

Department of Housing and Urban Development

Supporting Statement for Legal Instructions for Applications for Full Insurance Benefits—Assignment of Multifamily Mortgages to the Secretary (2510-0006)

A. JUSTIFICATION

1. Circumstances Making the Collection of Information Necessary

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 Section 207(g) of the National Housing Act (12 U.S.C. § 1713(g)), when an FHA insured multifamily mortgage goes into default, the mortgagee may become entitled to receive mortgage insurance benefits from FHA by assigning the mortgage to HUD. Section 207(g) states that in connection with the assignment of the mortgage to HUD, the mortgagee shall assign, transfer and deliver to the Secretary:

- (1) All rights and interests arising under the mortgage so in default;
- (2) All claims of the mortgagee against the mortgagor or others, arising out of the mortgage transactions;
- (3) All policies of title or other insurance or surety bonds or other guaranties and any and all claims thereunder; and
- (4) All records, documents, books, papers, and accounts relating to the mortgage transaction.

HUD's regulations implementing these requirements are found in 24 C.F.R. § 207.258(b). (Copies of relevant statutes and regulations are attached.) HUD's Office of General Counsel (OGC), Multifamily Mortgage Division, is responsible for reviewing and approving the mortgage-related documents submitted by the mortgagee in connection with these requirements. When HUD receives the mortgagee's election to assign the mortgage, the mortgagee receives an e-mail from HUD's Multifamily Delinquency and Default Report System (MDDR), which informs the mortgagee that it can obtain the Legal Instructions Concerning Applications for Full Insurance Benefits from MDDR, in order to inform the mortgagee of the requirements and procedures for meeting them.

Most of the documents which mortgagees are required to produce pursuant to the proposed form—e.g., the mortgage and the security agreement, are documents which the mortgagee should have in its files even in the absence of these requirements.

2. Purpose and Use of the Information Collection

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 mortgagee provides HUD with accurate, complete and valid documentation on the mortgage being assigned to the Secretary so that HUD may effectively service and, if necessary, sell or foreclose the lien of the mortgage. If the documentation did not meet HUD's requirements, HUD might not have a valid and enforceable first lien on both the real and the personal property comprising the project.

3. Use of Improved Information Technology and Burden Reduction

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.

Due to the low number of annual respondents and that there are no other forms to complete, and information technology would not reduce the burden. The information is gathered from the actual mortgage documents that the mortgagee already has in its possession as a result of applying for the insurance and providing the loan, and closing or settlement of mortgages remains a hard copy documentation process.

4. Efforts to Identify Duplication and Use of Similar Information

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.

The documentation necessary for completion of the insurance claim includes specific legal documents that carry with them the force of contract, binding the parties under the law and securing the interests of all parties by the specificity and particularity of each document. There is no duplication of information.

5. Impact on Small Businesses or Other Small Entities

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.

The collection of this information will not impact small businesses or other small entities.

6. Consequences of Collecting the Information Less Frequently

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.

FHA insurance claims could not be paid to mortgagees who are in good standing without this necessary information. The documents are required by law to assign the mortgage and determine ownership of the real property and chattel secured by the mortgage. The burden cannot be reduced as each of the documents is necessary because of the legal ramifications of each individual document.

7. Special Circumstances Relating to the Guidelines of 5 CFR 1320.5

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.

There are no special circumstances applicable to this connection of information.

8. Comments in Response to the *Federal Register* Notice and Efforts to Consult Outside the Agency

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.

As required by 5 CFR 1320.8(d), HUD published in the *Federal Register* the 60-Day Notice for this information collection on September 10, 2015, at 80 FR 55481. HUD received no public comments. On November 17, 2015, at 80 FR 71822, HUD published in the *Federal Register* the 30-day Notice for this information collection. HUD received no public comments.

9. Explanation of Any Payment or Gift to Respondents

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

No gifts or payments are provided other than the payment of insurance claims in cash or debentures in exchange for filing a claim for insurance benefits under the FHA Mortgage Insurance Program.

10. Assurance of Confidentiality Provided to Respondents

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

All legal documents and communications submitted will be bound by the principles of confidentiality set forth in the Model Rules of Professional Conduct as well as the attorney-client privilege.

11. Justification for Sensitive Questions

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 questions of a sensitive nature are included in this request

12. Estimates of Hour Burden Including Annualized Hourly Costs:

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.

This is an extension of a currently approved collection. The burden on each respondent will vary in proportion to the number of claims filed by the respondent. Some mortgagees hold very few FHA-insured mortgages, and may file few if any claims for insurance benefits each year. Other mortgagees (most notably, the Federal National Mortgage Association, known as Freddie Mac) hold very large portfolios of FHA-insured mortgages, and may file ten or more claims per year. For purposes of this response, however, it is assumed that in each year no mortgagee would file more than one claim.

The number of claims filed has been fewer since the previous OMB approval was provided. In 2015, the number of respondents to date is 35; in 2014, the number was 48; in 2013, the number was 83; and in 2012, the number was 107. The significant reduction is attributed to FHA's successful efforts at reducing mortgage defaults, but the downturn in the economy, especially the housing market during the 3 year period since the preceding approval, while not resulting in higher claims, has not resulted in fewer claims. Therefore, based on the number of claims in 2015, 2014, 2013, and 2012, the annual claim response was calculated at the average of 68.

The burden of 26 hours per claim includes the time necessary to provide mortgage documents such as title policies, UCCs, security agreements, original mortgage and mortgage note, etc., which relate to the HUD-insured mortgage covering the project. Documents must be obtained from various recording offices (land offices, title companies, etc.) archives, etc. The annualized cost to the respondent is estimated at \$90 an hour times 26 burden hours per claim times 68 responses or \$159,120.

<u>No. of Responses</u>	<u>Frequency (Annually)</u>	<u>Hours</u>	<u>Burden (Total Hours Annually)</u>
68	1	26	1,768
<u>No. of Respondents</u>	<u>Hours (Average)</u>	<u>Rate</u>	<u>Total</u>
68	26	\$90	\$159,120

13. Estimate of Other Total Annual Cost Burden to Respondent or Recordkeepers

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).

There are no capital or start-up costs. There are no cost burdens to respondents for operation and maintenance.

14. Annualized Cost to the Federal Government:

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.

For each claim filed, a paralegal specialist (typically a GS-12 to GS-13) will spend an average of 3 hours reviewing and checking on the insurance claim, and a GS-14 attorney advisor or a GS-15 senior attorney advisor will spend approximately one hour reviewing the work of the paralegal specialist. Assuming an average hourly rate of \$36 (the average of GS-12, Step 5 (\$ 32.73), and GS-13, Step 5 (\$38.92)) the labor cost will be approximately \$108.00 for staff review of the insurance claim. The additional one hour of the supervising attorney (\$40.58 for a GS-14 and \$47.74 for a GS-15) adds approximately an additional \$45 to the claim review. (See OPM table of federal wages which provide an hourly rate http://archive.opm.gov/oca/12tables/pdf/g_s_h.pdf.) Therefore, the HUD employee wage cost per application is \$144.00, which reflects the total cost to the federal government per insurance claim.

Number of reviews of mortgage insurance benefits requests:	68
Number of hours to complete a review:	4
Total number of hours (68 x 4)	272
Cost for total number of reviews: (@ \$144.00 per hour)	\$39,168

Total estimated annualized costs to the Federal government are \$39,168.00 based on 4 hours processing time at \$144 per hour for 68 responses.

15. Changes in Hour Burden

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

In this renewal of the Legal Instructions Concerning Applications for Full Insurance Benefits – Assignment of Multifamily Mortgage, HUD proposed, in both the 60-day notice and the 30-day notice to make the following revisions to this document:

Under Part B, Submissions of Legal Documents after Recordation of Assignment, HUD proposed to add new paragraphs 12 and 13 to read as follows:

12. Flood Insurance. If all or part of the building(s) included within the project are in a Special Flood Hazard Area (SFHA), acceptable proof of flood insurance coverage. This can be either the original flood insurance policy covering the building(s), a copy of the Flood Insurance Application and premium payment, a copy of the declarations page, or evidence of flood insurance, comprising flood insurance coverage equal to the lesser of the insurable value of the building(s) or the maximum amount of coverage available for that type of property under the National Flood Insurance Program (“NFIP”) (see www.fema.gov/business/nfip/manual.shtm). The flood insurance should name the mortgagee and the Secretary of Housing and Urban Development of Washington, D.C., his/her successors and assigns as mortgagee and loss payee respectively. The flood insurance must be in effect at least through 11:59 p.m. on

the date on which the assignment of mortgage is recorded. In addition, if the mortgagee submits evidence of flood insurance, the mortgagee must submit an affidavit that contains the following language and is otherwise acceptable to HUD:

[Insert name of the mortgagee] affirms under penalty of law that the [describe flood insurance policy by name of insurance company or producer and policy number] described in the [Evidence of Insurance or other document name, as applicable] is in full force and effect and names the Secretary of Housing and Urban Development, of Washington, D.C., his/her successors and assigns, 451 7th Street, SW, Room 9230, Washington, D.C. 20410-0500 as loss payee as of [insert the date of assignment].

The effective date of this endorsement and mortgagee's affidavit, if applicable, should be the date the assignment of mortgage to the Secretary is filed for record. The evidence of flood insurance is acceptable if it contains language to the effect that it is for informational purposes only and does not confer rights upon the holder of the policy only if accompanied by the mortgagee's affidavit. A Certificate of Insurance is not acceptable.

13. An assignment of the mortgagee's interest in the flood insurance policy should state the following:

The interest of _____, as the Mortgagee under Policy No. _____ issued by _____ is hereby assigned to the Secretary of Housing and Urban Development of Washington, D.C., his/her successors and assigns. Date: _____

In the 60-day notice and 30-day notice, HUD advised that existing paragraphs 12 through 16 would be unchanged except for being redesignated as paragraphs 14 through 18.

HUD did not receive any comments in response to the 60-day notice and 30-day notice. HUD therefore adopts these proposed new provisions in the final document.

16. Plans for Tabulation, Publication, and Project Time Schedule

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.

A. Time Schedule

B. Publication

C. Analysis Plan

None of the information collected will be published.

17. Reason(s) Display of OMB Expiration Date Inappropriate

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

No exemption is requested.

18. Exceptions to Certification for Paperwork Reduction Act Submissions:

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

There are no exceptions to the certification statement identified in item 19.

19. Collections of Information Employing Statistical Methods:

This collection will not employ statistical methods.