

## **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**

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**

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**

Due to the low number of annual respondents and that there are no forms to complete, 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**

Due to the low number of annual respondents and that there are no forms to complete, 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.

### **5. Impact on Small Businesses or Other Small Entities**

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

### **6. Consequences of Collecting the Information Less Frequently**

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**

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**

As required by 5 CFR 1320.8(d), HUD published in the [Federal Register](#) a 60-Day Notice on November 26, 2018 at 83 FR 60440. HUD also establish a webpage for the public to access [https://www.hud.gov/program\\_offices/general\\_counsel/legal\\_instructions\\_full\\_insurance\\_benefits](https://www.hud.gov/program_offices/general_counsel/legal_instructions_full_insurance_benefits) proposed revisions to the Legal Instructions. HUD received public comments from one law firm that represents mortgagees. The comments recommended name changes on assignments and UCC filings, eliminating certified copies, accepting PDFs of electronically filed UCCs if the filing/recording number is shown and other comments on UCC requirements. The commenter recommended that the Legal Instructions adopt the amount of hazard insurance required by HUD administrators at the time of assignment. The commenter raised concerns about the additional burden hours and documents required to be

delivered in a claim for FHA insurance benefits pertaining to a healthcare loan insured under Section 232 of the National Housing Act. The commenter also recommended changes to the title insurance policy and lender indemnification requirements for lapsed UCC financing statements, errors in interim mortgage assignments, and for matters potentially impacting the lien of the assigned mortgage. The commenter suggested that OGC review proposed documents to be submitted by the mortgagee in an FHA insurance claim before the documents are executed and/or recorded. The commenter also submitted a proposed redline of additional changes to the Legal Instructions. HUD made additional revisions to the Legal Instructions in response to accepted comments.

## **9. Explanation of Any Payment or Gift to Respondents**

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 personal property 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.

## **10. Assurance of Confidentiality Provided to Respondents**

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**

No questions of a sensitive nature are included in this request

## **12. Estimates of Hour Burden Including Annualized Hourly Costs:**

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 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 2019, the number of respondents to date is 4; in 2018, the number was 20; in 2017, the number was 6; and in 2016, the number was 14. Therefore, based on the number of claims in 2019, 2018, 2017, and 2016, the annual claim response was calculated at the average of 11.

The burden of no less than 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 FHA-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 \$150 an hour times 26 burden hours per claim times 11 responses or \$42,900.

<u>Number of Responses</u>	<u>Frequency (Annually)</u>	<u>Hours</u>	<u>Burden (Total Hours Annually)</u>
Respondents	11	1	26

<u>No. of Respondents</u>	<u>Hours (Average)</u>	<u>Rate</u>	<u>Total</u>
11	26	\$150	\$42,900

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

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:

For each claim filed, a paralegal specialist (typically a GS-12) will spend an average of 16 hours reviewing and checking on the insurance claim, and a GS-14 attorney advisor or a GS-15 senior attorney advisor will spend approximately two hours reviewing the work of the paralegal specialist. Assuming an hourly rate of \$34.65 (GS-12, Step 5), the labor cost will be approximately \$554.40 for staff review of the insurance claim. The additional two hours of the supervising attorney (\$48.70 for a GS-14 and \$57.28 for a GS-15) adds approximately an additional \$105.98 to the claim review. (See OPM table of federal wages which provide an hourly rate <https://www.opm.gov/policy-data-oversight/pay-leave/salaries-wages/salary-tables/pdf/2019/GS.pdf>) Therefore, the HUD employee wage cost per application is \$660.38, which reflects the total cost to the federal government per insurance claim.

Number of reviews of mortgage insurance benefits requests:	11
Number of hours to complete a review:	18
Total number of hours (11 x 18)	198
Cost for total number of reviews: (@ \$660.38 per claim)	\$7,264.18

Total estimated annualized costs to the Federal government are \$7,264.18 based on 18 hours processing time at \$660.38 per claim for 11 responses.

### 15. Changes in Hour Burden

Due to the increased complexity of healthcare loan insured under Section 232 of the National Housing Act, more documents are executed at the time of loan origination. Therefore, the mortgagee is required to submit more documents to HUD, as enumerated in

the Legal Instructions, to ensure that the Secretary has all documents necessary for the Secretary to service the loan as mortgagee.

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

**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**

No Exemption is requested.

**18. Exceptions to Certification for Paperwork Reduction Act Submissions:**

N/A

**19. Collections of Information Employing Statistical Methods:**

N/A