March 6, 2025

FHA Commissioner
Office of Housing / Federal Housing Administration
US Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: Draft Mortgagee Letter, Updating Requirements for Partial Claim Payoff Statements and Recording Timeframes

Dear Acting Commissioner Little,

The Housing Policy Council (HPC)[1], Mortgage Bankers Association (MBA)[2], and National Council of State Housing Agencies[3] appreciate the opportunity to submit comments on the Draft Mortgagee Letter (ML),[4] "Partial Claim Document Recording and Payoff Statements."

We support FHA's efforts to strengthen its process in light of the significant surge in the utilization of partial claims (PC) to bring mortgages current and help borrowers avoid foreclosure. Our members acknowledge that FHA has an important responsibility to contain the cost of loss mitigation, which includes enforcing compulsory repayment of PC subordinate liens by borrowers who refinance or sell their homes. However, we are concerned that the changes proposed in the Draft ML will increase operational complexity and inappropriately shift the costs and legal liabilities from the HUD-contracted vendor that manages these liens to FHA-approved mortgagees.

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[1] The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers; mortgage, hazard, and title insurers; and technology and data companies. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.

[2] The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 275,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,000 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

[3] The National Council of State Housing Agencies (NCSHA) is a nonprofit, nonpartisan organization created to advance, through advocacy and education, the efforts of the nation's state HFAs and their partners to provide affordable housing to those who need it. For more than 50 years, state Housing Finance Agencies (HFAs) have played a central role in the nation's affordable housing system, delivering financing to make possible the purchase, development, and rehabilitation of affordable homes and rental apartments for low- and middle-income households. For more information, visit www.ncsha.org.

[4] *See* Fed. Hous. Admin., FHA INFO 2025-02 (January 8, 2025), https://www.hud.gov/sites/dfiles/SFH/documents/ML-PC-Recording-and-Payoff-Statement-DT2.pdf.

Fortunately, the framework for a practical solution is embedded in the Draft ML. The feasible elements can be easily separated from the unworkable elements of the draft policy. In short, we believe that a reasonable policy change that could make a material difference is for HUD to require primary lien servicers to inform borrowers requesting a payoff statement that there may be an outstanding partial claim subordinate lien and to provide instructions on how to obtain a payoff statement from HUD. However, the remainder of the Draft ML poses significant operational costs and liability risks and is so unworkable that it must be abandoned entirely.

Before describing our concerns and our suggestion below, we again commend FHA for utilizing its Drafting Table to receive feedback. This best practice contributes meaningfully to more effective policy making.

Executive Summary

I. We strongly support extending the time allowed for mortgagees to record partial claim security instruments from 5 to 15 business days.
II. Requiring servicers to notify HUD when the first mortgage is being paid in full is reasonable.
III. We are concerned that the remainder of the proposal will improperly shift liability and risk from FHA's contractor to the primary lien mortgage servicers.
IV. We recommend that FHA consider alternative ways to address the problem.

I. We strongly support extending the time allowed for mortgagees to record partial claim security instruments from 5 to 15 business days.

We strongly support extending the time allowed for mortgagees to record partial claim security instruments from 5 to 15 business days. This change will reduce costs and improve efficiency for servicers, who must record both the partial claim and the modification to re-pool the primary mortgage in a Ginne Mae mortgage-backed security (MBS). For example, a COVID-19 Recovery Modification generally requires the servicer to buy out the loan from the MBS, which often itself takes longer than 5 business days from receipt of the borrower-executed modification agreement. From that point, the servicer still needs to countersign, book, and then send the modification for recording. Because the typical process takes longer than 5 days, servicers have been challenged to comply with the existing 5-day requirement; servicers must choose either to send the partial claim for recording prior to sending the modification agreement for recording *or* to delay booking the modification agreement until after the documents have been sent for recording. The former causes inconsistency in recording dates and the latter increases the risk of having to undo the recording of the modification agreements for loans where there was an issue preventing booking (usually related to the buyout process). This proposed timing extension squarely addresses this risk. Lastly, we also support the clarification that the time allowed for recordation may be based on bankruptcy court approval, when necessary.

II. Requiring servicers to notify HUD when the first mortgage is being paid in full is reasonable.

If FHA maintains that a new process is necessary to help "improve the accuracy and response time for payoff requests," we support maintaining FHA's existing guidance requiring primary lien servicers to notify HUD "so HUD may provide a payoff figure on a Partial Claim."[5] As proposed, the servicer would notify HUD's servicing contractor, currently Information Systems & Networks Corporation (ISN), through HUD's SMART Integrated Portal (SIP) when the first mortgage is being paid in full or refinanced, in order for HUD to provide a payoff figure on the partial claim. With this information, ISN can send a payoff statement for the subordinate lien to the borrower/requestor. This policy would improve the process so that no partial claim is overlooked when preparations are made to pay the first mortgage in full. We believe that adopting this sound and operationally feasible process would indeed help to "reduce confusion and help Borrowers [to] understand the total debt associated with their FHA insured Mortgage."

III. We are concerned that the remainder of the proposal will improperly shift liability and risk from FHA's contractor to the primary lien mortgage servicers.

As mentioned above, the responsibility for managing partial claims is currently held by HUD/FHA and their assigned contractor, ISN. We are concerned that this proposal inappropriately shifts this responsibility for managing these liens from FHA's contractor to the primary lien servicers.[6] This uncompensated shift in responsibilities is inappropriate as primary lien servicers cannot collect a debt that is not owed to them and is instead owed to HUD.[7]Additionally, the proposal raises a series of liability and risk questions that make FHA's proposed guidance unworkable, including the following:

- What are the consequences of a mortgagee failing to alert a borrower about the partial claim payoff? Could a servicer become financially responsible for the partial claim? We do not believe that it is possible for FHA to transfer responsibility for partial claim collections to primary lien servicers, who have no legal authority nor obligation for the administrative duties associated with managing these liens. However, we would appreciate assurance on this matter and are concerned that we have previously raised this matter,[8] yet clarity still has not been provided.
- How can primary lien servicers be "responsible for ensuring the accuracy of the data entered into SIP?" What happens if the information provided by the borrower is incorrect? How is the primary lien servicer supposed to know that the borrower-provided information is accurate or inaccurate?
- Is it the position of this draft ML that a primary lien servicer who indeed provides an inaccurate fax number then becomes responsible for "ensuring" the partial claim is paid off? If so, we adamantly reject this uncompensated risk-shifting.
- The policy is unclear about how a primary lien servicer will actually know "when a payoff statement has not been successfully delivered, as indicated in SIP." Is the expectation of HUD that a primary servicer will continuously monitor SIP to see if there

[5] Single Family Housing Policy Handbook 4000.1.III.A.2.a.k.v.(H)(9)
[6] Specifically lines 13 to 20 on Page 3 of the proposed ML.
[7] See MBA letter from October 11, 2024
[8] See HPC letter from October 1, 2024.

has been a successful delivery or to call up title offices to see if they received a fax? If so, we adamantly reject the significant time and resource burden that this would require, for a lien that is not serviced by the primary lien servicer. Instead, we are hopeful that FHA simply intends to notify the primary lien servicer that there has not been a successful delivery to see if there is additional information that the primary lien servicer can provide about where to send a partial claim payoff statement.

- Even if SIP were to develop an automated way of determining whether a payoff statement has been successfully delivered, we reject the premise that it should ever become the responsibility of the first lien servicer to send a payoff statement to the requestor. Any proposal that shifts the responsibility for managing partial claims, without the servicer having responsibility for, or direct access to, the necessary information is inappropriate. It is HUD's sole responsibility to inform borrowers about specific debts that are owed to HUD.

Any policy responses to these questions that shifts the responsibility for managing the subordinate lien, including tracking any partial pre-payments which have been made via the U.S. government's pay.gov system, and associated processes to the primary lien holder is not acceptable and therefore, we recommend that this section of the ML be abandoned.

IV. The proposal is operationally cumbersome and needs an efficient automated solution.

Servicers regularly receive high volumes of payoff requests from borrowers, many of which don't ultimately lead to the payoff of a mortgage. To accommodate large volumes of payoff requests, the industry standard is now an automated, self-service option for borrowers. Thus, any proposed changes to the FHA payoff process must work as an automated solution that can scale to the large volume of payoff requests that mortgagees are responsible for processing. We specifically request that HUD's SIP build out a web-based Application Programming Interface (API), for business-to-government connectivity, so that this isn't a manual process. Additionally, we request that the API include logic to prevent errors with case numbers, addresses, and borrower contact information to prevent false negatives that could result from transposition errors or data field differences between HUD's system and the mortgagee's system. This would be a much more effective and efficient way for HUD to deal with the legitimate "accuracy" concerns it raises in the ML.[9]

Conclusion

As expressed previously, we support FHA's objectives to improve the partial claim payoff processes, in light of the exponential growth in the utilization of partial claims to bring borrower's mortgages current. Sensible changes to the process hold the potential to reduce risk to FHA and improve borrower understanding. However, we believe there is a simpler way to achieve this objective than what is currently proposed in the Draft ML.

[9] See lines 13-20 on page 3 of the ML.

Thank you for the opportunity to comment on the proposed changes to the Handbook.

Your Truly,

Housing Policy Council
Mortgage Bankers Association
National Council of State Housing Agencies