

Supporting Statement for Paperwork Reduction Act Submissions

Eligibility of a Nonprofit Corporation/Housing Consultant Certification

OMB Control Number 2502-0057

(Forms HUD-3433, HUD-3434, HUD-3435, & HUD-92531)

A. Justification

1. Section 207(b)(1) and (2) of the National Housing Act (Public Law 479, 48 stat. 1246, (12 U.S.C. 1701 et. seq.) gives the Secretary authority to insure mortgages which cover properties sold by: (1) Federal or State instrumentalities, municipal corporate instrumentalities of one or more States, or limited dividend or redevelopment or housing corporations restricted by Federal or State laws or regulations of State banking or insurance departments as to rents, charges, capital structure, rate of return, or methods of operation, or (2) any other mortgagor approved by the Secretary. The Secretary may at his discretion, require any such mortgagor to be regulated or restricted as to rents or sales, charges, capital structure, rate of return, and methods of operation so as to provide reasonable rentals to tenants and a reasonable return on investment.

Copies of outstanding regulations are attached for 24 CFR 200, Subpart A and 24 CFR 221.501, require nonprofit corporations or associations to be organized for purposes other than the making of profit or gain for itself or person identified therewith and prohibit a nonprofit from being controlled or under the direction of persons or firms seeking to derive profit or gain. These regulations permit the Secretary to supervise rents, charges and methods of operation of any FHA approved mortgagor.

Copies of outstanding regulations are attached for 24 CFR 200.215(e)(1), pertain to the principal of a public or private entity proposing to participate in a project as a sponsor, owner, prime contractor, etc. The principal role can be one of actual participation in directing the activities and affairs of the mortgagor entity or involvement in decision-making, or one of inactive participation where an ownership interest has been acquired. All principals must be identified and analyzed based on their credit, experience, and financial histories.

2. The Department wants to prevent incidences in which documentation from nonprofit transactions are actually controlled by a profit motivated entity rather than a nonprofit sponsor. This practice presents a direct conflict with instructions in the Mortgage Credit Handbook 4470.1 Rev-2, Handbook 4560.1 Rev-1, Mortgage Income for Multifamily Moderate Income Housing Projects, and Chapter 8 of the Multifamily Accelerated Processing (MAP) Guide. The instructions require HUD to make a determination that the nonprofit sponsor/mortgagor is acting on its own behalf and is not, either, knowingly or unwittingly under the influence, control, or direction of any outside party seeking to derive a profit or gain from the proposed project.

HUD allows nonprofit corporations and public mortgagors to employ the assistance of Housing Consultants. Housing Consultants are required to exclusively serve the nonprofit sponsor and the tenants. The Department must determine if the Housing Consultant's efforts

are directed exclusively toward serving the nonprofit sponsor and tenants. The consultant certifies on form HUD-92531 that no payment has been or will be received either in the form of stock, options to buy stock or compensatory professional or financial services from any parties to the transaction. The certification assures the complete independence of the consultant and precludes any other party, including the builder, the attorney, the architect, and the mortgagee from receiving payment for consultant services.

Form HUD-3433, Request for Preliminary Determination of Eligibility as Nonprofit Sponsor and/or Mortgagor, and backup materials are provided at the Site Appraisal and Market Analysis (SAMA), feasibility stage, or preliminary stages of the MAP application process. Form HUD-3433 is submitted during the application stage and provides HUD with information to determine whether the sponsor has qualifications necessary for successful sponsorship of housing projects. HUD Program Offices use the data to evaluate a potential sponsor's/mortgagor's qualifications at the pre-application stage to determine that all the documentation required by Chapter 8 of the MAP Guide and Chapter 14 of Handbook 4470.1 comply with regulations. Form HUD-3433 provides a description of the relationship between the nonprofit and profit motivated entities involved in the transaction.

Form HUD-3434, Certificate of Relationships and Nonprofit Motives, provides a determination of eligibility or ineligibility of the nonprofits before initial endorsement. Form HUD-3434 requires the nonprofit mortgagor and sponsor to identify their officers and directors within their organization. A copy of form HUD-3433 is submitted as an application exhibit that accompanies form HUD-3434 and must be reviewed by HUD staff prior to initial endorsement of the note for mortgage insurance. Form HUD-3434, requires the mortgagor and sponsor to certify that the information on form HUD-3433 has not changed and if there are changes, an exhibit identifying the changes must be attached.

Form HUD-3435, Certificate of Contractual Relationship, requires submission by the general contractor, subcontractors, material suppliers, equipment lessees, supplier of the land, architectural services, legal and organizational services, and management of the project. The form requires these parties to certify to any direct or indirect contractual relationship they have with the sponsor or the mortgagor. HUD reviews this form to ensure that there is no change in the motives between the sponsor/mortgagor since the application stage and that no relationship exists, which violates the intent of outstanding regulations.

Form HUD-92531, Housing Consultant's Certificate, is submitted during the application stage and is reviewed by HUD mortgage credit staff. The form is required when a nonprofit sponsor/mortgagor uses a Housing Consultant in the development of housing projects insured under Sections 221(d)(3), 221(d)(4), 231, 232, and 244. The Housing Consultant hired by the sponsor/mortgagor must certify to HUD that: (1) during the term of the contract the consultant is not an employee or member of the Sponsor or owner of the project except as Housing Consultant and Management Agent, and has no financial interest in the project or operations; (2) except for the fee specified in the contract, the Housing Consultant will not accept any compensation or remuneration, directly or indirectly, in any form from any party interested in the development or operation of the project, including the seller of the land, attorney, architect, mortgagee, surety, title company, general contractor and subcontractor, or

material man; and (3) the intent of the contract is to prohibit the housing consultant and its employees from any transaction which would create a conflict of interest with other persons or entities participating in the development and operation of the project.

The number of applicants have declined due to the Program's suspension of the product (221d(3)).

3. Reengineering efforts are being made to replace the DAP system, which would improve the functionality and replacement of technology, and the online implementation of automated underwriting processing from the beginning to end of completion, including the e-signature. The target date of 9/30/2013 was given for implementation. The information was based on the 2009 FHA Multifamily IT Strategy Plan, modernization of IT. This information was submitted to Congress. Procurements are involved so the projected date is 9/2013 for implementation assuming all goes well with procurements.
4. The review of multifamily housing forms confirms that no other form provides this particular information. Applications for mortgage insurance involving nonprofit sponsors and/or mortgagors are required to submit information regarding their nonprofit status and the hiring of a Housing Consultant. There are no known methods to reduce burden for insured multifamily projects; these forms are only submitted once unless a change in relationship occurs.
5. By requiring the submission of these forms only once, unless a change in relationship occurs, the Department minimizes the burden on the nonprofit sponsor/mortgagor and small mortgagees.
6. The collection of the information occurs once for each multifamily application submitted. Consequences to the Department by not collecting this information would mean not meeting the intent of the law and Federal regulations. If HUD did not collect this information, a profit motivated entity could take advantage of the 100% financing alternatives and tax advantages available to a nonprofit sponsor/mortgagor with limited or no risk by the profit motivated entity. That practice would create additional risk to the General Insurance Fund since the profit motivated entity that controls the entire transaction may well have collected its fees at closing and have little or no concern about the long-term financial and physical health of the project.
7. There are no special circumstances involved in this collection.
8. Collection of this information is consistent with the guidelines in 5 CFR 1320.8(d). The agency's notice soliciting comments was announced in the *Federal Register* on November 15, 2012, (Vol. 77, pages 68138 and 68139).

HUD did not consult outside the agency regarding the collection of this information due to the small number of responses for each form. HUD staff completed samples to verify completion times of the various forms.

9. No payments or gifts of any kind are provided to respondents.
10. Each respondent who completes each form will read the Privacy Act Statement on the front of each form. Departmental policy requires the collection of information and failure to do so will result in disapproval of participation in the HUD program and/or delay action on the proposal.
11. These forms do not request information that could be considered of a sensitive nature.
12. Estimate of public burden

| Information Collection | Number of Respondents | Frequency of Response | Responses Per Annum | Burden Hour Per Response | Annual Burden Hours | Hourly Cost | Annual Cost |
|------------------------|-----------------------|-----------------------|---------------------|--------------------------|---------------------|-------------|----------------|
| HUD-3433 | 10 | 1 | 10 | .75 | 8 | \$30 | \$ 240 |
| HUD-3434 | | 1 | 10 | .50 | 5 | \$20 | 100 |
| HUD-3435 | 60 | 1 | 60 | .50 | 30 | \$50 | \$1,500 |
| HUD-92531 | 30 | 1 | 30 | 0 | 0 | 0 | 0 |
| Totals | 100 | | 110 | | 43 | | \$1,840 |

13. There are no additional costs to the respondents for the collection of this information. Amounts paid to Housing Consultants are approved under OMB Control Number 2502-0470.
14. Annualized cost to the Federal Government for each form is as follows:

| Information Collection | Responses Per Annum | Hours Per Response | Annual Hours | *Hourly Cost | Annual Cost |
|------------------------|---------------------|--------------------|--------------|--------------|----------------|
| HUD-3433 | 10 | .75 | 8 | \$32 | \$ 256 |
| HUD-3434 | 10 | .50 | 5 | \$32 | \$160 |
| HUD-3435 | 60 | .50 | 30 | \$32 | \$960 |
| HUD-92531 | 30 | .08 | 2 | \$32 | \$76 |
| Totals | 110 | | 45 | | \$1,452 |

*The hourly rate is based on a GS-12/Step 5, \$68,310

15. This information collection is a revision of a currently approved collection. The number of applicants have declined due to the Program's suspension of the product (221d(3)). Applicants may now use the 221d(4) with similar terms but less risky.
16. This collection of this information will not be published.
17. We are not seeking approval to avoid displaying the OMB approval date.
18. There are no exceptions to the "Certification for Paperwork Act Submissions."

B. Collections of Information Employing Statistical Methods

This collection does not employ statistical methods.