



DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7024-N-30]

30-Day Notice of Proposed Information Collection: Project Approval for Single-Family Condominiums; OMB Control Number: 2502-0610

AGENCY: Office of the Chief Information Officer, 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 comment from all interested parties on the proposed collection of information. The purpose of this notice is to allow for 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: 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 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: **Colette Pollard**, US 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. 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 submitted to OMB may be 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. Stakeholders may view the proposed changes to Form HUD-9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire and Form HUD-9992, FHA Condominium Project Approval Questionnaire at: https://www.hud.gov/program_offices/housing/sfh/SFH_policy_drafts

A. Overview of Information Collection

Title of Information Collection: Project Approval for Single-Family Condominiums.

OMB Approval Number: 2502-0610.

Type of Request Revision of currently approved collection.

Form Number: HUD-9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire and Instructions; HUD-9992, FHA Condominium Project Approval Questionnaire and Instructions; HUD-92544, Warranty of Completion of Construction; HUD-92541, Builder's Certification of Plans, Specifications, and Site; HUD-96029, Condominium Rider.

Description of the need for the information and proposed use: This collection package seeks to renew and revise two collection forms, Form HUD-9992, FHA Condominium Project Approval Questionnaire used to process condominium project approval applications and Form HUD-9991 FHA Condominium Loan Level/Single-Unit Approval Questionnaire used to process single-unit approvals. These forms are needed to determine if a condominium project is eligible for FHA project approval and if a Unit in

an approved or unapproved condominium project is eligible for FHA-insured financing. The Form HUD-9992, FHA Condominium Project Approval Questionnaire and the Form HUD-9991, FHA Condominium Loan Level/Single-Unit Approval Questionnaire have been revised to address comments on the 60-Day Notice. The HUD-92544, Warranty of Completion of Construction and HUD-96029, Condominium Rider were updated to comply with the burden statement requirements.

Respondents (i.e. affected public): Business or other for-profit (lenders and condominium associations).

Estimated Number of Respondents: 180,000.

Estimated Number of Responses: 180,000.

Frequency of Response: One-time for each condominium project approval or recertification, and one-time for loan level approval and Single-Unit Approval.

Average Hours per Response: .51250 hours (varies by form and approval type: project, loan level approval and Single-Unit Approval).

Total Estimated Burdens: 92,250.

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 comment in response to these questions.

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

D. Summary of Public Comments and HUD Responses

The 60-day Notice was published in the Federal Register on January 31, 2020 Volume 85, No. 21, Pages 5686 –5687, and the public comment period closed on March 31, 2020. HUD

received 140 comments from 13 commenters by the close of the public comment period.

Commenters included individuals, mortgage companies, banks, trade associations, and mortgage brokers. The following is a summary of the issues raised in the public comments. The comments that pertain to Forms HUD-9991 and HUD-9992 are addressed. Then, the comments specific to each form follow.

Comments on Forms HUD-9991 and HUD-9992

Comment: All the commenters requested changes to make it easier to use the forms and to reduce the amount of time required for completion. Suggestions for improvement included wording clarifications, consolidation of similar questions, and the elimination of questions to make the forms shorter and easier to understand. Several commenters noted that most condominium associations are not familiar with FHA requirements and requested additional guidance be provided. In addition, several commenters requested that the form be converted into a PDF fillable document with check boxes that can be changed.

HUD Response: HUD appreciates the feedback and used a combination of the suggestions to revise and restructure the forms. HUD agrees that the condominium associations and other non-mortgagee participants may not be familiar with FHA requirements. The forms

do not specify percentage benchmarks to make them adaptable to future policy changes. HUD developed instructions to explain how questions should be answered and included Handbook 4000.1 section references. Once the content of the forms has been finalized, the forms will be formatted and converted to a PDF fillable format that will allow corrections.

Comment: Many commenters indicated that requiring the condominium association to complete the form and sign the certification caused significant delays in obtaining information and increased costs. Commenters reported that condominium associations were not always able to answer all the questions. Condominium associations have expressed concern about the certification and the potential penalties, often refusing to sign the form. Commenters also noted increases in the cost to obtain the information. Some commenters suggested making the mortgagee or Submitter solely responsible for the completion and certification of the form.

HUD Response: HUD agrees that most condominium associations are not familiar with FHA requirements and understands from the comments that this often leads to delays in receiving the information and/or additional costs to process the forms. HUD has removed the requirement that the condominium association must complete the form and sign the certification for loan-level approvals and Single-Unit Approvals. Mortgagees using the Form HUD-9991 to determine the eligibility of a Unit for FHA-insured financing will be responsible for obtaining and certifying that the information provided is accurate and meets FHA requirements. For Condominium Project Approval, a Submitter is an Eligible Submission Source (Handbook 4000.1, section II.C. for Eligible Submission Sources) that prepares and submits a Condominium Project Approval application package. Submitters are responsible for completing the Form HUD-9992 and certifying that the FHA Condominium Project Approval requirements have been met. HUD also has removed the requirement that the condominium association must complete

the form and sign the certification for Condominium Project Approval unless the condominium association is the Submitter. Mortgagees and Submitters must use information obtained from verifiable sources including the condominium association, public records, or other data sources. HUD revised the forms and developed instructions to explain how the questions should be answered.

Comment: Commenters suggested HUD consider extending the life of data collected to reduce the number of times information must be requested from a condominium association. A commenter noted that most of the data on the questionnaire could be reused for up to a year.

HUD Response: HUD agrees that the data collected should have a period of applicability. HUD will allow data collected on the questionnaire to be no more than 90 days old prior to the questionnaire being signed. This 90-day period will permit the previously collected information to be used again and create more efficiency for the condominium association staff, mortgagees and Submitters.

Comment: Most of the commenters stated that the burden hour estimates for Forms HUD-9991 and HUD-9992 did not reflect the amount of time it took to collect the documentation and fill out the forms.

HUD Response: HUD agrees that an overall increase in the burden hour estimates is warranted for both Forms HUD-9991 and HUD-9992. In response to the public comments, HUD revised both forms to reduce the length, streamlined the information collection process and developed instructions. The burden hour estimate for OMB No. 2502-0610 assumes that many of the sources of information are typically used to operate a condominium project and are accessible to mortgagees and Submitters. In addition, the Paperwork Reduction Act (PRA) burden hour estimates for Single-Unit Approval and Condominium Project Approval allocate

time for the package preparation and collection of the documents, in addition, to the estimate for completion of the forms.

Comment: Many commenters noted that condominium associations are reluctant to provide their organization's Tax Identification Number and often refuse to provide it. A commenter requested that the field requiring the association tax identification number be marked as optional.

HUD Response: Many Condominium Projects have similar names and are often incorrectly entered into FHA's system. The condominium association tax identification number is required to establish a unique identifier number. Collection of this information provides a way to eliminate duplication and will help ensure the FHA concentration for each condominium project is correctly calculated. While HUD understands that the tax identification number may not be available in all situations, FHA would like to research the situations in which a tax identification number would not exist.

Comment: Several commenters indicated that it is difficult to determine how many units are owned by a single entity or related parties for individual owner concentration. Condominium associations do not track how individual Unit owners are related and cannot provide reliable information to verify if "an individual related to the Unit owner by blood, marriage or operation of law." A commenter suggested collecting only information on units owned by a single owner and removing the "Related Parties" requirement.

HUD Response: HUD concurs that it is difficult for condominium associations to provide this information and is considering updates to the policy that will remove the "Related Parties" requirement. It is important to know if there is one or several owners of multiple units that

could have an impact on the financial stability of the project if one or more of the owners were unable to pay their association dues.

Comment: Many commenters stated that the condominium associations are not able to accurately measure Owner Occupancy and that the data is difficult to obtain. One commenter noted that the reliability and accuracy of owner occupancy data reduces its usefulness in assessing the financial and operational viability of a condominium project.

HUD Response: HUD has revised the Owner Occupancy section on both forms and developed instructions to explain how the questions should be answered. Owner Occupancy plays a vital part in the successful operation of a condominium association. Maintaining occupancy records is something most condominium associations currently do to successfully manage their properties. HUD also understands lenders exercise their options to gather and verify this information. HUD finds the information requested and received to be effective and useful in the analysis of the condominium project's viability

Comment: Many commenters requested that third party industry questionnaires be allowed as a substitute for the Form HUD-9991 or Form HUD-9992. The commenters discussed the amount of condominium project information contained in these questionnaires and the wide-spread industry acceptance.

HUD Response: HUD agrees that these forms seem to provide useful information about the Condominium Project and condominium association. The Handbook 4000.1 lists the Form HUD-9991 and Form HUD-9992 as required documentation for many requirements. The Form HUD-9991 and HUD-9992 are official HUD forms and contain HUD's required certification for mortgagees and Submitters. Mortgagees and Submitters are not prohibited from using these pre-generated forms as a source of information to complete the HUD-9991 or HUD-9992 but

they cannot be submitted as a replacement. HUD needs to further research the third-party providers to understand the information collection and validation methods before it can determine the role of industry questionnaires.

Comment: Several commenters requested the HUD consider automating the collection of information and approval for Single-Unit Approval and Condominium Project Approval.

HUD Response: HUD concurs that electronic submission would be advantageous and cost-effective for our stakeholders. Automating where possible directly impacts HUD stakeholders and will make navigating the condominium approval process much easier. HUD will review potential options for future development and plans to address in the technology plan. Once funding is available, HUD will automate as appropriate.

Form HUD-9991 Comments and HUD Responses

The following comments and HUD responses pertain to Form HUD-9991. As previously noted, many of the commenters requested changes to Form HUD-9991 to simplify the process of completing the form to make it more user-friendly and less burdensome to complete.

Suggestions included revising, eliminating, and consolidating questions to shorten the questionnaire. HUD appreciated the suggestions and used many of them to restructure the questionnaire.

Comment: HUD-9991, Section 2.a, Condominium Project, includes a field requesting the FHA Condo-ID Number. A commenter suggested adding a parenthetical “(if applicable)” since the form is used for units in condominium projects that are not approved and may not have an FHA Condo ID.

HUD Response: HUD has revised the Form HUD-9991 and developed instructions to explain how the questions should be answered. The FHA Condo ID number was moved to the Mortgage Section. For Single-Unit Approval, an FHA case number may be requested without

the submission of this form. It is the lender's responsibility to enter the FHA Condo ID number prior to submitting the form in the FHA case binder. If the Unit is in a Condominium Project that is not currently approved but has an FHA Condo ID, the lender will have to provide the FHA Condo ID when the FHA case number is requested.

Comment: A commenter noted that the Form HUD-9991 was not listed in the required documentation.

HUD Response: On October 24, 2019, Handbook 4000.1, Section II.A.8.p was updated to require Form HUD-9991 as required documentation. Mortgagees were permitted to use the Form HUD-9991 on the original effective date of October 15, 2019 and required to use it for case numbers assigned on or after January 2, 2020.

Comment: Commenters noted various questions in Sections 3 and 4 that condominium associations would not be able to answer because they did not understand FHA requirements.

HUD Response: HUD has reviewed the comments and revised Sections 3 and 4 of Form HUD-9991. The instructions provide additional guidance and explain how the questions should be answered. To accommodate future policy changes, the Form HUD-9991 does not cite specific percentage requirements. The mortgagee must refer to Handbook 4000.1 for the FHA requirements. The mortgagee is required to complete the form using information obtained from verifiable sources including the condominium association, public records, or other data sources, and certify it meets FHA requirements.

Comment: Several commenters requested using a simpler form on a loan level basis when a condominium project has been approved by FHA.

HUD Response: HUD restructured Form HUD-9991 and simplified the process of completing the form. Sections 1 through 3 must be completed for both Loan Level (Units in an

approved Condominium Project) and Single-Unit Approval (Units in a Condominium Project that is not approved). Sections 1 through 4 must be completed for a Unit located in a Condominium Project that has not been approved. Form HUD-9991 is required documentation and must be included in the case binder along with all other required documentation as outlined in HUD Handbook 4000.1, FHA Single Family Housing Policy Handbook (Handbook 4000.1). Completion of this form is not required for the case number assignment process.

Comment: One commenter noted obtaining a new single unit approval takes the same level of effort as obtaining Condominium Project Approval. The commenter also noted that “it creates an additional hurdle for the homeowner to financially qualify.”

HUD Response: The Single Unit Approval program is not a replacement for full Condominium Project approval. HUD has developed this program to provide increased access to FHA-insured financing for the borrowers and limit risk to the FHA Insurance Fund. Form-9991 is substantially shorter than Form-9992 (required for Full Approval) and requires much less documentation. HUD is hopeful that the commenters will be pleased with the recent changes made based on comments received. The Form HUD-9991 has been reduced by an additional two pages, has instructions, and only requires the mortgagee to complete now.

Comment: Commenter requested that FHA should highlight the circumstances in which recorded documents are not required.

HUD Response: HUD has revised the Form HUD-9991 and developed instructions to explain how the questions should be answered. The instructions identify when recorded governing documents would not be required.

Comment: One commenter recommended including a reference to the October 21, 2019, Memorandum of Understanding Between the Department of Housing and Urban Development

and the Department of Justice concerning False Claims Act civil actions to convey the actual extent of False Claims Act liability incurred by form certification. The commenter noted that the information “should meet plain English requirements for clarity and be understandable by community association professionals outside of the legal profession.”

HUD Response: HUD does not think the inclusion of a reference to the Memorandum is necessary. HUD has revised the Form HUD-9991 and developed instructions to explain how the questions should be answered. The certification language is consistent with other OMB HUD approved forms. The requirement for the condominium association to certify has been removed, and Form HUD-9991 must be completed by the Mortgagee. HUD expects the mortgagee to collect the information from reliable and verifiable sources.

Comment: One commenter recommended changing the Litigation question to include “pending” in the question to add more clarity.

HUD Response: HUD concurs and has amended Section 4.e.1 in the questionnaire to include “pending” in the question.

Comment: Several commenters indicated the question regarding adverse determination for the condominium project is confusing to condominium associations.

HUD Response: HUD agrees that the current phrasing may be confusing to the respondent and removed the question.

Comment: Many commenters noted that the estimated burden for the HUD-9991 was too low and identified the requirement for the condominium association to complete the form and certify; the lack of instructions; and questions needing clarification.

HUD Response: HUD increased the estimated burden hours for the Form HUD-9991 by 15 minutes. The Form HUD-9991 revisions included: streamlining the form; developing

instructions to explain how the questions should be answered; removing the requirement for the condominium association to complete the form and certify; and making the mortgagee solely responsible for completion of the form. HUD assumes that many of the sources of information are typically used in the operation of a condominium project and are accessible to mortgagees. The amount of time to complete the Form HUD-9991 for a Unit in an approved condominium project is significantly less than the amount of time it takes to complete the form for a Unit in a non-FHA-approved project (Single-Unit Approval). FHA will allow data collected on the questionnaire to be no more than 90 days old prior to the questionnaire being signed. This 90 day period will permit information previously collected to be used again, and allow for a more efficient use of time, both for the staff of the condominium association and mortgagee by reducing burden hours. HUD expects the mortgagee to collect the information from reliable and verifiable sources.

HUD-9992 Comments and HUD Responses

HUD has made significant changes and streamlined Form HUD-9992 in response to the public comments received on the 60-Day Notice. To reduce duplication, Section 3: Project Eligibility and Section 4: Eligibility Worksheet for Condominium Project Approval have been consolidated. The project eligibility questions have been structured and, in some cases, removed to reduce the information collected. The first question of each section has been revised to determine if additional information is required or to direct the respondent to the next section. An N/A box also has been added where applicable. HUD also developed instructions to explain how questions should be answered with a Handbook 4000.1 reference. The form does not specify percentage benchmarks to make it adaptable to future policy changes.

HUD concurs that the condominium associations may not understand questions that do not specify the requirement. HUD removed the Form HUD-9992 completion and certification requirements for the condominium association unless the condominium association is the Submitter. The Submitter will be responsible for determining if the Condominium Project complies with Condominium Project Approval eligibility requirements and must use information obtained from reliable and verifiable sources including the Condominium Association, public records, or other data sources. Data that has been obtained within the past 90 days of the signature on the HUD-9992 for an approved condominium project can be used again. The Form HUD-9991 is designed to confirm continued eligibility of the Unit and Condominium Project with FHA requirements and this reduces the burden of completing the Form HUD-9991 for Units in FHA-approved condominium projects.

Comment: Several commenters requested clarification on how to complete Section 1: Mortgagee/Submitter and offered suggestions on the Mortgagee/Submitter information that should be collected.

HUD Response: HUD restructured Section 1: Mortgagee/Submitter Information and consolidated 1.b. Mortgagee Information and 1.c Submitter Information. In the updated form, 1.b. Submitter Information allows a variety of respondents to complete the form. The HUD-9992 instructions explain how the questions should be answered and contain Handbook 4000.1 references.

Comment: A commenter noted that the form should clarify if the submitter is not a mortgagee using the DELRAP process, then the submitter is not obligated to fill out Section 1.b. Right now, it is not clear whether a submitter using the HRAP process is supposed to leave

Section 1.b blank. This confusion would be eliminated if there were separate forms for the DELRAP and HRAP processes.

HUD Response: HUD revised Section 1: Mortgagee/Submitter of the Form HUD-9992 and developed instructions to explain how the organizational information should be provided. Section 1.b Mortgagee was deleted and replaced with 1.b. Submitter. The Submitter preparing the approval package should complete the Form HUD-9992. According to Handbook 4000.1, Section II.C.2.c.i. i. Form HUD-9992, FHA Condominium Project Approval Questionnaire , the "Form HUD-9992 must be completed, signed, and dated by an Eligible Submission Source or a DELRAP Mortgagee") The same requirements apply to Condominium Projects seeking approval under HRAP and DELRAP and the Form HUD-9992 is listed as required documentation for many FHA Condominium Project Approval requirements. At this time, HUD has no plans to create separate forms for HRAP and DELRAP submissions but will take this into consideration for the future.

Comment: In Section 2: Condominium Project Information, a commenter suggested adding "(if applicable)" to the FHA Condo-ID Number in Section 2.a since, the HUD-9992 is used with both approved condominium projects and projects seeking approval.

HUD Response: HUD agrees that not all condominium projects will have FHA Condominium Project Approval. The phrase "(if applicable)" was not added to the Form HUD-9992 because the instructions note that the FHA Condo-ID Number should be provided if one exists.

Comment: There were many comments on how to make the questions in Section 3.a Project Eligibility more user-friendly. One commenter noted that a third column for "unknown," should be added and suggested removing 3.a.3. because the condominium

associations did not understand mandatory rental pooling agreements. A commenter indicated the question 3.a.9 regarding adverse determination for the condominium project is confusing to condominium associations and should be deleted.

HUD Response: HUD agrees that some of the FHA requirements may be difficult to understand without the Handbook 4000.1 guidance. HUD removed the project eligibility questions 3.a.1. – 3.a.9. from the HUD-9992 to streamline the form and because it is the responsibility of the Submitter to determine if a condominium project complies with all the FHA condominium project eligibility and approval requirements. The Submitter must use information obtained from verifiable sources including the condominium association, public records, or other data sources to complete the HUD-9992 and to confirm compliance with the requirements.

Comment: Questions 3.c.3 through 3.c.9 request information about the status of the Legal Phases. A commenter noted that Section 3.c.3 through 3.c.9 should include an additional response column labeled “Unknown.” Another commenter suggested that 3.c.6 and 3.c.9 should be combined because the information requested is redundant.

HUD Response: HUD consolidated the Legal Phasing Sections 3.c. and 4.a and restructured how the information is collected. HUD needs to know the number of phases and related units that have been submitted for condominium project approval. HUD added an N/A check box the Legal Phasing section and structured the first question to determine if the respondent should provide more information or move to the next section. HUD also developed instructions to explain how the questions should be answered and to provide a reference to Handbook 4000.1.

Comment: A commenter noted that Sections 3.c and 4.a. “pertain to proof of legal phasing and the request that the submitter provide a certificate of occupancy (CO) or “their

equivalent." The commenter also noted that "FHA does not provide guidance on what documentation is an acceptable "equivalent." The commenter noted they typically submit the recorded amendment to the condominium instruments adding phases and that a certificate of occupancy requirement is better suited for newly constructed projects only. Another commenter suggested that the recorded declarations be added to the list of required documentation.

HUD Response: Questions 3.c. and 4.a collect information to determine if the Condominium Project and its Legal Phases comply with FHA requirements, which are written to apply to a broad array of laws throughout the United States and U.S. territories. The purpose of the "Certificate of Occupancy" or its "equivalent" is to demonstrate that all the units within the phase are built out and are ready for occupancy. HUD is open to other types of documentation that demonstrate the condominium project and legal phase(s) comply with FHA requirements. HUD will consider adding the recorded amendment annexing a phase to the required documentation in future updates.

Comment: Question 4.a.5 asks about the independently sustainability of Legal Phases. A commenter recommended that the Condominium Association answer this question instead of the Submitter.

HUD Response: HUD expects the Submitter to be able to determine if the completed Legal Phases are independently sustainable without future planned Legal Phases, as demonstrated by the budget and financial documentation, such that the submitted Legal Phases of the Condominium Project will not be jeopardized by the failure to complete additional Legal Phases. While the Condominium Association can provide its perspective, the Submitter should make the determination. The Submitter is responsible for determining if the Condominium Project complies with FHA eligibility Condominium Project Approval requirements and must

use information obtained from verifiable sources including the Condominium Association, public records, or other data sources to complete the HUD-9992.

Comment: Several commenters noted similar questions in Section 3: Project Eligibility and Section 4: Eligibility Worksheet for Condominium Project Approval should be consolidated to make the form more user-friendly and to reduce the possibility of errors. A commenter noted that Sections 3.e and 4.e. relate to the individual owner concentration and should be consolidated. Another commenter noted that Sections 3.d.2. and 4.c.1 pertain to the project's owner-occupancy rate and should be consolidated. A final commenter noted that Section 3.j.1 should be amended to include information asked in Section 4.1.5, "could legal action impact the future solvency of the Condominium Association?"

HUD Response: HUD agrees and combined Sections 3 and 4 to streamline the Form HUD-9992. The data collection and eligibility determination for individual owner concentration, owner occupancy and litigation have been consolidated into the same section. HUD developed instructions to explain how the questions should be answered.

Comment: Signature Pages. The Draft Form HUD-9992 requires the submitter to sign and date the form in 2 places, on pages 6 and 10. This seems unnecessary. The form should be consolidated so that the submitter only has sign in one place, as was the case the prior 2-page FHA Condominium Certification Checklist.

HUD Response: HUD has revised the Form HUD-9992 and only the Submitter's signature is required.

Comment: A commenter noted that Question 3.d.3.a.ii New Construction, Non-owner occupied Units in the HUD-9992 published with the 60-Day Notice should be eliminated because it is not possible to know if future transactions will be owner-occupied or not.

HUD Response: This question is asking for the number of owner-occupied units at a particular point in time and the non-owner-occupied units are equal to the difference between the total units and owner-occupied units. HUD based the categories of owner-occupancy in the Final Condominium Rule upon the Housing Opportunity Through Modernization Act of 2016 (HOTMA) requirements as directed by Congress. The question cannot be eliminated.

Comment: A commenter requested clarification regarding an owner concentration that is between 35% and 50% where a project meets the 10% delinquency requirement as to whether the submitter must also provide 3 years' worth of financial data and demonstrate 20% reserve funding, as provided for under Mortgagee Letter 2016-15, or if these requirements are now eliminated.

HUD Response: HUD thinks the reference to the FHA Single-Family Handbook 4000.1 is the comprehensive source of FHA condominium policy and Mortgagee Letter 2016-15 was superseded by Handbook 4000.1 published on August 14, 2019. For Condominium Project Approval, a Condominium Project with an owner occupancy percentage between 35% and 50% must meet the requirements in Handbook 4000.1, Section II.C.2.c.iv(c) Existing Construction Condominium Projects that are greater than 12 months old.

Comment: A commenter requested guidance on determining the reserve account balance for Question 3.f.1 in Section 3.f. Financial Stability. The commenter wanted to know if the balance sheet or another document should be used.

HUD Response: The Handbook 4000.1 lists the required financial documentation. The Submitter is responsible for determining the reserve account balance meets FHA requirements and is being funded in accordance with FHA requirements.

Comment: A commenter noted that many of the questions assume that the Homeowners Associations (HOA's) know HUD's guidelines. As an example, the commenter referenced Question 3.f.2 "Is the reserve account funded as required by FHA?" The commenter noted that not understanding FHA requirements makes the HOAs leery about answering many of the questions.

HUD Response: HUD concurs that the condominium associations may not understand questions that do not specify the requirement. HUD has revised the Form HUD-9992 and developed instructions, which explain how the questions should be answered and include Handbook 4000.1 references. The form does not specify percentage benchmarks to make it adaptable to future policy changes. HUD removed the Form HUD-9992 completion and certification requirements for condominium associations, which should make them feel more comfortable providing information to the Submitter. HUD expects the Submitter to know the requirements and to determine if the condominium project complies with FHA requirements.

Comment: A commenter asked if "old" delinquencies associated with prior owners should be included in the Unit in Arrears calculation in Question 3.f.5.

HUD Response: The Handbook 4000.1 guidance for Units in Arrears pertains to the current owners. If there are outstanding delinquencies from prior unit owners, they should be noted in the financial documentation if they pose a financial threat to the condominium project.

Comment: A commenter noted that Question 3.f.6. on the draft Form does not accommodate condominium projects that have units with different assessment amounts based on the unit size or common element interest of the units.

HUD Response: HUD agrees that the HUD-9992 structure does not allow for entry of a range of assessments. The form requests the annual amount of condominium assessments. If it

will have a bearing on the condominium project's performance, the Submitter should address it in the condominium project approval package.

Comment: A commenter noted that Section 3.l. Subsections 3.h through 3.k are unclear as to whether any box needs to be checked off if these sections do not apply. In general, it is unclear which boxes needed to be checked off if the subsection is inapplicable.

HUD Response: HUD revised the Form HUD-9992 and developed instructions to explain how the questions should be answered. To minimize the number of questions a respondent must answer the first question to determine if more information is required or to indicate the next required response. An N/A check box has been added to many of the sections including the Commercial, Live/Work and Leasehold sections referenced by the commenter.

Comment: For question 4.d.1., the commenter requested clarification that the specific documentation being reviewed to verify the requirement and on how to demonstrate that the project has had a stable income over the past two years with decreases that do not exceed FHA's percentage of 15%. The commenter noted that if the budget income from the previous year to the current year, the regulations need to be updated to request previous year's budget. Currently, only the current year budget is requested.

HUD Response: HUD will consider updates to the Handbook 4000.1 that will require the financial documentation for the past two years. Both the income and expense statement and the budget can be used to provide information on a Condominium Project's financial condition and the stability. The reviewer can also use the year-to-date to develop income projections for comparison with last year's statements to determine that the income did not decrease more than 15%.

Comment: A commenter also requested clarification on the requirements in Section 4.d.1 for new construction and asked for confirmation that if the operating income has not been in place for two years, a demonstration that the Project has not shown any decrease in income would suffice.”

HUD Response: HUD agrees with the approach and is considering updated guidance in the Handbook 4000.1 that will link the required financial condition documentation to the length of time the Condominium Project has been operating.

Comment: Questions 4.d.3 through 4.d.6 relate to the reserve account funding. A commenter noted that Questions 4.d.3 and 4.d.4. appear to be asking the same question. The commenter recommended revising Question 4.d.3 to read "Does the Condominium budget demonstrate that at least 10% of the total annual assessment is being allocated toward reserve funding as required by FHA? If the answer is "No", answer questions 4.d.5 and 4.d.6."

HUD: HUD concurs and revised the Financial Stability and Controls section in response to several comments received. The Submitter needs to confirm that the balance in the reserve account meets the FHA requirement and demonstrate that the reserve fund that is being funded consistently.

Comment: Section 4.d.5 also pertains to reserve funding. The commenter suggested rewording the question to make it clear when a reserve study must be reviewed to demonstrate the reserve account is funded as required. The commenter also requested guidance on the financial documentation that should be evaluated in conjunction with the reserve study.

HUD Response: In response to comments, HUD streamlined Form HUD-9992 and revised the reserve account balance questions to make it clear that if the reserve account balance is less than FHA's requirement and/or the reserve account is not being funded in accordance with

FHA requirements, an acceptable reserve study is required. The funding and/or expenditures must be consistent with the reserve study recommendations for approval.

Comment: The commenter noted that Question 4.k.3. seems to inquire about whether the management contract can be terminated upon no more than 90 days' notice only if the management contract was entered into during the developer control period. However, Single Family Housing Policy Handbook 4000.1 states that the management contract, regardless of when it was entered into, must be terminable upon no more than 90 days' written notice. The commenter noted that there is no place on Form HUD-9992 to provide this information for a current management contract that was not entered into during the developer control period. The commenter also indicated that Handbook 4000.1 is not clear on whether a project is ineligible solely because the management contract is not terminable upon no more than 90 days' notice. The commenter indicated that the public could also use clarity on whether the management contract termination provision must be with or without cause and whether an early termination penalty is permissible or not.

HUD Response: In response to the comments, HUD streamlined and revised the Form HUD-9992. HUD concurs that grouping the management contract with the other contracts on the HUD-9992 could be confusing to the respondent. If there is a management company, Handbook 4000.1 requires the management agreement to have a provision giving the Condominium Association the right to terminate the Management Agreement with no more than 90 Days' notice. Handbook 4000.1 also requires that a current management agreement must be submitted. It is the Condominium Association's responsibility to determine if the termination provision should be "with or without cause." FHA requirements must be met for a condominium project to be eligible for approval.

Comment: The commenter noted that in their practice, some condominium associations have cross-easements for shared recreational facility use.

HUD Comment: This comment seems to be a request for a policy interpretation regarding cross-easements for a shared recreational facility. If there is a specific case, HUD will review it. HUD will research to determine if additional guidance should be considered for future policy updates.

Comment: The commenter noted that Sections 4.k.4 through 6. inquire as to whether there are any recreational easements or leases. The commenter also noted that “Under Single Family Housing Policy Handbook 4000.1, a project with recreational easements or leases is eligible for approval if either the lease or easement holder is a nonprofit entity under the control of the condominium association or if each unit owner has the right to cancel the membership with no more than 90 days' notice and without penalty. However, these sections are written as if the project has to satisfy both prongs in order to be eligible. The commenter asked for clarification on the requirements that must be satisfied to be eligible.

HUD Response: The leasehold questions in Form HUD-9992 have been reworded. The commenter’s interpretation of the Handbook 4000.1 guidance is correct. It must be a nonprofit or any entity that gives the unit owners the right to cancel the membership with no more than 90 days’ notice and without penalty. Handbook 4000.1 always takes precedence.

Comment: Section 4.1.5 asks about the impact of any legal action on the solvency of the condominium association. The commenter noted that the question is too broad and should be removed.

HUD Response: The Form HUD-9992 has been revised in response to comments. The questions pertaining to litigation have been consolidated and restructured. Understanding

whether a current legal action could affect the financial stability of the project and if the Condominium Project or Condominium Association is facing any other type of litigation risk is important. Question 4.1.5 has been revised. If the litigation is at a point, where a settlement has been determined, it is important to understand if the funds allocated for any required repairs are sufficient to cover the costs. If there is a gap, and how the condominium association plans to finish the repairs.

Comment: A commenter noted that Section 4.1. Subsections 8 through 10 seem to only apply if the litigation has to do with structural issues and requested clarification on how to note litigation related for something else. Another commenter noted that Section 4.1.9 and Section 4.1.10, which pertain to whether repairs have started should be properly indented for clarity.

HUD Response: The Form HUD-9992 has been revised in response to comments and the questions pertaining to litigation have been consolidated. HUD thinks the questions are broad enough to capture all types of pending and/or current litigation. Submitters are asked to indicate if the Condominium Project or Condominium Association is subject to any pending Litigation and to provide a signed and dated explanation if yes. The Submitter should respond no to the questions that do not apply. The questions have been revised and the dependent questions are noted in the preceding question(s) and the Instructions.

Comment: The commenter noted Section 4.1.11 is too broad and should be removed. Section 4.1.11 asks if the Condominium Project or Condominium Association are subject to any other Litigation risk not covered by insurance or that exceeds the amount of insurance coverage relating to the potential losses for that matter.

HUD Response: The Form HUD-9992 has been revised in response to comments and the questions pertaining to litigation have been consolidated. Understanding whether the

Condominium Project or Condominium Association are facing any other type of litigation risk is important. If the litigation is at a point, where a settlement has been determined, it is important to understand if the funds allocated for any required repairs are sufficient to cover the costs. If there is a gap or potential gap understanding if there is a plan to address any anticipated shortfall is important.

Comment: The estimated reporting burden to complete HUD Form-9992 is 60 minutes per respondent. During the estimated 60 minutes, a respondent is expected to read and comprehend form instructions, conduct research to gather and document required information, complete the form, and review the form for submission accuracy. The estimated reporting burden for HUD Form-9991 for these same activities is 45 minutes

HUD Response: HUD increased the burden hours for the Form HUD-9992 to account for changes to the form and the addition of instructions. The Form HUD-9992 has been shortened from 13 to 8 pages and the requirement for the condominium association to complete a portion of the questionnaire has been removed. The burden estimate for condominium project approval included 1 hour for condominium package preparation and 1 hour to complete Form HUD-9992. The new burden estimate for the Form HUD-9992 is 1.5 hours. HUD recognizes that many condominium associations are not familiar with the FHA Condominium Project Approval guidelines and terminology. The Submitter is responsible for collecting information from verifiable sources and confirming the Condominium Project complies with FHA Condominium Project Approval requirements. The burden hour estimate assumes that most of the information required to complete the form is used while operating the condominium project. HUD understands from the comments that the certification has an impact on the cost and completion time for condominium associations. To reduce the number of questions that must be

answered, the first question of each section has structured to determine if more information is needed and to direct the respondent to the next question to answer. In addition, “Not Applicable” (N/A) checkboxes have been added throughout the Form HUD-9992 where appropriate.

Comment: The commenter indicated that requiring the HUD-9991 to be submitted on each individual loan in an FHA-approved condominium project after going through the condominium project approval process and completing the HUD-9992 is not efficient.

HUD response: HUD has eliminated the required documents sections from form 9991 to streamline completion on the form. While the "required documents" section is no longer part of the form, the mortgagee will still be responsible for submission of the required docs as applicable. Form HUD-9991 is now 4 pages, includes instructions, and is now only required to be completed by the mortgagee. Streamlining this form should reduce the burden of completing the form. The Form HUD-9992 is part of the FHA Condominium Project Approval package, which is used to determine the Condominium Project's compliance with FHA requirements for project approval. The Form HUD-9991 is used to determine the continued eligibility of a Unit for FHA-insured financing. HUD has reduced the information collected on both the Form HUD-9992 and the Form HUD-9991. In addition, HUD extended the period that data collected is valid to 90 days and removed the requirement that the condominium association complete the form. A mortgagee can submit both forms using the same data.

Comment: Several commenters noted the recertification requirements seemed as burdensome as initial certification. A commenter noted that requiring the use of one form to apply for project approval and project recertification imposes an equal burden for condominium project approval and project recertification. Several commenters requested the short form

questionnaire or checklist be developed for recertification. A commenter noted that it is very time-consuming to complete the Form HUD-9992 when many of the sections do not apply. Another commenter asked for clarification on the recertification requirements for recorded legal documents.

HUD Response: HUD has streamlined the information collection process for Condominium Project Approval certification and recertification. The extension of certification from two to three years reduces the frequency of the recertification. HUD expects the additional revisions to the form and to the structure of the questions to lower the number of responses required for most Condominium Projects seeking recertification. Form HUD-9992 collects critical information about the financial and operating status of the Condominium Project. For each section of the Form HUD-9992, the Submitter will answer the question to determine if additional information is required or move to the next question. In addition, N/A boxes have been incorporated throughout Form HUD-9992, which allow the respondent to bypass sections that do not apply. Condominium Projects are not required to submit the governing and legal documents for recertification unless there have been amendments. To assist respondents, a question has been added to the form to determine if the legal documents have been amended since the last FHA approval. Some projects will be able to complete recertification easily, while condominium projects with more features or recently completed Legal Phases will take more effort. The Form HUD-9992 is required. At this time, HUD does not have plans to create a separate form for recertification but will take this into consideration in the future. HUD is developing a checklist that shows the required documentation for Full Approval, Recertification and Legal Phasing. In addition, the instructions address recertification and include a reference to the Recertification Review in Handbook 4000.1, Section II.C.3.

Dated: July 20, 2020.

Anna Guido,

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Billing Code:4210-67

[FR Doc. 2020-16588 Filed: 7/30/2020 8:45 am; Publication Date: 7/31/2020]