

**Supporting Statement for Paperwork Reduction Act Submissions
Production of Material or Provision of Testimony by HUD in Response
to Demands in Legal Proceedings Among Private Litigants
(OMB # 2510-0014)**

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.

The Secretary of the Department of Housing and Urban Development (HUD) is frequently asked to provide documents contained in the Department's files or to authorize the provision of testimony by HUD employees in response to subpoenas or other demands issued in the course of legal proceedings to which HUD is not a party. It is necessary for the Secretary to collect information about these requests in order to determine whether a request in such a proceeding should be granted. These requirements and the authorization to impose such requirements are consistent with *United States ex rel. Touhy v. Ragen* (340 U.S. 462) as well as 24 CFR part 15.

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.

In order to evaluate demands for documents or testimony, the Secretary needs specific information concerning the nature and the extent of the documents and the testimony sought, and the reasons that support its production. The rule requires that private litigants making demands for the production of material or the provision of employee testimony must include in their demands the following: (1) Be submitted in writing to the Department or employee of the Department, with a copy to the Appropriate Associate General Counsel or Appropriate Regional Counsel, no later than 30 days before the date the material or testimony is required; (2) State, with particularity, the material or testimony sought; (3) If testimony is requested, state (i) the intended use of the testimony, and (ii) whether expert or opinion testimony will be sought from the employee; (4) State whether the production of such material or provision of such testimony could reveal classified, confidential, or privileged material; (5) Summarize the need for and the relevance of the material or testimony sought in the legal proceeding and include a copy of the complaint, if available; (6) State whether the material or testimony is available from any other source and, if so, state all such other sources; (7) State why no document[s], or declaration or affidavit, could be used in lieu of oral testimony that is being sought; (8) Estimate the amount of time the employee will need in order to prepare for, travel to, and attend the legal proceeding, as appropriate; (9) State why the production of material or the provision of testimony is appropriate under the rules of procedure governing the legal proceeding for which it is sought (e.g., not unduly burdensome or otherwise inappropriate

under the relevant rules governing discovery); and (10) Describe how producing such material or providing such testimony would affect the interests of the United States. The information contained in the demand will be used by the Secretary to determine whether and to what extent the Department will produce material or provide testimony by a HUD employee to a private litigant.

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.

The rule requires that the information be submitted in writing. The rule does not prohibit the submission of the requested information in electronic format, so long as the submission is in writing, and so long as the submission otherwise complies with the other requirements of the rule.

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.

Since this document is only collected when a private litigant is requesting documents or testimony from the Department, we can find no evidence of duplication.

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.

Since the collection of information only occurs when a party seeks documents or testimony from the Department, we are unaware of any measures that could minimize the burden on small businesses or other small entities.

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.

The information is necessary to allow the Department to make informed decisions with respect to the provision of documents or testimony of Departmental employees. It would be detrimental to program and policy activities if the Department did not collect this information, because HUD would be unable to evaluate the appropriateness of providing testimony or producing material.

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; **N/A**

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it; **N/A**
- requiring respondents to submit more than an original and two copies of any document; **N/A**
- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records for more than three years; **N/A**
- 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; **N/A**
- requiring the use of a statistical data classification that has not been reviewed and approved by OMB; **N/A**
- 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 **N/A**
- 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. **N/A**

No special circumstances exist.

8. 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.
 - 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 60-day Federal Register was published on June 14, 2021, at 86 FR 31521. HUD received no comments received. A copy is provided.

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

No payment provided.

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

No assurance of confidentiality is given.

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.

No sensitive questions are involved.

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 total number of respondents is estimated at 106 and the average response time is 1.5 hours, for an annualized response time of 159 hours. It was estimated that the average response time would be 1.5 hours based on the experience of the Office of Litigation attorneys in preparing similar demands. The estimated annualized cost to the respondent collecting and storing the information is \$7,950. This estimate is based on a calculation of multiplying the total number of hours necessary to complete the collection (159) by the cost of employing a paralegal or similar administrative personnel to prepare the demand.

Information Collection	Number of Respondents	Frequency of Response	Responses Per Annum	Burden Hour Per Response	Annual Burden Hours	Hourly Cost Per Response	Annual Cost
§ 15.203	106.00	1.00	106.00	1.50	159.00	*\$53.00	\$8,427.00

*GS-13 step 3 @\$49.56(2018 OMB tables)

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.

No additional cost.

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.

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*GS-13 step 3 @\$49.56(2018 OMB tables)

The estimated annualized cost to the Federal government of collecting and storing the information is \$8,000. This estimate is based on a calculation of multiplying the total number of hours necessary to complete the collection (159) by the cost of employing a paralegal or similar administrative personnel to prepare the demand at a GS-13 step 3 @\$49.56.

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

The collection is an extension without change of a currently approved collection.

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.

No information will 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.

Not seeking approval to not display the expiration date for OMB approval.

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

No exceptions sought.

B. Collections of Information Employing Statistical Methods

None