

Supporting Statement for Paperwork Reduction Act Submissions (Proposed Reinstatement, Without Change, of Previously-Approved Information Collection Requirements for HUD's Final Rule Implementing the Housing for Older Persons Act of 1995 (HOPA))

HUD is asking the Office of Management and Budget (OMB) to reinstate, without change, the previously-approved information collection requirements for HUD's Final Rule implementing the Housing for Older Persons Act of 1995 (HOPA), for which OMB approval expired on August 31, 2012, for an additional three (3) year period. The Final Rule implementing the HOPA was published in the *Federal Register* on April 2, 1999, and became effective on May 3, 1999. The HOPA Final Rule defines the standards that housing communities or facilities must meet if they intend to qualify for the exemption provided under section 807(b)(2)(C) of the Fair Housing Act, as amended by the HOPA, for housing "*intended and operated for occupancy by at least one person 55 years of age or older per unit*" ("55 or older" housing).

The previously-approved information collection requirements established under the HOPA Final Rule will be submitted to the OMB for review, as required under the Paperwork Reduction Act of 1995 [44 U.S.C. Chapter 35 as amended].

Title of Regulation: "24 CFR Part 100, Implementation of the Housing for Older Persons Act of 1995; Final Rule."

OMB Control Number, if applicable: 2529-0046.

A. Justification

1. Circumstances That Make the Information Collection Necessary

The Fair Housing Amendments Act of 1988 (the Act) [42 U.S.C. 3601 et seq.], as amended by the Housing for Older Persons Act of 1995 (HOPA) [Public Law 104-76], prohibits discrimination in the sale, rental, occupancy or advertising of residential dwellings because children under 18 years of age are domiciled in the household (familial status discrimination). However, section 807(b)(2)(C) of the Act provides an exemption from liability for familial status discrimination for housing that is "*intended and operated for occupancy by persons 55 years of age or older.*" A "55 or older" housing facility or community can lawfully refuse to sell or rent dwellings to families with minor children, or can lawfully impose different terms and conditions of residency on such families. A "55 or older" housing facility or community can also lawfully advertise dwellings for sale or rent in a manner that expresses a preference for applicants with no minor children.

In order to qualify for the “55 or older” housing exemption: (1) at least 80% of the occupied units in the housing facility or community must be occupied by at least one person 55 years of age or older; and (2) the housing provider must publish and adhere to policies and procedures that demonstrate the intent to operate housing for persons 55 years of age or older; and (3) the housing provider must be able to produce, in response to a valid complaint, proof of compliance with HUD’s regulatory requirements for verification of the ages of occupants of each dwelling unit, supported by reliable surveys and affidavits.

2. Use of Information

Under the Fair Housing Act, HUD is required to investigate all jurisdictional complaints alleging that a housing provider refused to sell or rent a dwelling to a qualified person because of the presence of minor children in that person’s household (familial status discrimination). If, in response to such a complaint, a housing provider asserts that the housing facility or community is exempt from liability for familial status discrimination because it qualifies for the “55 or older” housing exemption, HUD will request supporting documentation which clearly demonstrates that the housing has been consistently operated in compliance with the “55 or older” exemption criteria listed above in Paragraph One. If the supporting documentation confirms that the housing facility or community complied with all three “55 or older” housing exemption requirements as of the date(s) on which the discrimination allegedly occurred, HUD will determine that there is no reasonable cause to believe that the housing facility or community violated the Fair Housing Act.

For purposes of this information collection, the term “**Respondent**” means: (a) a provider of housing intended and operated for occupancy by persons 55 years of age or older, as provided under section 807(b)(2)(c) of the Fair Housing Act; or (2) an occupant of a “55 or older” housing facility or community claiming the HOPA exemption. Section 100.304(b) of the HOPA Final Rule defines the term “*housing facility or community*” as “...*any dwelling or group of dwelling units governed by a common set of rules, regulations or restrictions. A portion or portions of a single building shall not constitute a housing facility or community. Examples of a housing facility or community include, but are not limited to: (1) a condominium association; (2) a cooperative; (3) a property governed by a homeowners association; (4) a municipally zoned area; (5) a leased property under common private ownership; (6) a mobile home park; and (7) a manufactured housing community.*”

3. Use of Technological Information Collection Systems

HUD does not control how a “55 or older” housing provider maintains or disseminates the required information, *and has no authority to require housing providers to automate their data collection systems*. The use of technology in the information collection process will vary from community to community, based on the size or technical sophistication of the facility or community that intends to claim the “55 or older” housing exemption. For this reason, HUD does not maintain an electronic database for collection of HOPA exemption information.

4. Duplication Identification

Each information collection under the HOPA Final Rule will be unique to the particular housing facility or community that intends to claim the “55 or older” housing exemption.

5. Impact on Small Businesses and Other Small Entities

The information collection requirement imposes no additional burden on small businesses and other small entities that operate “55 or older” housing facilities or communities. Both the HOPA and the HOPA Final Rule require that any provider of housing who intends to claim the “55 or older” housing exemption provided under the HOPA must routinely collect, maintain and update age verification information necessary to meet the three eligibility criteria for the exemption. The HOPA’s age verification record keeping requirements are the responsibility of any housing provider that wishes to qualify for the “55 or older” housing exemption. The Fair Housing Act does not authorize HUD to waive the record-keeping requirement based on the size of a provider’s housing operation. However, HUD believes that, as a practical matter, the fewer the total number of units in a housing facility or community, the lighter the information collection burden per unit for the “55 or older” housing provider.

6. Reduction of Frequency of Information Collection

The information collection requirements contained in §§100.306 and 100.307 of the HOPA Final Rule are necessary to meet the eligibility criteria for the “55 and older” housing exemption provided under the HOPA. There is no statutory basis upon which the frequency of the data collection can be reduced. Housing providers must maintain ongoing compliance with the “55 or older” housing exemption requirements for as long as the housing facility or community intends to qualify for the exemption. HUD has no statutory authority to certify that a housing facility or community qualifies for “55 or older” housing exemption for an indefinite period of time. HUD also cannot predict when or whether a valid familial status discrimination complaint will

be filed with HUD against a particular housing facility or community. Section 810(a)(1)(A)(i) of the Fair Housing Act permits an aggrieved person to file a housing discrimination complaint with HUD within one year of the date on which the discriminatory housing practice allegedly occurred or ended.

The information required under section 807(b)(2)(C) of the Act, the HOPA, and the HOPA Final Rule will be collected in the normal course of business in connection with the sale, rental or occupancy of dwelling units situated in a "55 or older" housing facility or community. The creation of such records should occur in the normal course of sale or rental transactions, and should require minimal time.

The statutory and regulatory requirement to "publish and adhere to" reliable age verification rules, policies and procedures for screening current and prospective occupants is the usual and customary practice of the "senior housing" industry, without regard to the requirements of the Act or the HOPA. The procedures for verifying ages of current residents of a facility or community may require an initial survey and periodic reviews and updates of existing age verification records for each occupied dwelling unit. Section 100.307(c) of the HOPA Final Rule requires that such updates must take place "at least once every two years". The *Preamble* to the HOPA Final Rule offers the following rationale for this regulatory requirement:

"Some commenters objected to the 're-survey' of the park every two years as being unduly burdensome, especially if the list is actively updated on an ongoing basis. While HUD is sympathetic to those well-managed communities [that] actively update lists of residents, it does not feel that such communities will be unduly burdened by the update since the information required will be readily available in the files. HUD's experience in this area gives it reason to believe that if surveys are not required to be updated periodically the quality of the recordkeeping will deteriorate and create the opportunity for the excessive litigation Congress sought to prevent. The re-survey does not require that all supporting documents be collected again---only that the community confirm that those persons counted as occupying dwellings for purposes of meeting the 80% occupancy requirement are, in fact, still in occupancy."

7. Special Circumstances

No special circumstances apply to the information collection requirements of the Fair Housing Act, the HOPA of 1995, or the HOPA Final Rule.

8. Public Comments on Information Collection

- HUD solicited public comments on the proposed reinstatement of the previously-approved HOPA information collection that has expired. On Friday, December 28, 2012, HUD published a “*Notice of Proposed Reinstatement of Information Collection; Comment Request; Implementation of the Housing for Older Persons Act of 1995*” [Docket Number FR-5605-N-02 , *Federal Register* Vol. 77, No. 249, Friday, December 28, 2012]. The public comment period for this *Notice* expired on Tuesday, February 26, 2013. No public comments were received.
- There has been no formal outside consultation on the HOPA Final Rule’s information collection requirements. However, this information collection is consistent with the statutory requirement for conducting “*reliable surveys*” and obtaining “*affidavits*” to verify the ages of current residents of a housing facility or community that is claiming the “55 or older” housing exemption.

9. Payment or Gift to Respondents

As defined under section 802(n) of the Fair Housing Act, “*Respondent*” means—(1) the person or other entity accused in a complaint of an unfair housing practice; and (2) any other person or entity identified in the course of investigation and notified with respect to respondents so identified under section 810(a).” This proposed information collection involves no payment or gift to any person or entity who is identified as a Respondent in a valid familial status-based housing discrimination complaint filed with HUD, and who asserts the “55 or older” housing exemption provided under section 807(b)(2)(C) of the Act as an affirmative defense to the complaint.

10. Assurance of Confidentiality

Only one of the three types of information that would be collected under the HOPA Final Rule raises any question as to confidentiality. Information concerning the publication of a community’s housing rules, policies and procedures is not confidential, because such rules, policies and procedures must be publicly disclosed to current and prospective residents, and to residential real estate professionals, as part of the process to qualify for the exemption. The occupancy survey summary of results described in §100.307(i) of the HOPA Final Rule does not have to contain confidential information. It may simply indicate the total number of dwelling units that are occupied by persons 55 years of age or older. However, the supporting age verification records may contain some private information which would need to be kept confidential until a community or facility claims the “55 or older”

housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint filed with HUD. Sections 100.307(d), (e), and (g) of the HOPA Final Rule (“*reliable documentation*” of the age of the occupants) provide a range of options that allows residents to choose the method of age verification that best protects their privacy. Further, the *Preamble* to the HOPA Final Rule contains the following policy guidance issued in response to public comments received on the HOPA Proposed Rule:

“Copies of supporting information gathered in support of the occupancy verification may be retained in a separate file with limited access, created for the sole purpose of complying with HOPA, and not in general or resident files that may be widely accessible to employees or other residents. The segregated documents may be considered confidential and not generally available for public inspection. HUD, state or local fair housing enforcement agencies, or the Department of Justice may review this documentation during the course of an investigation.”

“There were objections to making public information contained in an age survey for fear that confidential information may be obtained by someone attempting to prey on seniors. HUD believes that this is a misinterpretation of the requirement. Only the overall survey summary is required to be available for review, not the supporting documentation. The word ‘summary’ has been added to this section.”

11. Questions of a Sensitive Nature

The HOPA Final Rule does not require the collection of information that is of a sensitive nature.

12. Estimate of Annual Hour Burden for Information Collection

No Federal, State or local entity, including the Federal Bureau of the Census, routinely collects, compiles or maintains data that would enable HUD to ascertain the total number of residential facilities and communities in the United States that are operating as “55 or older” housing at any given time. In estimating the total annual hour burden for this information collection, HUD divided the information collection and reporting activity into three (3) categories as shown in the following Chart:

Type of Collection Activity	Estimated Total Number of Respondents (“55 or older” Housing Providers and/or Occupants of “55 or older” Housing)	Estimated Frequency of Response (Data Collection)	Estimated Average Response Time (Hrs.)	Annual Burden Hours	Estimated Cost per Hour
One: Publication of and adherence to policies and procedures that demonstrate the <u>intent</u> to operate as 55-or-older housing	1,000 housing providers	One-time event for publication	2 hours	2,000	\$20.00

Two: Collect age verification data for at least one occupant per unit to meet the HOPA’s minimum “80% occupancy” requirement	Estimated 10,000 occupants	Once per each housing transaction	1 hour	1,000	\$20.00
Three: Periodic updates of occupancy records	1,000 housing providers	At least once every other year	2.5 hours	2,500	\$20.00

The Respondents [i.e. “55+” **Housing Providers**] referenced in Categories **One** and **Three** on the foregoing Chart are identical. HUD has estimated that approximately 1,000 housing facilities or communities nationwide would undertake to operate as “55 or older” housing; would adopt and enforce age verification rules, policies and procedures; and would collect and maintain age verification data necessary to achieve and maintain ongoing compliance with HUD’s regulatory requirements for the HOPA exemption. HUD also has estimated the average number of housing transactions per year at ten (10) transactions per housing facility or community. HUD has estimated that the occupancy/age verification data would require routine updating with each new housing transaction within the facility or community, and that the number of such transactions per year might vary significantly depending on the size and nature of the housing facility or community. HUD also estimated that the adoption and publication of age verification rules and procedures by a facility or community was “...likely to be a one-time event and in most cases would require no additional burden beyond what is done in the normal course of business.” HUD’s experience in the administrative enforcement of the Fair Housing Act indicates that, on average, the estimates reasonably reflect the actual burden.

HUD has estimated the total annual burden hours for the three information collection activities at 5,500 hours. HUD’s experience in the administration of the Fair Housing Act indicates that the estimates, on average, reasonably reflect the actual burden for these Respondents.

13. Estimated Annual Cost Burden to Respondents or Record Keepers

For purposes of this information collection, HUD multiplied the total estimated annual burden hours [5,500] by the estimated cost per hour [\$20.00] for a total estimated annual cost burden of \$110,000.00, or approximately \$110.00 per year for each housing facility or community that intends to qualify for the “55 or older” housing exemption. There are no additional cost burdens identified for “55 or older” housing providers beyond those reported under Item 12 of this Supporting Statement.

14. Estimate of Annual Cost to the Federal Government

The record keeping requirements for this information collection are the responsibility of the housing facility or community that intends to qualify for the HOPA’s “55 or older” housing exemption. Therefore, this information collection imposes no annual cost burden upon the Federal Government.

15. Change in Cost Burden

No changes have been made to the information provided under Items 13 and 14 on Form OMB 83-1. This will be a reinstatement of a previously approved information collection that has expired.

16. Publication of Results

This information collection does not include a requirement for publication of results with HUD.

17. Display of Expiration Date

This information collection does not require an expiration date display, because HUD does not require Respondents identified in a complaint investigation to utilize any official forms to collect, maintain, or submit HOPA exemption-related information to HUD.

18. Certification Exceptions

There are no certification exceptions associated with this information collection, because HUD lacks statutory authority to certify that a housing facility or community qualifies for the “55 or older” housing exemption.

B. Collection of Information Employing Statistical Methods

This information collection does not involve the use of statistical methods.