



**Billing Code: 4210-67**

**DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT**

**[Docket No. FR-7001-N-28]**

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

**HUD Multifamily Rental Project Closing Documents**

**AGENCY:** Office of the Chief Information Officer, HUD.

**ACTION:** Notice.

**SUMMARY:** HUD has submitted the proposed information collection requirement described below to the Office of Management and Budget (OMB) for review, in accordance with the Paperwork Reduction Act (PRA). The purpose of this notice is to allow for an additional 30 days of public comment.

**DATES:** Comments Due Date: **[Insert date that is 30 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: HUD Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503; fax: 202-395-5806, Email: [OIRASubmission@omb.eop.gov](mailto:OIRASubmission@omb.eop.gov)

**FOR FURTHER INFORMATION CONTACT:** Colette Pollard, Reports Management Officer, QMAC, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410, e-mail [Colette.Pollard@hud.gov](mailto:Colette.Pollard@hud.gov), or telephone 202-402-3400. 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:

[https://www.hud.gov/program\\_offices/housing/mfh/mfhclosingdocuments](https://www.hud.gov/program_offices/housing/mfh/mfhclosingdocuments) or obtained from Ms. Pollard.

**SUPPLEMENTARY INFORMATION:** This notice informs the public that HUD is seeking approval from OMB for the information collection described in Section A. The previous PRA Federal Register notice that solicited public comment on the information collection for a period of 60 days was published on September 5, 2017 at 82 FR 41977.

#### **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, with revisions to certain documents as shown in redline comparison found at the website link above.

Form Numbers: HUD-91070M; HUD-91071M; HUD-91073M; HUD-91710M; HUD-91712M; HUD-91725M; HUD-91725M-CERT; HUD-91725M-INST; HUD-92023M; HUD-92070M; HUD-92223M; HUD-92408M; HUD-92412M; HUD-92414M; HUD-92420M; HUD-92434M; HUD-92441M; HUD-92442M; HUD-92450M; HUD-92452A-M; HUD-92452M; HUD-92455M; HUD-92456M; HUD-92464M; HUD-92466M; HUD-92476.1M; HUD-92476aM; HUD-92476M; HUD-92477M; HUD-92478M; HUD-92479M; HUD-92554M; HUD-92907M; HUD-92908M; HUD-93305M; HUD-94000M; HUD-94001M.

Description of the need for the information and proposed use: The Closing Documents are used in FHA-insured multifamily rental project transactions. In connection with this 30-day notice, HUD generally tried to improve the forms in terms of readability and editorial corrections, while also addressing public comments received in connection with the 60-day

notice. While complying with the PRA, this 30-day notice provides information beyond that normally provided in such notices. This notice identifies substantive changes that HUD has made to the Closing Documents in response to public comments submitted in response to the 60-day notice and responds to significant issues raised by commenters on the Closing Documents. HUD received comments from four law firms and one industry group.

Discussion of Significant Revisions:

*Consolidated Certifications – Borrower, HUD-91070M*

One commenter suggested HUD merge the *Owner’s Certification and Acknowledgement of Program Obligation for Broadly Affordable, Affordable and Green/Energy Efficient Multifamily Housing Mortgage Insurance Premiums (MIPs) and the Acceptance of Housing Choice Vouchers*, form HUD-92013-D, with the *Consolidated Certifications - Borrower*, to make the closing process more efficient and reduce the number of forms used in closings. HUD agreed with the suggestion and merged the 92013-D into the HUD-91070M.

*Survey Instructions and Report, HUD-91073M*

One commenter suggested HUD’s Office of Multifamily Housing Production (Multifamily Housing) eliminate the Report portion of the document consistent with the LEAN/232 Healthcare program, and that to have the two programs with different closing requirements is arbitrary and capricious. HUD declines to accept this suggested change and comment. The risks associated with the two programs are different, thus it is not arbitrary and capricious for the two programs to have different requirements. Here, HUD has determined that the Report is necessary because it calls attention to important property characteristics, allowing HUD staff to more

efficiently address the findings to protect HUD's interests. With the recent improvements to the form, HUD believes the burden estimate is realistic.

*Opinion of Borrower's Counsel, HUD-91725M*

One commenter suggested changes concerning evidence of foreign qualification of entities within the organizational structure, as set out in Section I. HUD agreed with the comment and added an instruction to the HUD-91725M-INST to "include foreign qualification when Borrower has qualified the entity voluntarily or such qualification is required by state law or HUD Program Obligations."

HUD disagreed with a comment that Section 1, paragraph S (Residual Receipts Note/ Surplus Cash Note) should be deleted or moved because of new paragraph W for private secondary financing. HUD has determined that there may be instances where there is only a Surplus Cash Note.

Regarding Section 1, paragraph MM (Additional Transaction Documents), one commenter noted that the change to include all documents related to the loan closing could result in disclosure of certain due diligence certifications and documents that HUD does not allow lenders to recite in the lender certification documents. HUD agreed with the comment and modified the HUD-91725M-INST to limit paragraph MM to "all loan documents related to the FHA closing that will be delivered at closing that are not otherwise listed in the form Opinion . . ."

HUD agreed with a comment to modify the language in opinion 4 concerning authorization related to controlling entities within the borrower's organizational hierarchy "whose authorization is required." HUD rejected a comment to delete opinion 9 because Multifamily Housing does in fact permit trusts as borrower entities per the MAP Guide.

One commenter stated that the addition of “Supporting Documents” in opinion 11 is a change in policy, and that it results in HUD asking for an opinion about whether LIHTC documents prevail over the bond documents or vice versa. HUD disagreed with this comment as the concept of “Supporting Documents” is not new to the form. Further, neither “Primary Loan Documents” nor “Supporting Loan Documents” include the secondary financing documents, Source Documents, or tax credit documents in paragraphs T-W of Section I. Consequently, HUD is not asking for an opinion about which of these documents would control over the others in the event there is a conflict. HUD disagreed with a similar comment about the addition of “Supporting Documents” in opinion 12 for the same reason.

One commenter objected to the required disclosure of litigation threatened in writing in confirmation (g) of Section IV. HUD determined such disclosure is necessary because HUD is aware of situations where threatened litigation resulted in actual filing of litigation. Further, HUD is adding the requirement in the 91725-INST that litigation threatened in writing must not only be identified, but a detailed explanation and risk assessment must be provided.

*Exhibit A to Opinion of Borrower’s Counsel, HUD-91725-CERT*

One commenter noted that the Section 7 certification that there is no default under the *Regulatory Agreement* would only be applicable in the context of a refinancing where there is an existing HUD Regulatory Agreement. HUD agreed with the comment and revised the language to clarify that also no state of facts that exists now or that with the passage of time will result in a default under the *Regulatory Agreement* or PEA (for Section 6).

HUD agreed to a suggestion from one commenter to revise the signature block in the HUD-91725M to reflect signature by an attorney or law firm, which HUD points out is currently allowed in the *Instructions*.

*Instructions to Opinion of Borrower's Counsel*, HUD-91725M-INST

HUD made several changes to the 91725M-INST that resulted from comments discussed above relative to the HUD-91725M.

Two commenters objected to the requirement that paragraphs Y (Zoning) and GG (Utility Letters) be dated within 120 days of closing as being too inflexible. HUD agreed with the comment and revised the instructions to reflect that the timeframe for the documentation will vary depending on the circumstances and specific facts of a given transaction, keeping in mind that HUD is interested in receiving recent documentation. Notwithstanding, the date of documentation must not be more than one year prior to closing.

One commenter stated that the instruction for Section I, paragraph a, seems to indicate all organizational documents up the chain of the borrower must be included in the *Opinion*, even if they do not show up in the signature block of the borrower. The commenter also believes that discretion should be afforded to the local counsel to determine which organizational documents are necessary or relevant to issue the legal opinion in accordance with state law. HUD disagreed with this comment. Discretion is provided to local counsel, but the *Opinion* form is drafted to ensure that all entities in the chain are identified if necessary to establish authorization. The instructions state: “. . . Borrower's Counsel's review must include the organizational documents of Borrower and any controlling entity within the Borrower's organizational hierarchy to the extent necessary to provide the required opinion.”

HUD made a correction to the instructions for paragraph T (Public Entity Agreement) of Section I to establish that the term not only covers agreements between a borrower and a public entity, but also any agreement which binds the project, regardless of whether the current borrower is a signatory.

*Lease Addendum, HUD-92070M*

One commenter suggested HUD add bracketed options for different possible defined terms for the parties and documents. HUD rejected this suggestion because the different possible names are too numerous, and there is already flexibility to allow the underlying terms from the lease to be incorporated into the defined terms of the *Lease Addendum*. In response to a comment about the definition of “days,” HUD revised the form to clarify that “days” means calendar days. HUD agreed with a comment to revise the form to require landlords to deliver an estoppel certificate from time to time to the tenant, lender, or HUD.

HUD disagreed with a comment to add Native American tribal lands as a public entity eligible for waiver of the HUD option to purchase in Section 7. HUD Multifamily Housing will consider such requests on a case-by-case basis in Headquarters due to the unique and complex laws and requirements governing Native American tribal land.

One commenter requested clarification of lender’s cure and foreclosure rights under Section 11. HUD rejected this comment as it appeared to confuse lender’s rights under the *Lease Addendum* with lender’s rights under the *Security Instrument*. The *Security Instrument* provides that borrower’s failure to pay to lender ground rents is a Monetary Event of Default under the *Security Instrument*; HUD determined the *Lease Addendum* does not also need to provide that nonpayment of ground rents is a default under the *Security Instrument*.

Another comment requested HUD add a finite term to the cure period in Section 11. HUD disagreed with the comment because the time required to cure will vary depending on the circumstances. Consequently, HUD has determined that reasonableness is the appropriate standard where the lender or HUD are reasonably and diligently pursuing a cure of a Ground Lease Event of Default.

*Surplus Cash Note*, HUD-92223M

One commenter suggested the recent addition of the limitation on borrowers' repayment to 75% of cumulative Surplus Cash in Section 2 should not be in this document but rather in the *Regulatory Agreement*. HUD disagreed with the comment because it is important that payees of borrowers have no doubt or misunderstanding about this limitation when the borrower is the maker on multiple *Surplus Cash Notes* or any other subordinate loans. Payees will not necessarily know to look to the *Regulatory Agreement* for this restriction on repayment. Another commenter suggested that the limitation is mathematically unclear, with which HUD disagreed. The comment didn't seem to take into consideration that a borrower could be the maker on more than one *Surplus Cash Note*, and without the language in question, could result in the borrower paying more than 75% of Surplus Cash in a given year to repayment on multiple subordinate loans. Regarding this same requirement, HUD made further revisions to clarify that the 75% of available Surplus Cash limitation applies to all subordinate debt of the borrower, not just debt under *Surplus Cash Notes*.

One commenter requested HUD add "except upon the prior written approval of HUD" to the end of Section 8 to allow for the sale or assignment of the *Surplus Cash Note* for LIHTC transactions. HUD did not accept this requested policy change, as the present requirement has

not been a barrier to using LIHTC in FHA Multifamily transactions, and HUD does not anticipate it being a barrier in the future.

HUD added bracketed language in Section 9 to accommodate the policy to allow for compounding of interest in certain LIHTC transactions.

*Subordination Agreement – Public, HUD-92420*

HUD agreed with several commenters that Section 3(b) needed further clarification to allow for an exception to the general rule that the subordinate loan may not mature before the FHA-insured loan for forgivable loans. HUD rejected a comment that the HUD-required language in Section 3 should not be required when the subordinate loan is forgivable, as these protections are still needed for forgivable loans in the event the borrower defaults under a forgivable loan and the subordinate lender seeks repayment.

HUD added language in Section 3(c) that payments due under borrowers' subordinate loans are limited to 75% of cumulative Surplus Cash, consistent with MAP Guide policy and the *Surplus Cash Note*. One commenter asked that HUD add back "from project income" (from the version of the form published in connection with the 60-day notice) relative to payments due under the subordinate note. HUD rejected this change as unnecessary because the *Subordination Agreement – Public* continues to permit borrower repayment from non-project sources. In response to a commenter and consistent with the change to *the Surplus Cash Note*, HUD made a change to Section 3 to allow for compounding of interest for certain eligible LIHTC transactions. One commenter suggested that removal of the requirement in Section 5 that the subordinate lien be extinguished upon a deed in lieu of foreclosure is contrary to the MAP Guide. While the commenter is correct, HUD Multifamily Housing decided to revise this policy (for public

subordinate lenders only) as reflected in the document; the next issuance of the MAP Guide will include this revised policy.

A commenter asked that Section 10 be revised to allow for automatic re-subordination of the subordinate lien for Sections 223(a)(7) and 223(f) refinancings; HUD declined to make this change as the form already requires automatic subordination of refinancing the FHA-insured senior loan, which includes FHA refinancings. HUD made a technical correction in Section 10(d) to remove the allowance of deletion of this paragraph for forgivable loans. This paragraph contains an important senior lender protection that is applicable to forgivable loans in the event of a default under the forgivable loan and payment becomes due.

One commenter requested HUD add the schedule/exhibits of senior and subordinate loan documents to the signature page. HUD agreed with this comment and made the corresponding revision.

*Lender's Certificate*, HUD-92434M

HUD accepted several editorial and other non-substantive corrections suggested by commenters and shown in the redline comparison published in connection with this 30-day notice.

In response to a comment, HUD added language in Section B.2. to accommodate situations where certain Firm Commitment conditions cannot be satisfied until after initial closing. HUD further revised language in Section B.4 to clarify the Firm Commitment should not be attached to the *Lender's Certificate* in response to another comment.

One commenter objected to references to the reserve for replacement amount and related exhibit in Section C.4; HUD disagreed the references could lead to an inconsistency but changed the language to reference the Firm Commitment instead of the *Regulatory Agreement*. Relative to UCC searches in Section C.8, one commenter asked to qualify the provision for UCC filing

searches to exclude UCC filings to be terminated upon closing of the insured loan; HUD rejected this change in procedure. Similarly, HUD rejected a requested change to Section E.7 for materials stored off-site to be limited to those paid from insured loan proceeds, as HUD's collateral for the insured loan includes all borrower assets, not only those paid from insured loan proceeds.

One commenter asked HUD to modify Section E.10 to allow for inclusion of an exhibit describing delayed permits and approvals to be obtained at a later date, but the commenter did not provide a rationale for the requested modification. HUD therefore declined to accept this change. Concerning lenders' due diligence in Section E.10 in ensuring all required permits and approvals have been obtained, HUD agreed with several commenters that the prohibition against relying on the *Opinion of Borrower's Counsel* should be removed. However, HUD determined that the "reasonable" standard for the required due diligence should remain. Another commenter asked HUD to revise the definition of "HUD-insured Loan Funds" in Section F; HUD rejected the language as unnecessary given existing guidance on these structures.

One commenter suggested that HUD add the Lender's Assurance of Permanent Financing to the *Lender's Certificate*; while HUD generally agreed with the comment, HUD decided it would be too difficult to adopt at this time.

*Building Loan Agreement*, HUD-92441M

HUD did not receive comments on this document but decided to make a needed technical correction to add language in Section 4(c) to ensure compliance with 24 C.F.R. § 200.54.

*Construction Contract*, HUD-92442M

HUD agreed to make several non-substantive editorial changes to improve the document in response to several comments and as shown in the redline comparison published in connection with this 30-day notice.

HUD declined a request to remove the requirement in Article 2.C. for the lender to sign the plans and specifications as this is a MAP Guide requirement that HUD has decided to maintain. HUD agreed to a proposed change in Article 3.A to set the start date for work within fourteen days of the date of the *Construction Contract*.

One commenter requested HUD modify the liquidated damages provision in Article 3(E) to allow borrowers to recoup soft costs. HUD declined to revise its policy that soft costs not be allowed in the calculation of liquidated damages. Another commenter asked about the Identity of Interest Amendment referenced within the form. HUD has determined that this form should not have been removed from the MAP Guide Appendices as it is still required when applicable. The MAP Guide will be revised to again include this document in the appendices.

One commenter noted that the bracketed language in Section 4.E is confusing because Section 2.A.8 does not include the incentive payment addendum as a construction document in identity of interest cases, but Section 4.E requires the addendum for identity of interest cases. HUD agrees with this comment and has revised Section 2.A.8 (re-numbered as Section 2.A.7) accordingly.

HUD agreed with one comment that the owner as opposed to the contractor is sometimes responsible for paying for the building permits and as-built survey and made corresponding changes in Article 7.A and 7.C to allow for this possibility.

*Performance Bond*, HUD-92452M

No public comments were submitted for this form, but HUD determined that several technical corrections were needed. HUD revised Section 3 to use the already-defined term “Obligees” rather than separately listing Borrower and Lender as “Obligees.” This change is consistent with the first paragraph of the form and with Section 2 of the form *Payment Bond*, HUD-92452A-M. Separately, HUD included a parenthetical definition of the already-capitalized term “Obligor,” which is similarly defined in the form *Payment Bond*.

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

HUD accepted several editorial and other non-substantive corrections suggested by commenters and shown in the redline comparison published in connection with this 30-day notice.

One commenter requested HUD revise the language in Section I.A.7 to qualify lender’s certification about completion of borrower’s repairs “Based on the Repair Certification of Borrower....” or “to the best of lender’s knowledge and information....” This change is unnecessary as the entire section is qualified by the best of lender’s knowledge. HUD rejected a similar comment with respect to the new No Material Adverse Change certification in Section I.A.14 given that the entire section is qualified by the best of lender’s knowledge. Further, this new provision was explicitly identified in the 60-day notice as new, rather than a clarification of the form, as the commenter suggested.

Regarding the 50% holdback for cash-out refinances in Section 223(f) and addressed in Section I.B.1 of the form, HUD declined to change its policy at this time to allow for an alternative percentage.

One commenter objected to the reference to the reserve for replacement amount and exhibit in Section I.B.5. HUD disagreed the reference could lead to an inconsistency and notes that the

provision references the Firm Commitment instead of the *Regulatory Agreement* and made further edits to clarify that the Firm Commitment is not attached to the form.

Regarding the list of fees and charges of lender in Section I.C.3, HUD disagreed with a request to reference the Certified Closing Statement instead of a separate list, as HUD wants this information separated from the other information that is included in the Certified Closing Statement.

One commenter asked HUD to modify Section I.C.11 to allow for inclusion of an exhibit describing delayed permits and approvals to be obtained at a later date but did not provide any rationale for the modification. HUD therefore declined to accept the requested modification.

Concerning lenders' due diligence in I.C.11 in ensuring all required permits and approvals have been obtained, HUD agreed with several commenters that the prohibition against relying on the *Opinion of Borrower's Counsel* should be removed, but kept the "reasonable" standard for the required due diligence. Another commenter asked HUD to revise the definition of "HUD-insured Loan Funds" in Section I.D.; HUD rejected the language as unnecessary given existing guidance on these structures.

HUD disagreed with a comment concerning Section II.A.1, requesting that the borrower certification about the Certificate of Lender be qualified, because the entire section is already qualified by "knowledge and belief." HUD further disagreed with the request in II.A. to exclude customary vendor payables not over thirty days old from the list of unpaid obligations, as these items fall outside the scope of the language in most scenarios. One commenter objected to newly added language requiring the borrower to certify to the status of the Mortgaged Property and *Security Instrument* as more appropriate for a title company. HUD rejected this comment as

borrowers in FHA-insured Multifamily transactions are sophisticated business entities that can engage professionals to assist them in making these determinations.

One commenter suggested that HUD add the Lender's Assurance of Permanent Financing to the Certificate of Lender; while HUD generally agreed with the comment, HUD decided it would be too difficult to adopt at this time.

*Regulatory Agreement, HUD-92466M*

One commenter requested HUD revise the definition of "Affiliate" to change "policy" to "actions," but did not sufficiently identify or explain the commenter's perceived deficiencies with the current definition. HUD therefore declined to make the requested change. As a general matter, HUD believes that the terms "Affiliate" and "Principal" in the context of the *Regulatory Agreement* should remain distinct from "Controlling Participant" or any other term in the new previous participation regulations because the participants and scope of activity is different. Accordingly, HUD has elected to largely preserve the former 24 C.F.R. § 200.215 definitions of "Affiliate" and "Principal" previously referenced in the *Regulatory Agreement* rather than referencing the new term or regulations.

One commenter requested HUD elaborate on the types of assets that can be held by borrowers apart from the Mortgaged Property defined in I.1.s. HUD declined to make changes to this paragraph to incorporate any additional specific examples of permissible non-project funds. As stated in prior FAQs, references to items such as distributed Surplus Cash and permissible loan repayments are themselves examples of potential non-project funds. If a party is uncertain as to how to treat a particular asset after reviewing applicable Program Obligation, such party should contact the Office of Multifamily Housing for guidance.

One commenter requested that HUD improve the definition of Residual Receipts in I.1.dd. HUD declined to make the proposed change to the new definition of Residual Receipts, as it would be inappropriate to describe a method of calculating Residual Receipts in this document because any residual receipts requirements will generally stem from separate HUD programs and source documents (e.g., Section 8 HAP contracts) with their own residual receipts language.

Accordingly, the definition merely refers to residual receipts requirements in general terms, while the Residual Receipts Rider still functions to more precisely reference the source of residual receipts restrictions and their effect on the *Regulatory Agreement*.

HUD also received a comment to provide greater clarity to the Section 30 listing of other occupancy and use restrictions. It was not HUD's intent to change policy on what information is to be shown in this Section 30, but rather to clarify the existing policy by making the separate instructions more distinct. Thus, subsection "a" of this revised Section 30 corresponds to the first sentence in the current version of the *Regulatory Agreement*. This subsection "a" instruction is designed to encompass any occupancy restrictions or policy that may be imposed in connection with the FHA loan itself. For further clarification, HUD included examples of types of loan-related occupancy restrictions and policies that fall under this category. The subsection "b" instruction corresponds to the second sentence of the current version of the Section 30 language. This is intended to cover *other* occupancy restrictions that, while not a requirement of the FHA loan itself, may otherwise be convenient to identify in the *Regulatory Agreement*. In such cases, such other restrictions may only be referenced in Section 30 with the caveat that they are included for informational purposes only.

*Escrow Agreement for Deferred Repairs*, HUD-92476.1

HUD received a comment to add alternative language for lenders that are approved for self-administration of the escrow. HUD agreed with this comment and added additional language in Sections 5 and 6 along with a new Exhibit C to reflect transactions where HUD has approved delegation to the lender of administration of the repair escrow.

The remaining changes to the form shown in the redline comparison published in connection with this 30-day notice are HUD-initiated improvements and updates given the expanded levels of work that are permitted in certain 223(f) transactions. HUD added a new Alternative B for Sections 1 and 2 for transactions with Level 2/Level 3 repairs funded with tax credit equity, along with a new Exhibit D to include the tax credit equity pay-in schedule, and that the additional assurance of completion amount may be cash or a letter of credit.

HUD added language in Section 8 to: (a) clarify that the Latent Defects Deposit is only required when required by the Firm Commitment; (b) clarify that it is calculated on both “critical” and “non-critical” repairs performed before or after closing; and (c) include the amount when a Latent Defects Deposit is required, or to insert “N/A” if it is not required.

Given that the Firm Commitment requires latent defect assurances when the repairs/alterations are greater than \$400,000, regardless of when the work is completed, HUD added a new Alternative B in the Recitals to capture the possibility of a Latent Defects Deposit when all work is completed before closing and no deferred repair escrow is required. Further, HUD added an instruction to revise the title of the document and strike paragraphs 1-3 and 5-7 in such situations.

*Borrower's Oath*, HUD-92478M

One commenter asked why the *Borrower's Oath* is notarized and why it can't be combined with one of the other closing documents executed by the borrower. This document is notarized

because at least one provision is required by statute to be certified under oath. In terms of merging the contents into another document. HUD declined to accept this suggestion because the notary requirement and the form's contents support keeping it as a stand-alone document.

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

HUD received a comment to add to this document any provisions in the AIA A201 that HUD requires be stricken or modified per the FHA Multifamily Program Closing Guide. HUD declined to make this change. Including the requested change is not practical because the closing documents are renewed every three years, and the AIA A201 document may change prior to or soon after the documents are renewed. HUD has determined that it is more practical to announce changes in policy via the Closing Guide or other HUD directives.

*Subordination Agreement – Private, HUD-92907M*

One commenter asked HUD to clarify whether all “Subordinate Loan Documents” referenced in Section 1(p) actually means “all” of such documents. HUD determined no additional clarification is needed, the document clearly states, “include all documents.” HUD added language in Section 3(c)(1) that payments due under borrower subordinate loans are limited to 75% of cumulative Surplus Cash, consistent with MAP Guide policy and the *Surplus Cash Note*. To be consistent with the change to the *Surplus Cash Note* and Multifamily Housing policy, HUD made a change to Section 3(c)(4) to allow for compounding of interest for certain eligible LIHTC transactions.

A commenter asked that Section 10 be revised to allow for automatic re-subordination of the subordinate lien for Sections 223(a)(7) and 223(f) refinancings; HUD declined to make this

change as the form already requires automatic subordination of refinancing the FHA-insured senior loan, which includes FHA refinancings. One commenter requested HUD add the schedule/exhibits of senior and subordinate loan documents to the signature page. HUD agreed with this comment and made the corresponding revision.

*Agreement and Certification*, HUD-93305M

One commenter requested that Section 14 be revised to not require attachment of special condition certifications. HUD agreed with the comment and removed the requirement to attach the separate certifications. These certifications should be inserted into the body of the document in Section 14.

*Security Instrument*, HUD-94000M

One commenter asked for additional clarity on the content of Exhibit B. HUD agreed with the comment and added instructions to indicate that form state Addendum provisions do not need to be separately referenced in the Exhibit B specifically if such addenda are otherwise validly attached to and incorporated in the Security Instrument under applicable state law. HUD similarly revised the instruction language in Sections 43 and 49.

Another commenter suggested HUD add as an option “[Leasehold]” where the document covers a leasehold estate. HUD agreed with the suggestion and added the term “Leasehold” as optional bracketed language on the Security Instrument cover, title on page 2, and preamble paragraph.

This language is to be inserted for transactions involving a leasehold estate. Note that use of the *Security Instrument* in such transactions must comply with the HUD requirements for leasehold mortgages, including use of the form *Lease Addendum*.

*Note*, HUD-94001M

One commenter requested additional language to harmonize the *Note* with the requirements of form HUD-9807 to put borrowers on notice of HUD's administrative prepayment procedures to protect lenders from arguments that they are improperly conditioning prepayment on HUD approval. HUD declines to add the suggested language to the *Note*. The existing *Note* language does not conflict with form HUD-9807. To the extent any party has questions on HUD's administrative processes regarding loan prepayment or FHA insurance termination, please refer to relevant Program Obligations and forms, including Section 11.8 of the MAP Guide and the instructions in form HUD-9807.

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

Estimated Number of Respondents: 17,468

Estimated Number of Responses: 17,468

Frequency of Response: 1

Average Hours per Response: .72 hours

Total Estimated Burden Hours: 12,576.96

## **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 HUD to consolidate and consider comparison versions of each of the documents from numerous interested parties. HUD will only consider proposed changes to the documents listed under Section A that are submitted in narrative and/or bulleted form (preferably in MS Word 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 redline/strikeouts.

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

**Date:** June 8, 2018

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Colette Pollard  
Department Reports Management Officer  
Office of the Chief Information Officer

[FR-7001-N-28]

[FR Doc. 2018-13660 Filed: 6/25/2018 8:45 am; Publication Date: 6/26/2018]