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DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

[Docket No. FR-7027-N-28]

60-Day Notice of Proposed Information Collection:

COVID19 HUD Contingency Plan for HUD Multifamily Rental Project Closing Documents

OMB Control No.: 2502-0618

AGENCY: Office of Housing- Federal Housing Commissioner, HUD.

ACTION: Notice.

SUMMARY: In accordance with the Paperwork Reduction Act of 1995, HUD has requested from the Office of Management and Budget (OMB) emergency approval of the information collection described in this notice.

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 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, Reports Management Officer, QDAM, Department of Housing and Urban Development, 451 7th Street, SW,

Washington, DC 20410; e-mail Colette Pollard at Colette.Pollard@hud.gov or telephone 202-402-3400. Persons with hearing or speech impairments may access this number through TTY by calling the toll-free Federal Relay Service at (800) 877-8339. This is not a toll-free number.

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.

A. Overview of Information Collection

Title of Information Collection: COVID19 HUD Contingency Plan for HUD Multifamily Rental Project Closing Documents.

OMB Approval Number: 2502-0618.

Type of Request: New Collection.

Form Numbers: HUD-5985 & HUD-5960.

Respondents: Business or other for-profit, Not-for-profit institutions, State, Local or Tribal Government.

Estimated Number of Respondents: 612.

Estimated Number of Responses: 1,224.

Frequency of Response: Twice per annum.

Average Hours per Response: 1.00 hour [0.50 x 2 = 1 hour].

Total Estimated Burdens: 1,224.

Description of the need for the information and proposed use: This is a new collection based on **situational** conditions relating to the COVID-19 Coronavirus outbreak and the Presidential declaration that began a national emergency. This new PRA collection will serve as the authority for any new or future changes or revisions to multifamily programs impacted by COVID-19 or related pandemics.

The Lender's Certificate, HUD-92434, establishes the conditions, which the Lender agrees to abide by in consideration of HUD's commitment to FHA-insure mortgages, and by which the Lender certifies that the conditions have been fulfilled to date, including any work done prior to endorsement of the Note that has been approved by HUD in writing, and all HUD imposed conditions that have been met with respect to such work. The information collection requirements contained in the Lender's Certificate are to oversee the parties' compliance with all applicable legal requirements and therefore ensure protection of the FHA insurance fund. The HUD-92434M is required by the Closing Checklists via the Firm Commitment (Housing Notice 2018-03) and per the fact that the underlying forms contemplate hardcopy submission (since HUD historically has not accepted electronic submission of documents for closing purposes). The *Lender's Certification Regarding: Electronic Submission of Closing Documents* is a modification of the HUD-92434M that will set the Office of General Counsel's ("OGC") temporary uniform electronic closing protocols until normal closing can resume after the COVID-19 Pandemic.

Relating to the current COVID-19 Coronavirus outbreak and the President declaring a national emergency the Department of Housing and Urban Development ("HUD") and its offices remain open for business at this time, many are now engaged in full-time telework. It is therefore prudent and appropriate for the OGC, in collaboration with Multifamily to establish protocols, rules, and procedures that best ensure continuity of operations in the event of an extended closure of a specific division,

regional or field office, or the determination that OGC in its entirety should work remotely. Pursuant to the March 16, 2020 HUD Memorandum issued for all Regional Counsel and Deputy Regional Counsel, all Associate Regional Counsel for Programs and all OGC Closing Attorneys, set forth protocols and best practices for the continued provision of legal services by HUD Closing Attorneys while working from home or from another remote location. Also included in the memorandum are suggestions that may be shared with outside counsel to facilitate the work being done remotely by OGC attorneys. Therefore, Regional Counsel will ensure that the temporary protocols set forth in the March 16, 2020 memorandum are adopted and applied consistently across the regional and field offices within their purview. When the pandemic subsides and OGC resumes normal closing operations consistently across the country, HUD will reconsider the temporary protocols in this memorandum. OGC attorney protocols for review and approval of draft closing documents must rely on electronic transmission of closing documents in lieu of hard copies in performing their initial reviews. This approach will ensure the continuation of reviews even if our external partners are unable to physically transmit the volume of paper documents needed at this stage. While providing increased flexibility to lenders in submitting closing documents, this protocol does not authorize any additional substantive modifications to the closing process without approval of the appropriate Regional Counsel and the Office of Insured Housing in Headquarters. Draft closing submission will remain consistent with the approach of Multifamily Housing and OGC will accept draft closing packages in fully electronic form.

Respondents estimation for the Escrow Agreement for Deferred Repairs & Debt Service - 223(f)
– (one closing):

Estimated Number of Respondents: 330.

Estimated Number of Responses: 330.

Frequency of Response: Once per annum.

Average Hours per Response: .50 hours.

Total Estimated Burdens: 165.

Description of the need for the information and proposed use: The form *Escrow Agreement for Deferred Repairs & Debt Service – 223(f)* (“*Debt Service Escrow Agreement*”), sets the terms and conditions between the Borrower and Lender and provides for the establishment of an escrow by the Borrower as security for completion of non-critical deferred repairs. Such escrow also serves as security for HUD’s insurance of the loan. The agreement provides for prior approval of HUD for certain actions to be taken by the Borrower or Lender. The information collection requirements contained in Debt Service Escrow Agreement are to oversee the parties’ compliance with all applicable legal requirements and therefore ensure protection of the FHA insurance fund.

The global pandemic relating to the COVID-19 Emergency has disrupted the U.S. economy with significantly increased unemployment and overall economic instability. This instability has carried over to real estate markets in general, including multifamily commercial markets. During these challenging times, HUD remains open for business and will continue as an active participant in sourcing new construction and refinance debt through its mortgage insurance programs. At the same time, HUD has reevaluated its underwriting requirements, particularly for market rate refinance transactions that may now experience increased vacancy, rent collection losses and income disruption both in the near and long term. Section 207 of the National Housing Act provides that no mortgage shall be acceptable for insurance unless the Secretary finds that the project is economically sound, and the MAP Guide permits specific mitigants to be employed to

reduce risk for transactions currently in process but yet to receive a Firm Commitment to insure. These mitigants include but are not limited to the requirement of a Debt Service Reserve (DSR) for Section 223(f) transactions to offset anticipated operating losses post endorsement. To address risk and/or changed economic circumstances for transactions that have been issued a commitment to insure but have yet to endorse, HUD includes language in the Firm Commitment affirming that no material adverse change (MAC) has occurred between the issuance of the commitment and endorsement. Accordingly, HUD has taken the position that the impact of the COVID-19 Emergency has resulted in a material change in most, if not all, real estate markets and therefore, HUD will require mitigants to offset this additional risk. Accordingly, this form provides clarification and instructions to HUD staff describing additional mitigants that may be included in the Firm Commitment for Section 223(f) loans that are in processing, as well as for those projects for which a Firm Commitment has been issued.

Revisions to the OMB approved Form HUD-92476.1M is the temporary *Escrow Agreement for Deferred Repairs & Debt Service - 223(f)*. This form does not permanently replace the HUD-92476.1M. The revised escrow, while based on the HUD-92476.1M, is a separate document for temporary use during the COVID-19 emergency pursuant to Mortgagee Letter 2020-11 issued April 10, 2020. The temporary *Escrow Agreement for Deferred Repairs & Debt Service - 223(f)* Form will remain in effect until such time as HUD determines that the real estate markets that have been negatively affected by the COVID-19 Emergency have stabilized and additional mitigants for Section 223(f) transactions are no longer required.

This new collection can be used to address future changes to multifamily programs or processes that may arise from impacts due to the COVID19 pandemic.

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

Assistant Secretary for Housing – Federal Housing Commissioner, Dana T. Wade, having reviewed and approved this document, is delegating the authority to electronically sign this document to submitter, Nacheshia Foxx, who is the Federal Register Liaison for HUD, for purposes of publication in the Federal Register.

Dated: September 1, 2020.

Nacheshia Foxx,
Federal Register
Liaison for the Department of
Housing and Urban Development.

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