



**Billing Code: 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-6001-N-28]**

**60-Day Notice of Proposed Information Collection:**

**HUD Multifamily Rental Project Closing Documents**

**AGENCY:** Office of the Assistant Secretary for Housing- Federal Housing Commissioner, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD is seeking approval from the Office of Management and Budget (OMB) for the information collection described below. In accordance with the Paperwork Reduction Act, HUD is requesting comments from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 60 days of public comment.

**DATES:** Comments Due Date: **[INSERT DATE THAT IS 60 DAYS AFTER THE DATE OF PUBLICATION IN THE FEDERAL REGISTER.]**

**ADDRESSES:** Interested persons are invited to submit comments regarding this proposal. Comments should refer to the proposal by name and/or OMB Control Number and should be sent to: Colette Pollard, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW, Room 4176, Washington, DC 20410-5000; telephone 202-402-3400 (this is not a toll-free number) or email at [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov) for a copy of the proposed forms or other available information. Persons with hearing or speech impairments

may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

**FOR FURTHER INFORMATION CONTACT:** Sylvia S. Chatman, Housing Program Manager, Office of Multifamily Production, Sylvia.s.chatman@hud.gov, 202-402-2994, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410.

This is not a toll-free number. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339.

Copies of available documents to be submitted to OMB may be found at:

[http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/housing/mfh/mfhclosingdocuments](http://portal.hud.gov/hudportal/HUD?src=/program_offices/housing/mfh/mfhclosingdocuments).

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A.

#### **A. Overview of Information Collection**

Title of Information Collection: HUD Multifamily Rental Project Closing Documents.

OMB Approval Number: 2502-0598.

Type of Request: Extension of currently approved collection and implementation of two new forms.

Form Numbers: HUD-91710M, HUD-91712M, HUD-92023M, HUD-92070M, HUD-92223M, HUD-92412M, HUD-92414M, HUD-92450M, HUD-92452A-M, HUD-92452M, HUD-92455M, HUD-92456M, HUD-91073M, HUD-92464M, HUD-92476.1M, HUD-92476a-M, HUD-92477M, HUD-92478M, HUD-92479M, HUD-91725M, HUD-91725M-CERT, HUD-91725M-INST, HUD-92434M, HUD-92442M, HUD-92466M, HUD-92554M, HUD-94000M, HUD-94001M, HUD-93305M, HUD-

92476M, HUD-92420M, HUD-92408M, HUD-91070M, HUD-91071M, HUD-92907, HUD-92908

Description of the need for the information and proposed use: The Closing Documents were revised to: provide clarification, improve readability, ensure consistency across the documents, correct previously provided information, and to reflect the 2016 MAP Guide and the FHA Multifamily Closing Guide. The following is a discussion of noteworthy changes to certain of the Closing Documents, and an explanation of two new Closing Documents.

Revisions to the Closing Documents:

*Regulatory Agreement, HUD-92466M*

Given that the definitions of “Principal” and “Affiliate” no longer appear at 24 C.F.R. 200.215 following changes to HUD’s Previous Participation Rule, HUD proposes to add the prior definition of Principal and Affiliate from 24 C.F.R. 200.215 as defined terms.

HUD proposes to reincorporate the definition of “Residual Receipts” into the form. The term means certain funds which are restricted in their use by Program Obligations and applicable business documents (e.g., HAP Contract, Use Agreement) as may be more specifically described in the Residual Receipts Rider attached to the Regulatory Agreement. This definition has been reincorporated because a number of HUD loan documents make reference to Residual Receipts, including some documents that refer to the Regulatory Agreement as the source of the definition. However, because the source of Residual Receipts requirements now ultimately lies in programs other than FHA insurance (e.g., in connection with certain Section 8 HAP contracts), the definition for purposes of this document does not describe all instances when Residual Receipts would

apply nor does it precisely describe the method for calculating Residual Receipts. Instead the definition makes reference to such other potential sources of Residual Receipts requirements, as may be more particularly described in an attached Residual Receipts Rider.

*Note, HUD-94001M*

HUD proposes to add alternative language for bifurcated notes for consistency with the MAP Guide policy allowing for such financing structures.

*Lender's Certificate, HUD-92434M*

HUD proposes to add a new paragraph concerning No Material Adverse Changes for consistency with similar language in the Firm Commitment templates issued through Housing Notice 2016-06.

HUD proposes the attachment of a new exhibit for the Reserve for Replacement funding schedule generated during the mortgage insurance application stage and attached to the Firm Commitment. The schedule represents the amounts that lenders must collect from borrowers during insured loan servicing unless other amounts are approved in writing by HUD pursuant to Program Obligations.

HUD proposes to add a restriction formerly contained in the Instructions of Borrower's Counsel relating to lenders' due diligence obligations concerning certificates, permits, licenses, etc., that is more appropriate for the Lender's Certificate.

HUD proposes to add a new section for transactions involving cash-collateralized tax-exempt bonds combined with 4% Low Income Housing Tax Credits for consistency with the MAP Guide and current HUD practice.

*Request for Endorsement of Credit Instrument, HUD-92455M*

*Certificate of Lender (HUD-92455M, Section I)*

HUD proposes to add a new paragraph concerning No Material Adverse Changes for consistency with similar language in the Firm Commitment templates issued through Housing Notice 2016-06.

HUD proposes the attachment of a new exhibit for Reserve for Replacement funding schedule generated during the mortgage insurance application stage and attached to the Firm Commitment. The schedule represents the amounts that lenders must collect from borrowers during insured loan servicing unless other amounts are approved in writing by HUD pursuant to Program Obligations.

HUD proposes to add a restriction formerly contained in the Instructions to Opinion of Borrower's Counsel relating to lenders' due diligence obligations concerning certificates, permits, licenses, etc., that is more appropriate for the Lender's Certificate.

HUD proposes to add a new section for transactions involving cash-collateralized tax-exempt bonds combined with 4% Low Income Housing Tax Credits for consistency with the MAP Guide and current HUD practice.

HUD proposes to add a new certification moved from the Instructions to Opinion of Borrower's Counsel relating to lender consent for any secondary financing.

*Certificate of Borrower (HUD-92455M, Section II)*

Completion of construction certification was enhanced to have the Borrower certify to the level of craftsmanship used to complete the repairs.

The following certifications were typically given separately from the Certificate of Borrower and collected at closing: Certification of Schedule of Accounts Payable, Certification of Rent Roll, Certification of Tenant Security Deposits. These certifications have now been incorporated into this document in order to reduce the number of separate documents collected at closing.

*Opinion Of Borrower's Counsel, HUD-91725M; Instructions, HUD-91725M-INST; Exhibit A, HUD-91725M-CERT*

HUD proposes separate paragraphs related to bond, tax credit, secondary financing, and Public Entity Agreement (PEA) for clarification. The definition of PEA now includes public secondary financing; private secondary financing is a separate paragraph. There are separate opinions concerning supremacy of Primary/Supporting Loan for each of these matters.

HUD proposes to add a new paragraph under documents reviewed to clarify (as stated in existing Instructions) that all transaction documents must be included.

HUD proposes to add a new paragraph under opinions for required state or deal specific opinions.

HUD proposes that Borrower's Counsel must review all organizational documents within Borrower's organizational structure, as is legally necessary, to establish the authority of

the signatory executing transaction documents on behalf of Borrower and to give the authorization opinion. Also, HUD proposes to add a definition for 2nd tier entity foreign status certificate.

HUD proposes to add a disclosure exception in confirmation (d) where another attorney in Borrower's Counsel's law firm has an interest in the subject matters of the Opinion. Previously the conflict/identity of interest had to be disclosed but it was unclear how to disclose. HUD proposes to add language that counsel must confirm compliance with applicable ethics rules rather than issuing a separate ethics opinion.

HUD proposes to include litigation "threatened in writing" as part of the litigation disclosures.

HUD proposes to add a definition of "Primary Loan Documents" to include HUD loan documents but not bond, tax credit, secondary financing, and supporting documents to ensure the supremacy opinions regarding bond, tax credit, and secondary financing are clear that the Primary Loan Documents control.

*Lease Addendum, HUD-92070M*

HUD has reformatted this document for ease of reading along with adding section headings. There is no longer a separate instructions page as that caused confusion in the past. HUD proposes to revise the document to be a signed agreement that is attached to the underlying ground lease/lease, rather than an unsigned addendum. Additionally, recognition of HUD lease requirements formerly in the recitals are now proposed as part of the actual agreement.

The proposed document has been further revised to provide two different options for the property interest being leased for consistency with new MAP Guide: Option 1, landlord owns the fee interest in the land and tenant/borrower owns the building and improvements (this is the traditional structure found in the existing Lease Addendum); Option 2, the landlord owns the land, building and improvement in fee simple, which the tenant/borrower leases- this structure is now permitted in the revised MAP Guide in certain circumstances.

HUD proposes to add minimum requirements if a memo of lease is recorded instead of the entire ground lease, subject to state law requirements. This should establish greater uniformity with respect to different practices in different HUD offices.

The document now memorializes an existing but previously separate HUD requirement that landlords provide an estoppel certificate. HUD further proposes a bracketed option for deletion of the HUD option to purchase the fee estate when authorized in writing by HUD pursuant to Program Obligations, consistent with the new MAP Guide.

Lastly, HUD proposes to add a clause to prohibit merger of the fee and leasehold estates without HUD consent, for the protection of HUD. This is a fairly typical ground lease provision.

*Subordination Agreement - Public, HUD-92420M*

HUD proposes that this particular form will only be used for public, secondary lenders. HUD proposes a separate subordination form for private, subordinate lenders (see below).

HUD proposes to add brackets to certain provisions to accommodate secondary financing that comes in the form of forgivable loans. HUD proposes to add a sentence to memorialize Senior Lender's consent to the Subordinate Loan pursuant to the MAP Guide.

HUD proposes to add certain required language from the MAP Guide that was previously omitted. HUD also proposes to add language from the Surplus Cash Note that is required by the MAP Guide. HUD further proposes to include required HUD language to be inserted into the underlying promissory note so that Surplus Cash Note does not also need to be used. This should resolve inconsistent guidance and practice with respect to the form of note to use with public secondary financing that is secured.

HUD proposes to remove the requirement that public, subordinate lenders agree that their lien be extinguished by deed in lieu of foreclosure. This is a concession to state and local housing finance agencies that have raised numerous objections to this provision over the last 2.5 years.

HUD proposes a change to the prohibition against foreclosure of subordinate mortgages. Secondary financing lenders were previously prohibited from pursuing foreclosure in the event of a default under their loan documents. As an accommodation to public secondary financing lenders, Housing proposes to allow such public lenders to pursue their foreclosure remedies after a standstill period of 180 days. Note that foreclosure for a monetary event of default will still not be allowed while the loan is insured or HUD-held, given that that repayment obligations during this time are limited to 75% of available Surplus Cash. Consequently, public subordinate lender foreclosure

can only occur for covenant events of default, such as for violations of use and affordability restrictions.

*Subordination Agreement - Private, HUD-92907M*

This is an entirely new form. It replaces the Secondary Financing Rider found in the FHA Multifamily Program Closing Guide that was previously used for secured, private secondary financing. This new form is largely modeled after the Subordination Agreement, HUD-92420M, which will become the form used with public secondary financing lenders.

*Residual Receipts Note, HUD-92908M*

Residual Receipts Note (Nonprofit Borrowers) (HUD-91710M) & Residual Receipts Note (Limited Dividend Borrowers) (HUD-91712M) will be merged into one form of note going forward. For new transactions, Housing doesn't underwrite NP or LD owners differently and so there is no longer an FHA-driven basis for residual receipts accounts. This was discussed in a public FAQ dated 6/18/2015 (highlighting that borrower's nonprofit status no longer triggers the requirement of residual receipts). However, the existing forms will continue to be made available for existing projects.

*Supplementary Conditions to the Construction Contract, HUD-92554M*

HUD proposes to add language that the document supersedes conflicting provisions in the AIA Document A201 General Conditions of the Contract for Construction, for consistency with the FHA Multifamily Program Closing Guide.

*Survey Instructions and Surveyor's Report, HUD-91073M*

HUD proposes revisions that are necessary to permit the form to work with new 2016 ALTA/NSPS standards as discussed in an FAQ from earlier this year. Additionally, the proposed revision to page one of the document isolates the instructions to make it easier for surveyors to understand HUD requirements and how to complete the form.

*Escrow for Deferred Repairs, HUD-92476.1M*

HUD proposes to remove the term "Non-critical" throughout, in order to recognize the MAP Guide policy change to allow certain accessibility corrections to be paid from this escrow after initial/final closing.

*Supplement to Building Loan Agreement, HUD-92441M-SUPP*

HUD is eliminating this form from the Collection of Information and use in the Multifamily programs, as borrower entities can no longer serve as their own general contractors and remain in compliance with HUD's regulatory single asset entity and administrative requirements.

Respondents (i.e. affected public): Lenders, Borrowers, Housing Finance Agencies, Government Agencies that support affordable housing, Multifamily Housing Developers, Lender's Council, Borrower's Council, Contractors, Architects, Secondary Financing Lenders

Estimated Number of Respondents: 17,468.

Estimated Number of Responses: 17,468.

Frequency of Response: Once per annum.

Average Hours per Response: .70 hours

Total Estimated Burden: 12,359.50 hours.

## **B. Solicitation of Public Comment**

This notice is soliciting comments from members of the public and affected parties concerning the collection of information described in Section A on the following:

- (1) Whether the proposed collection of information is necessary for the proper performance of the functions of the agency, including whether the information will have practical utility;
- (2) The accuracy of the agency's estimate of the burden of the proposed collection of information;
- (3) Ways to enhance the quality, utility, and clarity of the information to be collected; and
- (4) Ways to minimize the burden of the collection of information on those who are to respond; including through the use of appropriate automated collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

HUD encourages interested parties to submit comments in response to these questions.

Please note that HUD will not consider any redline/strikeout comparison documents submitted by commenters, as it is far too inefficient for the Department to consolidate and consider redline/strikeout versions of each of the documents from numerous interested parties, based on HUD's past experience in seeking public comments on this information collection. HUD will only consider proposed changes to the documents listed under Section A that are submitted in narrative and/or bulleted form, accompanied by a detailed explanation and rationale for each requested change. However, commenters may

include in their detailed explanation and rationale the relevant excerpt(s) from the document(s) with redlines/strikeouts.

**C. Authority:** Section 3507 of the Paperwork Reduction Act of 1995, 44 U.S.C. Chapter 35.

**Dated:** August 29, 2017

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Dana T. Wade  
General Deputy Assistant Secretary for Housing

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