

Supporting Statement for Paperwork Reduction Act Submissions

Affirmative Fair Housing Marketing Plan – HUD 935.2A, HUD 935.2B, and HUD 935.2C

OMB Control Number: 2529-0013

The Department of Housing and Urban Development (HUD) is requesting that the Office of Management and Budget (OMB) approve the revision of forms HUD-935.2A Affirmative Fair Housing Marketing Plan – Multifamily Housing, HUD-935.2B Affirmative Fair Housing Marketing Plan – Single Family Housing and HUD-935.2C Affirmative Fair Housing Marketing Plan – Condominiums or Cooperatives.

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 Act (the Act) requires the Department of Housing and Urban Development (HUD) to administer its programs and activities relating to Housing and Urban Development in a manner to affirmatively further fair housing. Executive Order 11063 requires Federal agencies to take all necessary and appropriate steps to eliminate discriminatory practices involving federally insured and subsidized housing. This collection of information is necessary to promote compliance with these requirements by ensuring that builders/developers who are benefiting from HUD programs conduct outreach and marketing on housing opportunities to prospective buyers and renters that are least likely to apply for the housing because of their race, color, religion, sex (including sexual orientation and gender identity), national origin, disability, or familial status. Under the Affirmative Fair Housing Marketing (AFHM) Regulation (24 CFR part 200, Subpart M) issued pursuant to these provisions, all applicants for participation in Federal Housing Administration (FHA) subsidized and unsubsidized housing programs for the development or rehabilitation of the following types of housing must submit an AFHM Plan on a prescribed form: (1) multifamily projects or manufactured home parks of five or more lots, units, or spaces; (2) a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision, and a lender is making an initial application for mortgage insurance; or (3) dwelling units, when the applicant's participation in FHA housing programs had exceeded or would thereby exceed development of five or more such dwelling units during the year preceding the application (not counting the development of single family dwelling units for occupancy by a mortgagor on property owned by the mortgagor and in which the applicant had no interest prior to entering into the contract for construction or rehabilitation).

a. Statutory and Executive Authority

- (i) The Fair Housing Act (42 U.S.C. 3601 et seq.), Section 808 (e)(5), requires the Secretary of HUD to administer its programs and activities relating to Housing and Urban Development in a manner to affirmatively further fair housing. Section 808 (e)(6) of the Act requires HUD to report to Congress annually and make available to the public data on the race, color, religion, sex (including sexual orientation and gender identity), national origin, age, disability and family characteristics of persons and households who are applicants for, participants in, or beneficiaries or potential beneficiaries of programs administered by HUD. This provision also requires the

Signature of Senior Officer or Designee:

Date:

X
Wayne Eddins, Departmental Paperwork Reduction Act Officer,
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Secretary to collect such information relating to these characteristics as the Secretary determines to be necessary and appropriate.

- (ii) To assess the extent of compliance with Federal fair housing requirements, Section 562 of the Housing and Community Development Act of 1987 requires the Secretary to collect data on the racial and ethnic characteristics of persons eligible for, assisted, or otherwise benefiting from any community development, housing assistance, mortgage and loan insurance, and guarantee program administered by the Secretary. This Section also requires the Secretary to send to Congress a summary and evaluation of the data collected.
- (iii) Executive Order 11063, as amended, which provides that no person in the United States because of race, color, religion (creed), sex or national origin, shall be denied equal opportunity in housing or related facilities owned, operated or insured by the Federal government or provided with federal financial assistance; and that all Federal Executive Departments and agencies shall take action to promote the abandonment of discriminatory practices for: (1) Residential property and related facilities endowed with federal financial assistance, and (2) The lending practices connected with such property and facilities insofar as such practices relate to loans insured or guaranteed by the Federal Government.

b. Regulatory Authority

- (i) Affirmative Fair Housing Marketing Regulation (24 CFR part 200, Subpart M).
- (ii) Compliance Procedures for Affirmative Fair Housing Marketing (24 CFR part 108).
- (iii) Fair Housing Poster Regulations (24 CFR part 110).
- (iv) Single Family Regulation (24 CFR 203.12(b)(3)).

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.

The Regulation at 24 CFR 200, Subpart M, states the purpose of Affirmative Fair Housing Marketing as follows:

“... as to achieve a condition in which individuals of similar income levels in the same housing market area have a like range of housing choices available to them regardless of their race, color, religion, sex, disability, familial status or national origin.” (24 CFR 200.610)

To achieve this purpose, HUD requires applicants for insured housing to submit an AFHM Plan in which:

- (i) The applicant describes the affirmative steps it plans to take to attract prospective buyers or renters that are least likely to apply for the housing because of their race, color, national origin, religion, sex, disability, or familial status.
- (ii) HUD assesses the potential effectiveness of the methods to be employed by the applicants in marketing their housing in accordance with the statutes and regulations listed above. HUD approves the plan if it determines that it contains appropriate marketing techniques for the size, type, and location of units to be sold or rented to attract groups least likely to apply for housing in the housing market area.

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.

Although this information collection has not been automated in the past, HUD is revising form HUD-935.2A to automate the retrieval of project information and geocoded census data which substantially reduces the burden hours of completing the form, eliminating the need for applicants to provide information already available to HUD.

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.

There is no similar information submitted by applicants to HUD in other forms or application packages that can be used in place of the AFHM Plan. This form is the only instrument that collects information on the methods used by the sponsors and developers of insured multifamily, single family, and cooperative and condominium housing to make their housing available to persons least likely to apply because of their race, color, national origin, religion, sex, disability, or familial status.

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.

To minimize the burden on single family builders/developers, HUD has provided these small entities with an exemption from completing the AFHM Plan - Single Family Housing or Condominiums or Cooperatives (HUD-935.2B or 935.2C). Single Family builders/developers can check block 11(d) on the Builder's Certification of Plans, Specifications, and Site form (HUD-92541) to certify compliance with HUD's AFHM Regulation. If a builder opts to check block 11(d), they no longer need to submit an individual AFHM Plan - Single Family Housing (HUD 935.2B) to HUD for approval. Condominium or Cooperative builders/developers can certify compliance with HUD's AFHM Regulation by checking block 2(d) under the "Applicability" Section of the AFHM Plan - Condominiums or Cooperatives (HUD 935.2C). If a builder opts to check block 2(d), they no longer need to submit an AFHM Plan - Condominiums or Cooperatives (HUD 935.2C) to HUD for approval. Single Family and Condominium or Cooperative builders/developers must still maintain records of their affirmative fair housing marketing activities and make them available to HUD upon request. In addition, Single Family homebuilders/developers can certify their compliance in the Applicability section of HUD-935B and Question 2 on HUD 935C, after which they no longer need to complete an AFHM Plan, although they still must comply with AFHM regulations. To minimize the burden on owners/agents of multifamily properties, the revised HUD 935.2A incorporates HUD guidance describing the conditions requiring an updated AFHM Plan. The revised form requires submitters to select applicable conditions from two-tiered checkbox options at the beginning of HUD 935.2A. This clarification is expected to reduce the number of AFHM Plan submissions to HUD. Owners/agents must still review marketing efforts every five years and make records of their review and affirmative fair housing marketing activities available to HUD upon request.

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.

If this collection is not conducted or is conducted less frequently, it would hinder HUD's ability to meet its obligations under the Fair Housing Act and Executive Order 11063. Under the AFHM Regulation (24 CFR part 200, Subpart M) issued pursuant to these provisions, builders/developers who are benefiting from HUD

programs are required to market and conduct outreach to prospective buyers and renters that are least likely to apply for the housing because of their race, color, religion, sex (including sexual orientation and gender identity), national origin, disability, or familial status. In order to determine compliance with this requirement, HUD requires all applicants for participation in Federal Housing Administration (FHA) subsidized and unsubsidized housing programs for the development or rehabilitation of the following types of housing to submit an AFHM Plan on a prescribed form: (1) multifamily projects or manufactured home parks of five or more lots, units, or spaces; (2) a single family property, where the property is located in a subdivision and the builder or developer intends to sell five or more properties in the subdivision, and a lender is making an initial application for mortgage insurance; or (3) dwelling units, when the applicant's participation in FHA housing programs had exceeded or would thereby exceed development of five or more such dwelling units during the year preceding the application (not counting the development of single family dwelling units for occupancy by a mortgagor on property owned by the mortgagor and in which the applicant had no interest prior to entering into the contract for construction or rehabilitation). Without this collection, HUD would be unable to determine compliance with these requirements.

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 often 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.

The AFHM Plan for multifamily housing projects remains in effect for the life of HUD's mortgage assistance (24 CFR 200.620(a)), or the term of the HAP contract. These AFHM plans must be reviewed and updated as needed to ensure continued compliance with HUD's AFHM Regulation (24 CFR 200, Subpart M). Therefore, respondents may need to retain records for more than three years in order to have the data necessary to conduct these reviews. This would ensure that respondents have the data necessary to determine if there are circumstances that would require them to update their plan, such as data that show that there has been a significant demographic change in the residents of their project, neighborhood, or housing market area, or data that suggest that their marketing activities have not been successful in reaching groups least likely to apply. Respondents may also need to retain records for more than three years in order to demonstrate compliance with the AFHM Regulation over the life of HUD's mortgage assistance.

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

Not applicable.

- Requiring the use of a statistical data classification that has not been reviewed and approved by OMB.

Not applicable.

- That includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use.

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.

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.

In accordance with 5 CFR 1320.8(d), the agency's notice announcing this collection of information appeared in the Federal Register on 06-26-2024, (Volume 88, No 123, Page 53437). The public was given until 08-26-2024, to submit comments on the proposed information collection. Several comments were received from one commenter. The comments have been addressed.

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

There are no payments or gifts provided to respondents in this collection of information.

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

There are no assurances of confidentiality provided in this collection of information. However, the form contains no questions of a confidential nature.

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.

There are no questions of a sensitive nature asked in this collection of information.

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 for approval 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.

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.

<u>Information Collection</u>	<u>Number of Respondents</u>	<u>Frequency of Response</u>	<u>Responses Per Annum</u>	<u>Burden Hour Per Response</u>	<u>Annual Burden Hours</u>	<u>Hourly Cost Per Response</u>	<u>Annual Cost</u>
HUD-935.2A (MFH)	5,703	1	5,703	New 4x303 Review & Update 2x1,080 Review 2x4,320	New 1,212 Review & Update 2,160 Review 8,640	Respondents \$40/hr (professional work) \$18/hr (clerical work) \$1.35 per report mailing	Respondents New = (\$40x4x303) + (\$18x2x303) = \$59,388 Updates = (\$40x2x1,080) + (\$18x2x\$1,080) = \$125,280 Reviews = (\$40x2x4,320) = \$345,600 Mailing Costs = \$1.35x100 = \$135 Annual Cost = \$59,388 + \$125,280 + \$345,600 + \$135 = \$530,403 Government New = (\$40.45x3x303) + (\$18.40x0.5x

						<u>work)</u> <u>\$18.40/hr²</u> <u>(clerical</u> <u>work)</u>	<u>303) =</u> <u>\$39,556.65</u> <u>Reviews &</u> <u>Updates =</u> <u>(\$40.45x3x</u> <u>1,080) +</u> <u>(\$18.40x0.5x</u> <u>1,080) =</u> <u>\$140,994</u> <u>Annual Cost =</u> <u>\$39,556.65+</u> <u>\$140,994 =</u> <u>\$180,550.65</u>
<u>HUD-935.2B</u> <u>(SFH) & C</u> <u>(Condos and</u> <u>Co-Ops)</u>	<u>30</u>	<u>1</u>	<u>30</u>	<u>3</u>	<u>90</u>	<u>Respondents</u> <u>\$40/hr</u> <u>(professional</u> <u>work)</u> <u>\$18/hr</u> <u>(clerical</u> <u>work)</u> <u>\$1.35 per</u> <u>report</u> <u>mailing</u> <u>Government</u> <u>Government</u> <u>\$40.42/hr</u> <u>(professional</u> <u>work)</u> <u>\$18.40/hr</u> <u>(clerical</u> <u>work)</u>	<u>Respondents</u> <u>(\$40x3x30) +</u> <u>(\$18x2x30) =</u> <u>\$4,680</u> <u>\$1.35x0 = \$0</u> <u>Annual Cost =</u> <u>\$4,680 + \$0 =</u> <u>\$4,680</u> <u>Government</u> <u>Annual Cost =</u> <u>(\$40.42x3x30) +</u> <u>(\$18.40x0.5x 30)</u> <u>= \$3,918.8</u>
<u>Total</u>	<u>5,733</u>	<u>1 each</u>	<u>5,733</u>	<u>Avg. of 3.5</u>	<u>12,102</u>	<u>Avg. of \$17.84</u>	<u>Respondents</u> <u>\$535,083</u> <u>Government</u> <u>\$184,469.49</u>

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).

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 and 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

¹ Base rate for GS 12 Step 5 (\$40.42/hr) based on the salary information available on OPM.gov

² Base rate for GS 5 step 5 (\$18.40/hr) based on the salary information available on OPM.gov

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 burden 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.

There are no additional costs to the respondents.

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.

One GS-12/5 to review and recommend approval/initial rejection of AFHM Plans:

	Hourly Cost		Hours		Responses		Total
New (MFH): at \$38.56 per hour for approximately 3 hours:	\$40.42	X	3	X	303	=	\$36,741.78
New (SFH/Condo/Co-op): at \$38.56 per hour for approximately 3 hours:	\$40.42	X	3	X	30	=	\$3,637.8
Updates (MFH): at \$38.56 per hour for approximately 3 hours:	\$40.42	X	3	X	1,080	=	\$130,960.8
							Total: \$171,340.38

One GS-5/5 to perform clerical duties:

New (MFH): at \$17.55 per hour for approximately ½ hour:	\$18.40	X	0.5	X	303	=	\$2,787.6
New (SFH/Condo/Co-op): at \$17.55 per hour for approximately ½ hour:	\$18.40	X	0.5	X	30	=	\$276
Updates (MFH): at \$17.55							

per hour for approximately ½ hour: \$18.40 X 0.5 X 1,080 = \$9,936

TOTAL: \$184,340.04

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

There has been a reduction in the overall number of respondents who are required to submit this form according to current Multifamily Housing statistics. As such, the response burden has been reduced and recalculated.

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.

The results of this collection of 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.

The OMB approval number and expiration date will be displayed on the form.

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 exceptions to the certification statement identified in Item 19 of form OMB 83-I.

B. Collections of Information Employing Statistical Methods

The collection of information will not be used for statistical purposes.