

Supporting Statement for Paperwork Reduction Act Submissions

Housing for Older Persons Act of 1995 (HOPA) Exemption from Familial Status

Prohibitions

2529-0046

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 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 facility or community 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 facility or community must be able to produce, in response to a 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. **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.**

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.

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).*" For example, the term "respondent" could apply to (1) a housing facility or community 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. **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.**

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.

A housing provider that asserts the “55 or older” housing exemption as an affirmative defense to a jurisdictional familial status discrimination complaint may submit evidence of eligibility for the exemption to HUD in person, by mail, fax, e-mail, or electronically via the internet. A housing provider may submit supporting documentation of eligibility for the exemption to HUD when filing an answer to the complaint as provided under section 810(a)(1)(B) (iii) of the Act and under 24 C.F.R. Part 103, Subpart D, §103.203(a) of HUD’s Fair Housing Act implementing regulation, which states:

“The respondent may file an answer not later than ten days after receipt of the notice described in §103.50. The respondent may assert any defense that might be available to a defendant in a court of law. The answer must be signed and affirmed by the respondent. The affirmation must state: ‘I declare under penalty of perjury that the foregoing is true and correct.’”

During a complaint investigation, housing providers may also submit supporting documentation of eligibility for the “55 or older” housing exemption to HUD in person, by mail, fax, e-mail, or electronically via mobile storage devices such as CDs and USBs, in response to a Data Request Letter, or in response to a subpoena issued under authority of section 811 of the Fair Housing Act. HUD Investigators may also review and copy housing providers’ supporting documentation in person during on-site inspections of subject housing facilities or communities.

On December 8, 2023, FHEO’s Office of Information Services & Communication issued an updated Privacy Impact Assessment (PIA) for FHEO’s electronic HUD Enforcement Management System (HEMS) database. HEMS, implemented in 2014, is FHEO’s authorized automated repository for case records and documentary evidence collected during Fair Housing Act complaint investigations [42 U.S.C. 3601 et seq.; 24 C.F.R. Part 100], including jurisdictional familial status discrimination complaints for which Respondents asserted the “55 or older” housing exemption as an affirmative defense. FHEO’s HEMS PIA describes: (1) the legal authority that permits FHEO’s collection of information; (2) the specific type of information used by HEMS; (3) how and why HEMS uses the information; (4) whether the system provides notice to individuals that their information is generated by the system; (5) the length of time that HEMS retains the information; (6) whether and with whom the system disseminates information; (7) procedures individuals may use to access or amend information used by the system; and (8) physical, technical, and administrative safeguards applied to the system to secure the information. HEMS is also FHEO’s authorized automated repository for

information collected during the course of administrative complaint investigations and compliance reviews conducted under Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d-2000d-7]; Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794]; Section 109 of Title I of the Housing & Community Development Act of 1974 [42 U.S.C. 5309]; Title II of the Americans with Disabilities Act of 1990 [42 U.S.C. §§ 12131-12165]; Title III of the Americans with Disabilities Act of 1990 [42 U.S.C. §§ 12181-12189]; the Age Discrimination Act of 1975 [42 U.S.C. §§ 6101-6107]; Title IX of the Education Amendments Act of 1972 [20 U.S.C. §§ 1681-1688]; the Architectural Barriers Act of 1968 [42 U.S.C. 4151 et seq.]; the 2022 reauthorization of the Violence Against Women Act (VAWA 2022) [34 U.S.C. 12291; 34 U.S.C. 12471-12475; 34 U.S.C. 12491-12496; 24 C.F.R. Part 5, Subpart L, 5.2001-5.2011]; and Executive Orders 12549 and 12689.

- 4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purpose described in Item 2 above.**

Each information collection under the HOPA Final Rule will be unique to the characteristics of the housing facility or community that intends to qualify for the “55 or older” housing exemption.

- 5. If the collection of information affects small businesses or other small entities (Item 5 of Form OMB-83i), describe any efforts used to minimize burden.**

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 section 807(b)(2)(C) of 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. 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 collection requirements contained in §§100.306 and 100.307 of the HOPA Final Rule are necessary to meet the eligibility criteria for the “55 or 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 the “55 or older” housing exemption for an indefinite time period. 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 the 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. 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 records, 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 the 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;

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. 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 on 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 may preclude consultation in a specific situation. These circumstances should be explained.

Attached is a copy of FHEO's "*60-Day Notice of Proposed Information Collection--Comment Request*" that solicits comments from the public and affected agencies prior to submission to the OMB. The *60-Day Notice* [FR-7083-N-01] was published in Volume 89, Number 60, pages 21265-21266 of the *Federal Register* on Wednesday, March 27, 2024. The public comment period expired on Tuesday, May 28, 2024. HUD/FHEO received no comments in response to this Notice.

No persons or entities outside of HUD were consulted regarding 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 HOPA's "55 or older" housing exemption.

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

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

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 community or facility’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 1997 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.”

This language is consistent with policy guidance (including DOJ/HUD Joint Statements) that FHEO has issued with respect to testing evidence; anonymous witnesses; medical records submitted in support of requests for reasonable modifications of existing premises pursuant to section 804(f)(3)(A) of the Fair Housing Act; and medical records submitted in support of requests for reasonable accommodations in rules, policies, practices, or services pursuant to section 804(f)(3)(B) of the Act. The “55 or older” housing exemption does not protect housing providers from liability for violations of section 804(f) of the Act. The reasonable accommodations requirement is referenced at §100.305(e)(4) of the HOPA Final Rule [“80% Occupancy”] and is discussed on page 16327 of the *Preamble*. Section 810(d)(1) of the Act [“Prohibitions and Requirements With Respect to Disclosure of Information”] established the following restrictions on disclosure of information obtained during conciliation efforts:

“Nothing said or done in the course of conciliation under this title may be made public or used as evidence in a subsequent proceeding without the written consent of the persons concerned.”

Further, 24 C.F.R. Part 103, Subpart E §103.330 of HUD’s Fair Housing Act implementing regulation reads as follows:

- (a) *“Except as provided in paragraph (b) of this section and §100.230(c) [‘Final Investigation Report’], nothing that is said or done in the course of conciliation under this part may be made public or used as evidence in a subsequent administrative hearing under part 180 or in civil actions under title VIII of the Fair Housing Act, without the written consent of the persons concerned.”*
- (b) *“Conciliation agreements shall be made public, unless the aggrieved person and respondent request nondisclosure and the Assistant Secretary determines that disclosure is not required to further the purposes of the Fair Housing Act. Notwithstanding a determination that disclosure of a conciliation agreement is not required, the Assistant Secretary may publish tabulated descriptions of the results of all conciliation efforts.”*

On December 8, 2023, FHEO’s Office of Information Services and Communication (OISC) issued an updated Privacy Impact Assessment (PIA) for FHEO’s HUD Enforcement Management System (HEMS). The PIA describes HEMS as an automated system located on a centralized HUD server that functions as “a repository” for Fair Housing Act complaint-related information and case files collected and maintained during FHEO’s complaint

intake and investigation process, including Personally Identifiable Information on Complainants, Respondents, and witnesses interviewed during a complaint investigation. HEMS also serves as FHEO's authorized automated repository for information collected during the course of administrative complaint investigations and compliance reviews conducted under Title VI of the Civil Rights Act of 1964 [42 U.S.C. 2000d-2000d-7]; Section 504 of the Rehabilitation Act of 1973 [29 U.S.C. 794]; Section 109 of Title I of the Housing & Community Development Act of 1974 [42 U.S.C. 5309]; Title II of the Americans with Disabilities Act of 1990 [42 U.S.C. §§ 12131-12165]; Title III of the Americans with Disabilities Act of 1990 [42 U.S.C. §§ 12181-12189]; the Age Discrimination Act of 1975 [42 U.S.C. §§ 6101-6107]; Title IX of the Education Amendments Act of 1972 [20 U.S.C. §§ 1681-1688]; the Architectural Barriers Act of 1968 [42 U.S.C. 4151 et seq.]; the 2022 reauthorization of the Violence Against Women Act (VAWA 2022) [34 U.S.C. 12291; 34 U.S.C. 12471-12475; 34 U.S.C. 12491-12496; 24 C.F.R. Part 5, Subpart L, 5.2001-5.2011]; and Executive Orders 12549 and 12689.

11. Provide any 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.

The HOPA Final Rule does not require the collection of information of a sensitive nature.

12. Provide estimates of the hour burden of the collection of information.

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 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 Number of Respondents	Estimated Frequency of Response	Estimated Responses Per Annum	Estimated Burden Hour Per Response	Estimated Annual Burden Hours	Estimated Hourly Cost Per Response	Estimated Annual Cost
One: Collect reliable age verification records for at least one occupant per dwelling unit to meet the HOPA's minimum "80% occupancy" requirement	1,000 (estimated 10,000 occupants)	1 (once per each housing transaction)	10,000	1	1,000	\$20.02	\$20.02
Two: Publication of & adherence to policies & procedures that demonstrate intent to operate "55 or older" housing	1,000 (estimated 1,000 housing providers)	1 (one-time event for publication)	1,000	2	2,000	\$20.02	\$40,040
Three: Periodic updates of age verification records	1,000 (estimated 1,000 housing providers)	1 (update occupancy records at least once every 2 years)	1,000	2.50	2,500	\$20.02	\$50,050
Total Estimated Burden Hours & Costs	12,000	3	12,000	5,500	5,500	\$20.02	\$110,110

The Respondents [i.e., providers of "55 or older" housing facilities or communities] referenced in Categories **Two** 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. Provide an estimate for 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).

Section 100.304(b) of the HOPA Final Rule 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 buildings; 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 or older” housing facilities and communities nationwide, the HOPA Final Rule “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, Respondents are not required to submit financial data that would allow HUD to calculate the actual itemized expenses that a Respondent might incur when 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 Respondents during a Fair Housing Act complaint investigation. A Respondent who 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 the HOPA Final Rule neither require nor authorize the production or submission of a housing provider’s financial records during a Fair Housing Act complaint investigation. Specifically, section 100.306(a) of the HOPA Final Rule identifies the following factors, among others, 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 the HOPA Final Rule describes the age verification requirements for “55 or older” housing facilities or communities:

“(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.”

Neither the Fair Housing Act nor the HOPA Final Rule 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 the housing provider qualified for the “55 or older” housing exemption on the date of the alleged violation.

Since 2017, HUD’s Paperwork Reduction Act Office has instructed FHEO to retrieve current national income data from PayScale Human Capital’s Internet website at:

https://www.payscale.com/research/US/Job=Office_Manager/Hourly_Rate to calculate the Respondents’ annual hourly cost burden for the HOPA Final Rule information collection requirements. PayScale collects and analyzes national income data to generate average salaries for specific job titles, including the Office Manager position. In March 2024, PayScale reported that the average US hourly pay rate for an Office Manager is **\$20.02** per hour. Neither the HOPA nor HUD’s HOPA regulation requires that a “55 or older” housing facilities or communities must hire an office manager for HOPA recordkeeping purposes. However, for the reasons cited above, HUD utilizes PayScale’s average national income data for the Office Manager position to calculate the annual hourly cost burden for the HOPA information collection requirements because PayScale’s Office Manager job description includes the following relevant skills and/or duties:

- “Customer Service”
- “Office Administration”
- “Program Management”
- “Legal Compliance”

Since HUD lacks authority under the Act or the HOPA Final Rule to collect financial data for calculation of a “55 and older” housing provider’s actual operating costs, HUD has calculated an estimated

average US annual salary of **\$41,641.60** for an Office Manager position based on the following formula:

$$\text{\$20.02 (Average hourly Office Manager pay rate)} \times \text{2080 (Total annual labor hours)} = \text{\$41,641.60}$$

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 [**\$20.02**] for a total estimated annual cost burden of **\$110,110.00**, or approximately **\$110.11** 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. Provide estimates of annualized costs 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 may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

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

As reported in Paragraph 13 of this Statement, HUD has revised the estimated annual cost burden for this information collection from **\$99.99** per year to **\$110.11** per year for each “55 or older” housing facility or community. HUD also has revised the estimated hourly cost burden for this information collection from **\$18.18** per hour to **\$20.02** 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 approval for a currently approved information collection requirement.

16. For collections 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.

This information collection does not include a requirement for publication of results with HUD.

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.

This information collection doesn't require an expiration date display, because HUD doesn't require Respondents identified in a housing discrimination complaint investigation to use any mandatory or official HUD forms to collect, maintain, or submit HOPA exemption-related information to HUD.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-i.

There are no certification exceptions associated with this information collection requirement, 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: 2024 OMB-2529-0046 HOPA PRA FORM OMB-83-I SUPPORTING
STATEMENT.Rev.1