

## Supporting Statement for Paperwork Reduction Act Submissions

**OMB TITLE:** COVID19 HUD Contingency Plan for HUD Multifamily Rental Project Closing Documents

**FORMS:** Lender's Certification Regarding: Electronic Submission of Closing Documents and Escrow Agreement for Deferred Repairs, Debt Service – 223(f)

**OMB Control No.:** 2502-NEW

### A. Justification

1. **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.**

*This is an emergency request to for approval of a new collection based on situational conditions relating to the COVID-19 Coronavirus pandemic and the Presidential declaration of a national emergency. The new collection accommodates Electronic Submission of Closing Documents and Escrow Agreement for Deferred Repairs, Debt Service – 223(f) and Lender's Certification. This new PRA collection will serve as the authority for any new or future changes or revisions to multifamily programs impacted by COVID-19 or related pandemics.*

*The Department of Housing and Urban Development ("HUD") and its offices remain open for business at this time and many employees are now engaged in full-time telework. On March 16, 2020, J. Paul Compton, Jr., General Counsel of HUD issued a memorandum to the Regional Counsel and Deputy Regional Counsel, all Associate Regional Counsel for Programs and all Office of General Counsel ("OGC") Closing Attorneys to temporary implement uniform electronic closing protocols and best practices for the continued provision of legal services to perform the closing of FHA-insured mortgages. The change for this submittal is to perform electronic closings the Office of General Counsel created the **Lender's Certification Regarding: Electronic Submission of Closing Documents**, which is a modification of the currently approved closing document Lender's Certification HUD-92434M. HUD Closing Attorneys while working remotely will use the **Lender's Certification Regarding: Electronic Submission of Closing Documents** during this COVID-19 situation.*

*It is therefore prudent and appropriate for the OGC, in collaboration with Multifamily to establish protocols, rules, and procedures that best ensure continuity of operations in the event of an extended closure of a specific division, regional or field office, or the determination that OGC in its entirety should work remotely. Pursuant to the March 16, 2020 memorandum, set forth protocols and best practices for the continued provision of legal services by HUD Closing Attorneys while working from home or from another remote location. Also included in the memorandum are suggestions that may be shared with outside counsel to facilitate the work being done remotely by OGC attorneys. Therefore, Regional Counsel adopted and applied the temporary protocols set forth in the March 16, 2020 memorandum consistently across the regional and field offices within their purview.*

*When the pandemic subsides and OGC resumes normal closing operations consistently across the country, HUD will reconsider the temporary protocols in this memorandum.*

OGC attorney protocols for review and approval of draft closing documents must rely on electronic transmission of closing documents in lieu of hard copies in performing their initial reviews. This approach will ensure the continuation of reviews even if our external partners are unable to physically transmit the volume of paper documents needed at this stage. While providing increased flexibility to lenders in submitting closing documents, this protocol does not authorize any additional substantive modifications to the closing process without approval of the appropriate Regional Counsel and the Office of Insured Housing in Headquarters. Draft closing submission will remain consistent with the approach of Multifamily Housing and OGC will accept draft closing packages in fully electronic form.

Likewise, on April 10, 2020, Brian D. Montgomery, Assistant Secretary of Housing - Federal Housing Commissioner, issued Mortgagee Letter 2020-11 announcing to the Multifamily Regional Directors, Production Directors, Operations Officers and the FHA MAP Lenders that Multifamily Housing has reevaluated its underwriting requirements, particularly for market rate refinance transactions that may now experience increased vacancy, rent collection losses and income disruption both in the near and long term, due to the COVID-19 emergency. Further we cite Section 207 of the National Housing Act which provides that no mortgage shall be acceptable for insurance unless the Secretary finds that the project is economically sound, and the MAP Guide permits specific mitigants to be employed to reduce risk for transactions currently in process yet to receive a Firm Commitment to insure. These mitigants include but are not limited to the requirement of a Debt Service Reserve (DSR) for Section 223(f) transactions to offset anticipated operating losses post endorsement.

Therefore, the Office of General Counsel created the temporary Form **Escrow Agreement for Deferred Repairs & Debt Service - 223(f) (“Debt Service Escrow Agreement”)** to provide a financial protection for the insurance fund. The change for this submittal is the revisions of the OMB approved Form HUD-92476.1M, Escrow Agreement for Non-Critical, Deferred Repairs. The **Debt Service Escrow Agreement** does not permanently replace the HUD-92476.1M. The revised escrow, while based on the HUD-92476.1M, is a separate document for temporary use during the COVID-19 emergency pursuant to Mortgagee Letter 2020-11. The temporary **Debt Service Escrow Agreement** will remain in effect until such time as Multifamily Housing determines that the real estate markets have stabilized and additional mitigants for Section 223(f) transactions are no longer required.

To address risk and/or changed economic circumstances for transactions that have been issued a commitment to insure but have yet to endorse, HUD includes language in the Firm Commitment affirming that no material adverse change has occurred between the issuance of the commitment and endorsement. Accordingly, HUD has taken the position that the impact of the COVID-19 Emergency has resulted in a material change in most, if not all, real estate markets and therefore, HUD will require mitigants to offset this additional risk. Accordingly, this form provides clarification and instructions to HUD staff describing additional mitigants that may be included in the Firm Commitment for Section 223(f) loans that are in processing, as well as for those projects for which a Firm Commitment has been issued.

The National Housing Act (12 U.S.C. 1701 et seq.) requires a Lease Addendum for a mortgaged property that is subject to a ground lease.

Under Title II of the National Housing Act, HUD is authorized to insure mortgage loans upon certain multifamily rental housing projects and health care facilities (nursing homes, extended care facilities, board and care homes and hospitals). HUD is also authorized and directed to make such rules and regulations as may be necessary to carry out the provisions of Title II. (See 12 USC 1715b). Generally, the mortgages are defined as those "commonly given" in the various States; therefore, State and local law govern virtually the entire mortgage insurance transaction from the formation of the mortgagor entity to the making and securitization of the loan to the construction of the project in accord with local law. Consequently, prior to endorsement of a mortgage note for insurance in connection with a multifamily rental facility, it is imperative that HUD knows the precise legal status of the mortgagor entity and of the realty and personality that will comprise the security property.

HUD’s regulation at 24 CFR 200.46 provides as follows: “Upon approval of an application for insurance, a commitment shall be issued by the Commissioner setting forth the terms and conditions upon which the mortgage will be insured. The commitment term and any extension or reopening of an expired commitment shall be in accordance with standards established by the Commissioner.”

HUD’s regulation at 24 CFR 200.51 provide that the mortgagee shall certify to the Commissioner that it will conform with terms and conditions established by the Commissioner for the mortgagee’s control of project funds, and other incidental requirements established by HUD.

HUD’s regulation at 24 CFR 200.105 provides as follows: “As long as the Commissioner is the insurer or holder of the mortgage, the Commissioner shall regulate the mortgagor by means of a regulatory agreement providing terms, conditions and standards established by the Commissioner, or by such other means as the Commissioner may prescribe.”

**2. 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.**

Information Collection	Title/Purpose
<i><b>NEW Form Number</b></i>	Office of General Counsel ("OGC") Closing Attorneys will facilitate temporary uniform electronic closings of FHA-insured mortgages by the <i><b>Lender’s Certification Electronic Submission of Closing Documents</b></i> . This temporary Form is a modification of the Lender’s Certificate, HUD-92434M, which the Lender agrees to abide by in consideration of HUD’s commitment to FHA-insure mortgages, and by which the Lender certifies that the conditions have been fulfilled to date, including any work done prior to endorsement of the Note that has been approved by HUD in writing, and all HUD imposed conditions that have been met with respect to such work. The information collection requirements contained in the Lender’s Certificate are to oversee the parties’ compliance with all applicable legal requirements and therefore ensure protection of the FHA insurance fund.
<i><b>NEW Form Number</b></i>	<i>Lenders will use the <b>Escrow Agreement for Deferred Repairs &amp; Debt Service - 223(f)</b> will establish a debt service escrow for Section 223(f) transactions to offset anticipated operating losses post endorsement due to temporary mitigation of increased vacancy, rent collection losses and income disruption both in the near and long term. Accordingly, this form provides clarification and instructions to HUD staff describing additional mitigants that may be included</i>

Information Collection	Title/Purpose
	in the Firm Commitment loans that are in processing, as well as for those projects for which a Firm Commitment has been issued. The Form is a modification of the Escrow Agreement for Non-Critical Deferred Repairs HUD-92476.1M. The Repair Escrow sets forth the terms and conditions between the Borrower and Lender and provides for the establishment of an escrow by the Borrower as security for completion of post-closing repairs.

- 3. 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.**

*Relating to the current COVID-19 Coronavirus outbreak and the President declaring a national emergency the HUD in its entirety is currently working remotely. Therefore, HUD has ensured the continuity of operations to conduct FHA-insured mortgage closings electronically via but not limited to current technological equipment and various modes of electronic communications.*

- 4. 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.**

*There is no duplication of information. These documents are situational and temporary modifications of standard documents to conduct and for multifamily housing closings.*

- 5. 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. This document reduces burden by requiring use of these documents for all the various multifamily rental housing projects, except for healthcare facilities, and not requiring these documents to be individually tailored for the transaction.

- 6. 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 would not be available to the borrower, and therefore the multifamily housing transaction, likely, would not proceed. In this economy, the availability of FHA mortgage insurance is often the factor that helps to maintain the availability of affordable multifamily rental housing. Additionally, HUD must protect the FHA insurance fund, which these multifamily closing documents, along with others is designed to do, by establishing the legal rights and obligations of the parties to the multifamily housing closing transaction.

Without this collection HUD and the mortgagee would perform duplicative legal work and expend considerably greater amount of time and resources than a borrower's or owner's counsel, who would be conducting the due diligence analysis as a matter of course in representing the client.

- 7. 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:** *Multifamily says, there are no special circumstances surrounding this collection of information.*
  - **requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it:** *Multifamily says, there are no special circumstances surrounding this collection of information.*
  - **requiring respondents to submit more than an original and two copies of any document:** *Multifamily says, there are no special circumstances surrounding this collection of information.*
  - **requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records for more than three years:** *Multifamily says, while the information collection does not explicitly require the retention of records for more than three years, in addition to the fact that the documents in the collection are mostly certifications and agreements that could possibly be considered government contracts, to the extent the information collection implicitly requires the retention of the documents for more than three years, it is because HUD is insuring mortgage loans pursuant to the National Housing Act (12 USC 1701 et. seq.) for a period of up to forty years. Such long-term financing requires the Security Instrument, Note, Regulatory Agreement, and other documents in the collection to be enforceable by HUD and between the program participants (lenders and borrowers) for the same term authorized by statute.*
  - **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:** *Multifamily says, there are no special circumstances surrounding this collection of information.*
  - **requiring the use of a statistical data classification that has not been reviewed and approved by OMB:** *Multifamily says, there are no special circumstances surrounding this collection of information.*
  - **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:** *Multifamily says, there are no special circumstances surrounding this collection of information.*
- 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:** *Multifamily says, there are no special circumstances surrounding this collection of information.*
8. **If applicable, provide a copy and identify the date and page number of publications 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.**
- **Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any) and the data elements to be recorded, disclosed, or reported.**

- Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years -- even if the collection of information activity is the same as in prior periods. There may be circumstances that preclude consultation in a specific situation. These circumstances should be explained.

*The Department published the notice entitled “COVID19 HUD Contingency Plan for HUD Multifamily Rental Project Closing Documents: Lender’s Certification Regarding: Electronic Submission of Closing Documents and Escrow Agreement for Deferred Repairs, Debt Service – 223(f): 14-Day Notice of New Information Collection”*

*In accordance with 5CFR 1320.8(d), this information collection soliciting public comments was announced in the Federal Register on XXXXXXXXXX, Volume XX, No. XXX, Pages XXXXXX. (X) Comments received.*

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

*Multifamily says, no gifts or payments are provided other than the provision of mortgage insurance, and the payment of insurance claim for a validly submitted claim.*

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

*Multifamily says, the document contains no personally identifying information subject to privacy requirements.*

11. 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.

*Multifamily says, no questions of a sensitive nature are included in this request.*

12. 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.

The burden on each respondent will vary in proportion to the number of multifamily housing rental closings in which the respondent is involved. Generally, because of the high dollar amount of the transaction and the complexity of the transaction (state and local laws factor into such closings), a respondent will only engage in one such transaction during a one-year period.

The form *Lender's Certification Electronic Submission of Closing Documents* is a modification of the HUD-92434M that will set the Office of General Counsel's temporary uniform electronic closing protocols until normal closing can resume after the COVID-19 Pandemic.

The **Lender's Electronic Certification** is completed for construction type projects, which has two closings: initial and final and existing type projects which has one closing: initial/final closing. The Form is required for each closing occurrence so the 'frequency of responses' is one and the 'responses per annum' is two. The number of 'respondents' is based on Multifamily initial endorsement (closing) data that occurred in the **past 11 months that is 612 closings**. The annual responses per annum and burden hours for the form is explained in the following paragraph:

**Respondents - 612**

**Frequency - 2 closings (initial and final endorsement)**

**Total annual response - 1,224 [ 612 x 2 = 1,224]**

**Burden hour – 1 [0.50 is based on the time it takes to read and complete each form, so the total burden is 1 (one) hour.]**

The form *Escrow Agreement for Deferred Repairs & Debt Service - 223(f)* will remain in effect until such time as HUD determines that the real estate markets that have been negatively affected by the COVID-19 Emergency have stabilized and additional mitigants for Section 223(f) transactions are no longer required.

The *Debt Service Escrow Agreement* is required for each initial/final closing so the 'frequency of responses' and the 'responses per annum' is one. The number of '**respondents' for Section 223(f) is 330 closings** based on Multifamily initial/final endorsement (closing) data that occurred in the past 11 months. The annual responses per annum and burden hours for the form is explained in the following paragraph:

**Respondents - 330**

**Frequency - 1 closing (initial/final endorsement)**

**Total annual response - 330 [ 330 x 1 = 330]**

**Burden hour - 0.50 [based on the time it takes to read and complete the form.]**

The entire Closing Document 'burden hours per response' is based on the time it takes to read and complete each form in preparation for closing. 'Annual burden hours' are based on the number of times the form is completed in preparation for a closing ('responses per annum') multiplied by the amount of time it takes to complete each form. Use of the form(s) is dependent on the Section of the Act (i.e. Sections 220, 231 221(d)(4), Section 223(f)) followed by type of closing. The number of respondents is based on the number of closings achieved in Fiscal Year 2019. See the results in the below matrix. **The total annual cost per form is explained in the following paragraph:**

**Electronic Lender's Certification:**

**Hourly Cost - \$26 ~ Annual Burden Hours – 1,224 ~ Total Annual Costs - \$31,824 [26 x 1,224 = 31,824]**

**Debt Service Escrow Agreement:**

**Hourly Cost - \$26 ~ Annual Burden Hours – 165 ~ Total Annual Costs - \$4,290 [26 x 165 = 4,290]**

The 'hourly cost' is an estimate based on an average annual salary of \$62,000 for developers and mortgagees.

Information Collection	Number of Respondents	Frequency of Response	Responses Per Annum	Burden Hours Per Response	Annual Burden Hours	Hourly Cost	Total Annual Cost
<b>Lender's Certification Electronic Submission of Closing Documents</b>	612.00	2.00	1,224.00	1.00	1,224.00	26.00	31,824.00
<b>Escrow Agreement for Deferred Repairs, Debt Service – 223(f)</b>	330.00	1.00	330.00	0.50	165.00	26.00	4,290.00
<b>Totals</b>	942	2	1,554		1,389		36,114

**13. 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).**

- **The cost estimate should be split into two components: (a) a total capital and start-up cost component (annualized over its expected useful life); and (b) a total operation and maintenance purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s) and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software; monitoring, sampling, drilling and testing equipment; and record storage facilities;**
- **If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate. In developing cost burden estimates, agencies may consult with a sample of respondents (fewer than 10) utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.**
- **generally, estimates should not include purchases of equipment or services, or portions thereof made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.**

*Multifamily Programs found there are no capital or start-up costs. There are no cost burdens to respondents for operation and maintenance.*

**14. 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.**

*All MF Closing documents are reviewed by an attorney in one of HUD's Field Offices. The attorneys range from a GS-12 to a GS-14. Therefore, the grade of a GS-13 is used as an average. The time it takes to review each document corresponds to the time that it takes for the party to complete the form. Per the following website, the hourly rate of a GS-13 attorney is \$ 51.48 (rounded to \$51) per the following website [www.opm.gov/oca/10tables/html/RUS.asp](http://www.opm.gov/oca/10tables/html/RUS.asp).*

*The Electronic Lender's Certification's base hourly rate is \$51 to review and process the Form. The new form's annual burden hours are 1,224 hours.*

*The form's total estimated annualized costs, to the Federal government is \$62,424. [51 x 1,224 = 62,424]*

*The Debt Service Escrow Agreement's base hourly rate is \$51 to review and process the Form. The new form's annual burden hours are 165 hours.*

*The form's total estimated annualized costs, to the Federal government is \$8,415. [51 x 165 = 8,415]*

*The total estimated annualized costs for both Forms, to the Federal government is \$70,839. [62,424 x 8,415 = 70,839]*

Information Collection	Number of Respondents	Frequency of Response	Responses Per Annum	Burden Hours Per Response	Annual Burden Hours	Hourly Cost	Total Annual Cost
<b>Electronic Lender's Certification {Construction Projects} (no form number)</b>	612.00	2.00	1,224.00	1.00	1,224.00	51.00	\$62,424.00
<b>Repair Escrow Debt Service - 223(f) {Existing Projects} (no form number)</b>	330.00	1.00	330.00	0.50	165.00	51.00	\$8,415.00
<b>Total</b>	942		1,554		1,389		\$70,839

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

*This is a request for approval of a new information collection. This new emergency collection is being established in response to the current COVID19 pandemic. The collection will serve the purpose of addressing situational conditions to accommodate collections for multifamily programs impacted by unforeseen circumstances associated with COVID19 and other related situations in the future as the need may be.*

*This current request involves two new temporary closing forms to conduct electronic closings on all closing types and to set up a debt service escrow for FHA-insured mortgage closings for Section 223(f) market rate refinances. This relates to the current COVID-19 Coronavirus outbreak and the Presidential declaration that declared a national emergency. While HUD offices remain open for business, employees are now engaged in full-time telework and closings are being conducted electronically. Therefore, the current collection's burden hours and cost will increase by 2.0 hours as reported in line 13 and 14 of the OMB Form 83-I.*

- 16. 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.**

*The information will not be published.*

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

*There is no request to not display the expiration date.*

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

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

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**B. Collections of Information Employing Statistical Methods**

*This collection will not employ statistical methods.*

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