

**Supporting Statement for Paperwork Reduction Act Submissions (Proposed Extension of OMB Approval for the Information Collection Requirements for HUD's Final Rule Implementing the Housing for Older Persons Act of 1995 (HOPA))**

HUD is requesting that the Office of Management and Budget's (OMB) current approval of the information collection requirements for HUD's Final Rule implementing the Housing for Older Persons Act of 1995 (HOPA) be extended for an additional three (3) years after the expiration of the current approval period. HUD's 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 criteria 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 proposed 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]. HUD has solicited public comments on the proposed extension of the HOPA information collection requirement.

**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.

**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, advertising, insuring, or financing 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: (1) a provider of housing intended and operated for occupancy by persons 55 years of age or older, as defined under section 807(b)(2)(c) of the Fair Housing Act; or (2) a housing facility or community that claims eligibility for the “55 or older” housing 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’ or resident 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 housing facility or community that intends to qualify for 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 qualify for 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. Under the Fair Housing Act and the HOPA Final Rule, a housing provider that intends to qualify for the “55 or older” housing exemption must collect, maintain, and update reliable age verification information that demonstrates the provider’s compliance with the exemption criteria. HUD has no statutory authority to waive or modify the “55 or older” exemption’s record-keeping requirements based on the size of a particular housing facility or community. 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 established under section 807(b)(2)(C) of the Fair Housing Act. The Act does not authorize HUD to waive or modify the record keeping requirements for the “55 or older” housing exemption. Housing providers must demonstrate ongoing compliance with the Act’s “55 or older” housing exemption requirements for as long as the housing facility or community intends to qualify for the exemption. The Act does not authorize HUD to certify that a housing facility or community qualifies for “55 or older” housing exemption for an indefinite period of time. Further, HUD cannot predict when or whether a jurisdictional familial status-based housing discrimination complaint will be filed with HUD against a particular

housing facility or community. Under section 810(a)(1)(A)(i) of the Act, an aggrieved person may file a housing discrimination complaint with HUD not later than one year from the date on which the discriminatory housing practice allegedly occurred or ended.

The information required under section 807(b)(2)(C) of the Fair Housing Act 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 Final Rule. The procedures for verifying ages of current residents of a housing 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 [page 16328] 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**

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;  
**Not Applicable**

requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

**Not Applicable**

requiring respondents to submit more than an original and two copies of any document;

**Not Applicable**

requiring respondents to retain record, other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

**Not Applicable**

in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

**Not Applicable**

requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

**Not Applicable**

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  
**Not Applicable**

requiring respondents to submit proprietary trade secrets, 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.

**Not Applicable**

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 extension of the information collection. On Tuesday, December 13, 2016, HUD published a “*60-Day Notice of Proposed Information Collection; Comment Request; Implementation of the Housing for Older Persons Act of 1995 (HOPA)*” [Docket Number FR-5911-N-03, *Federal Register* Vol. 81, No. 239]. The public comment period for this *Notice* expired on Monday, February 13, 2017. 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 claims eligibility for 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 jurisdictional 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 facility’s or 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 of qualifying for the “55 or older” housing 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 asserts the “55 or older” housing exemption as an affirmative defense

to a jurisdictional familial status-based housing discrimination complaint filed with HUD. Sections 100.307(d), (e), and (g) of the HOPA Final Rule (“*reliable documentation*” of the ages 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 [pages 16327, 16328] contains the following policy guidance issued in response to public comments received on the HOPA Proposed Rule:

*“A summary of the information gathered in support of the occupancy verification should be retained for confirmation purposes. 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 Burden Hours 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 actually operating as “55 or older” housing at any given time. In estimating the total annual burden hours for this information collection, HUD divided the information collection and reporting activity into three (3) categories as shown on 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)	Est. Average Response Time (Hours)	Est. Annual Burden Hours	Est. Hourly Cost Burden
<b>One:</b> 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	\$21.30

<b>Two:</b> Collect age verification data for at least one occupant per unit to meet the HOPA’s minimum “ <u>80% occupancy</u> ” requirement	Estimated 1,000 occupants	Once per each housing transaction	1 hour	1,000	\$21.30
<b>Three:</b> Periodic updates of occupancy records	1,000 housing providers	At least once every other year	2.5 hours	2,500	\$21.30

The Respondents [i.e. “55 or older” **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 housing 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 for these Respondents.

HUD has estimated the total annual burden hours for the three HOPA 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**

Section 100.304(b) of HUD’s HOPA regulation provides the following definition of a “*housing facility or community*”:

*“...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’ or resident 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.”*

Under section 803(b)(2) of the Fair Housing Act, qualified “55 or older” housing facilities or communities could range in size from 4-unit non-owner-occupied apartment building; to residential developments containing hundreds of single-family houses; to high-rise condominium buildings; to an entire municipal zoning district. Considering the wide variations in size;

organization; administration; dwelling unit configuration; and geographic locations of “55 and older” housing facilities and communities nationwide, HUD’s HOPA regulation *“attempted to address the issue in the broadest possible terms to account for the large variety of senior communities while being sufficiently detailed to provide clear guidance on the requirements of the senior housing exemption, without dictating results which may be inconsistent with local practice or deny flexibility in a variety of circumstances....[and] to include any type of housing which could qualify for the exemption [Preamble, pages 16325, 16327].”*

Under the HOPA, “55 or older” housing providers are not required to submit financial data that would allow HUD to calculate the actual itemized expenses that a “55 or older” housing provider might incur in the course of advertising a housing facility or community; screening prospective residents; or periodically updating age verification information on current occupants. Accordingly, HUD does not collect financial information from “55 or older” housing providers in the course of a Fair Housing Act complaint investigation. A housing provider that claims the “55 or older” housing exemption as an affirmative defense to a familial status discrimination complaint has the burden of demonstrating that the housing facility or community consistently operates in compliance with the HOPA exemption requirements. The information collection requirements for the “55 or older” housing exemption provided under sections 100.305 [“*80 percent occupancy*”]; 100.306 [“*Intent*”]; and 100.307 [“*Verification of occupancy*”] of HUD’s HOPA regulation neither require or authorize the production or submission of a housing provider’s financial records during the course of a Fair Housing Act complaint investigation. Specifically, section 100.306(a) of HUD’s HOPA regulation identifies the following factors as relevant in determining whether a housing facility or community has demonstrated the intent to operate as “55 or older” housing:

“(1) *the manner in which the housing facility or community is described to prospective residents; (2) any advertising designed to attract prospective residents; (3) lease provisions; (4) written rules, regulations, covenants, deed or other restrictions; (5) the maintenance and consistent application of relevant procedures; (6) actual practices of the housing facility or community; and (7) public posting in common areas of statements describing the facility or community as housing for persons 55 years of age or older.*”

Section 100.307 of HUD’s HOPA regulation describes the age verification requirements for “55 or older” housing providers:

*“(a) In order for a housing facility or community to qualify as housing for persons 55 years of age or older, it must be able to produce, in response to a complaint filed under this title, verification of compliance with section 100.305 [“80 percent occupancy”] through reliable surveys and affidavits. (b) A facility or community shall, within 180 days of the effective date of this rule, develop procedures for routinely determining the occupancy of each unit, including the identification of whether at least one occupant of each unit is 55 years of age or older. Such procedures may be part of a normal leasing or purchasing arrangement. (c) The procedures described in paragraph (b) of this section must provide for regular updates, through surveys or other means, of the initial information supplied by the occupants of the housing facility or community. Such updates must take place at least once every two years.”*

Further, nothing in the HOPA or HUD’s HOPA regulation authorizes HUD to consider a housing provider’s financial records as relevant factual evidence when determining, in accordance with section 810(g) of the Fair Housing Act, whether or not the housing provider qualified for the HOPA’s “55 or older” housing exemption on the date of the alleged violation.

For purposes of this information collection, HUD retrieved current national income data from PayScale Human Capital’s Internet website at [www.payscale.com](http://www.payscale.com). PayScale collects and analyzes national income data to generate average salaries for specific job titles, including the Office Manager position. In March 2017, PayScale reported that the average (U.S.) salary for an Office Manager is \$44,316.00 per year. Neither the HOPA nor HUD’s HOPA regulation requires that a “55 or older” housing provider must hire an office manager for HOPA recordkeeping purposes. However, for the reasons cited above, HUD is utilizing PayScale’s average national income data for the Office Manager position to calculate the annual hourly cost burden for the HOPA information collection because PayScale’s Office Manager job description includes the following relevant duties:

“Greet visitors and callers;  
Route and resolve information requests;  
Maintain records and databases.”

Since HUD lacks authority under the HOPA to collect financial data for calculation of a “55 and older” housing provider’s actual operating costs,

HUD has calculated an estimated hourly cost burden of \$21.30, based on the following formula:

$$\$44,316.00 \text{ (Average annual Office Manager salary)}/2080 \text{ (Total annual labor hours)} = \$21.30$$

Absent a national registry of “55 or older” housing providers, and absent statutory authority to conduct periodic certification/compliance reviews of “55 or older” housing facilities or communities, HUD’s estimated annual cost burden and estimated hourly cost burden cannot and do not reflect the actual operating costs of individual “55 or older” housing providers during any given time period.

For purposes of this information collection, HUD multiplied the total estimated annual burden hours [5,500] by the estimated hourly cost burden [\$21.30] for a total estimated annual cost burden of \$117,150.00, or approximately \$117.50 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**

As reported in Paragraph 13 of this Statement, HUD has revised the estimated annual cost burden for this information collection from \$110.00 per year to \$117.50 per year for each “55 or older” housing provider. HUD also has revised the estimated hourly cost burden for this information collection from \$20.00 per hour to \$21.30 per hour. No changes have been made to the information provided under Items 13 and 14 on Form OMB 83-1. This will be an extension of a currently approved information collection.

#### **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 housing discrimination 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.

Filename: 20017 HOPA PRA OMB-2529-0046 REVISED SUPPORTING STATEMENT.Rev2.doc