as those "commonly given" in the various States; therefore, State and local law govern virtually the entire mortgage insurance transaction from the formation of the mortgagor entity to the making and securitization of the loan to the construction of the project in accord with local law. Consequently, prior to endorsement of a mortgage note for insurance in connection with a multifamily rental project or a health care facility, it is imperative that HUD knows the precise legal status of the mortgagor entity and of the realty and personalty that will comprise the security property. Inasmuch as the transaction is largely coordinated by the counsel to the mortgagor or owner, HUD has looked to such counsel for an opinion, which provides assurance to the insured mortgagee and HUD regarding virtually all legal aspects of the transaction.

HUD's regulations at 24 CFR 200.45 provide the regulatory authority for the collection of all exhibits and documents in support of an application for mortgage insurance. "Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting for the terms and conditions upon which the mortgage will be insured." (See 24 CFR 200.46.) Submission of the Opinion of Mortgagor's Counsel is a required condition for endorsement of insurance to assure the Department that the mortgagor has complied with certain general requirements and property requirements set forth in 24 CFR 200.60 – 200.78.

Although it is unclear that the rendering of a legal opinion is within the ambit of "the collection of information," HUD has determined that the more conservative approach is to treat the opinion as such and let OMB make a definitive determination.

- 2. Indicate how, by whom and for what purpose the information is to be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.**

The opinion is designed to provide HUD and the mortgagee with assurance that the mortgagor or owner entity has been validly formed, lawfully exists and that the security property and the construction thereupon comply with appropriate local laws such as building codes, zoning, etc. Further, the loan documents must comport with local law and practice and only an attorney licensed in the jurisdiction can complete such documents and provide HUD with the requisite assurance. It would be an enormous burden for HUD and the mortgagee, which often is a national entity, to perform such a legal analysis of the mortgagor or owner entity, the documents and the transaction.

A form is designed to provide HUD the opinion.

- 3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.**

The document passes from counsel to the mortgagor or owner to HUD and the mortgagee. Because this document is used in a real estate closing and real estate closings across the nation continue to be conducted with hard copy documents and hard copy documents must be filed with the applicable court for recordation, there is no consideration at this time for using information technology. However, the providing of a sample opinion in electronic format assists in reducing burden, as attorneys are able to electronically store the sample opinion so that it can be easily modified with word processing software for each specific HUD-insured real estate closing.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Since this is the **only** legal opinion required by HUD in connection with the transaction, we can find no evidence of duplication. Further, there is no duplication of this collection for mortgagors and their attorneys given that such an opinion by counsel is standard industry practice in conventional, non HUD-insured, multifamily mortgage transactions. Attorneys representing mortgagors supply a legal opinion to the mortgage lender whether or not their client uses HUD mortgage insurance to finance their multifamily building or health care facility.

5. If the collection of information impacts small businesses or other small entities (Item 5 of OMB Form 83-I) describe any methods used to minimize burden.

HUD generally requires that the mortgagor or owner entity be a sole asset entity and sometimes the HUD-approved mortgagee might also be a small business; however, no burden falls upon these entities. The entire burden is upon the counsel to the mortgagor or owner to represent its client in the mortgage loan transaction. A small portion of such representation involves rendering a legal opinion that can be relied upon by HUD and the mortgagee.

Only counsel for the mortgagor or owner is in a position to render the necessary opinion. HUD attorneys do not have access to the mortgagor or owner entity in a fashion that would provide HUD counsel with all of the data and knowledge available to the mortgagor's or owner's counsel. Further, HUD counsel are not in a time management or bar membership position to legally opine as to organizations, real and personal property, local law, etc., which comprise a mortgage loan transaction.

6. Describe the consequence to Federal program or policy activities if the collection is not conducted or is conducted less frequently, as well as any technical or legal obstacles to reducing burden.

Without the assurance provide by the opinion, HUD and the mortgagee would be performing duplicative legal work and would expend considerably greater time and resources than the mortgagor's or owner's counsel, who would be conducting the due diligence analysis as a matter of course in representing the client.

7. Explain any special circumstances that would cause an information collection to be conducted in a manner:

- **requiring respondents to report information to the agency more than quarterly;**
- **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;**
- **requiring respondents to submit more than an original and two copies of any document;**
- **requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records for more than three years;**
- **in connection with a statistical survey, that is not designed to produce valid and reliable results than can be generalized to the universe of study;**
- **requiring the use of a statistical data classification that has not been reviewed and approved by OMB;**
- **that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or**
- **requiring respondents to submit proprietary trade secret, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.**

No special circumstances exist.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice, required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

- **Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any) and the data elements to be recorded, disclosed, or reported.**
- **Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that preclude consultation in a specific situation. These circumstances should be explained.**

The Federal Register 60-day notice was published on July 2, 2012 (77 FR 39251). No comments were received.

In order to comply with this item and 5 CFR 1320.8(d)(1), attorneys in HUD's Office of General Counsel, Office of Insured Housing, Multifamily Mortgage Division consulted, once again, with three law firms that regularly represent mortgagors and owners in connection with HUD-insured multifamily mortgage loan transactions and regularly submit to HUD the Opinion by Counsel to the Mortgagor. HUD staff queried these private attorneys for comment on the four separate topics listed in the regulation. With regard to whether the proposed collection is necessary for the proper performance of the agency's functions, lawyers from all three law firms confirmed that the opinion by counsel is indeed necessary for HUD's functions as an insurer of multifamily and health care loans, and that the requirement is not unique to HUD, as a legal opinion by counsel to the mortgagor is standard industry practice for almost all conventionally financed non-residential mortgage transactions.

With respect to the agency's estimate of the proposed burden for completing the actual opinion, not including the time spent performing due diligence and otherwise representing the borrower in the transaction, two law firms thought that the one hour time estimate is typical, while the third law firm thought two hours would be more appropriate. HUD has decided to continue to use the one hour estimate, as two of the three firms agreed with that amount; further, HUD has not received any public comment questioning the one hour estimate. These private attorneys also informed HUD that performing the due diligence and document review necessary to issue the legal opinion involves many more hours than just the time spent writing the opinion, that such due diligence could take as many as ten to fifty hours per transaction, depending on the familiarity of the client with HUD programs and the complexity of the loan transaction. However, as is further explained in item twelve of this justification, and by admission of the private attorneys interviewed, this time and effort would be expended whether HUD mortgage insurance was involved or not, as well as whether the attorneys were required to issue an opinion or not, since the attorneys would have to perform the same level of review and due diligence as part of their professional and legal obligations to their clients in connection with the real estate transaction. Lastly, on the issue of the burden estimate, HUD confirmed with the private law firms that the estimated per hour cost of \$250 is still appropriate.

In 2011, HUD revised the closing documents used in connection with its multifamily rental project insurance programs, but decided, in response to public comment, not to revise the Opinion by Counsel to the Mortgagor. Commenters, in response to the update of closing multifamily documents, expressed their preference that the Opinion by Counsel to the Mortgagor remain unchanged.

With respect to minimizing the burden of the collection of information including the use of electronic means, the attorneys consulted offered very few suggestions for minimizing the burden, provided that HUD continue the practice of live closings. The attorneys were largely satisfied with having an electronic version of the form Opinion by Counsel to the Mortgagor available on the HUD website, which they store on their own internal computer systems for modification from transaction to transaction. One attorney mentioned that they take advantage of being able to submit a copy of the opinion to HUD staff for review prior to sending a hard copy, which reduces the burden of the information collection.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

No payment provided.

10. Describe any assurance of confidentiality provided to respondents and the basis for assurance in statute, regulation or agency policy.

No assurance of confidentiality is given.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

No sensitive questions are involved.

12. Provide estimates of the hour burden of the collection of information. The statement should:

- **Indicate the number of respondents, frequency of response, annual hour burden, and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than 10) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size, or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally estimates should not include burden hours for customary and usual business practices;**
- **If this request covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I; and**
- **Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead this cost should be included in Item 13.**

The total annualized cost to mortgagors or owners of retaining private counsel to prepare the opinion is estimated to be \$200,000.00, which is based upon a total of 800 hours at an average cost per hour of \$250.00. Although one hour is expended completing the form, approximately 100 to 150 hours are expended by mortgagor's or owner's counsel in representing the mortgagor or owner in connection with the purchase of the property and a mortgage line item covers such typical total cost of approximately \$15,000 to \$25,000.00 to the mortgagor. The 100 to 150 hours would normally be expended by counsel in business transactions involving the purchase of a large asset such as a multifamily housing project, whether or not HUD is involved in the transaction. These hours are, therefore, exempt from the "burden" estimate under OMB's paperwork regulations at 5 CFR 1320.3(b)(2), which exclude from "burden" the "time effort, and financial resources necessary to comply with a collection of information that would be incurred by persons in the normal course of their activities."

The above estimates are based upon an estimated total of 800 multifamily project and health care facility loan closings per year. One legal opinion is required per closing. These estimates are based upon HUD's program staff experience in dealing with the aforementioned mortgage line item, the referenced loan closings, the experience of HUD personnel who have recently acted as counsel to mortgagors in the private sector, and the experience of the private attorneys who represent mortgagors that HUD consulted as part of this Paperwork Reduction Act process, as discussed in item eight above.

- 13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information (do not include the cost of any hour burden shown in Items 12 and 14).**
- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s) and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities;**
 - **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10) utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
 - **Generally, estimates should not include purchases of equipment or services, or portions thereof made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

There are no additional costs to the respondent.

- 14. Provide estimates of annualized cost to the Federal government. Also, provide a description of the method used to estimate cost, which should include quantification of hours, operational expenses (such as equipment, overhead, printing, and support staff), and any other expense that would not have been incurred without this collection of information. Agencies also may aggregate cost estimates from Items 12, 13, and 14 in a single table.**

The estimated annualized cost to the federal government of collecting and storing the opinion based upon an hourly rate of \$33.00 per hour and a total of seven hours is \$231.00. The opinion is one of many documents that is collected at each loan closing and is stored in the docket file that is maintained for the life of the project loan in the federal records center. There is also the cost of review of the document by HUD field counsel. We estimate that this review should take approximately one-half hour per opinion and based upon an hourly rate of \$47.00, the total cost for the estimated 800 annual submissions would be \$18,800. The hourly rates of \$33.00 and \$47.00 are based upon the average hourly rates (for the Washington, DC area) of a GS-11/Step 5 legal assistant/paralegal and a GS-13/Step 5 attorney, respectively.

Given the freeze on federal salaries during the past 3 years, the costs assessments have not changed since the 2009 renewal.

15. Explain the reasons for any program changes or adjustments reported in Items 13 and 14 of the OMB Form 83-I.

There are no program changes or adjustments from Items 13 and 14 that necessitate explanation.

16. For collection of information whose results will be published, outline plans for tabulation and publication. Address any complex analytical techniques that will be used. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

No information will be published.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

Not seeking approval to not display the expiration of OMB approval.

18. Explain each exception to the certification statement identified in item 19.

No exceptions sought.

B. Collections of Information Employing Statistical Methods

None.
