



October 1, 2024

Honorable Julia Gordon
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 Commissioner Gordon,

The Housing Policy Council (HPC)¹ appreciates the opportunity to submit comments on the Draft Mortgagee Letter (ML),² Updating Requirements for Partial Claim Payoff Statements and Recording Timeframes.

We support FHA's efforts to strengthen its process in light of the significant surge in the utilization of partial claims to bring borrower's mortgages current and help them to avoid foreclosure. HPC members acknowledge that FHA has an important responsibility to minimize losses to the FHA Mutual Mortgage Insurance Fund and at the same time prevent challenges and borrower confusion related to the subordinate lien for those refinancing or selling their home. However, we are concerned that the proposed changes in the Draft ML will unintentionally increase the operational complexity and liability that mortgagees face.

Fortunately, we are pleased to submit for your consideration a simpler approach that we believe addresses FHA's legitimate concerns. In short, we believe that there is an effective solution that is more consistent with historical practice – simply requiring mortgagees to notify FHA when the first mortgage is being paid in full or refinanced in order for FHA to provide a payoff figure to the borrower.

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

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 See Fed. Hous. Admin., FHA INFO 2024-64 (September 12, 2024), https://www.hud.gov/sites/dfiles/SFH/documents/SFH_FHA_INFO_2024-64.pdf.

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. We are concerned that the proposed changes to the partial claim payoff process will delay the delivery of payoff statements and cause borrower confusion regarding who services the subordinate lien(s).
- III. We recommend that FHA consider alternative ways to address the problem.
- IV. Other issues

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 Ginnie 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 could be based on bankruptcy court approval.

II. We are concerned that the proposed changes to the partial claim payoff process will delay the delivery of payoff statements and cause borrower confusion regarding who services the subordinate lien(s).

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

We are encouraged that the Draft ML recognizes that FHA will need to enhance the technology platform to “provide functionality to support mortgagees.”³ This is critical because servicers regularly receive high volumes of payoff requests from borrowers, many of which don’t ultimately lead to the payoff of a mortgage. For example, one HPC member, who is a top 5 FHA servicer, shared that fewer than half of the payoff requests that they receive actually end up paying off within the “good thru date” of the request. Thus, an automated solution is needed to scale to the large volume of payoff requests that mortgagees are responsible for processing.

³ Id.

The announcement states that the FHA technology enhancement will include “the ability to view and download the entire partial claim history associated with a borrower, and the property and request multiple payoff statements at one time.”⁴ These technology enhancements are welcome, but we respectfully ask that FHA assure servicers that the technology enhancements will be in place and will have been adequately tested by mortgagees (included time to build out private sector technology enhancements to support the process), before the effective date of a final mortgagee letter. Without this technology in place, we are concerned that the ML’s requirements are infeasible.

Another area we would welcome clarity is in regard to the format and substance of the partial claim payoff statement itself. We believe that it is critical that HUD provide the partial claim payoff on HUD letterhead, with the relevant disclaimers required by applicable law, and with language that makes it clear that this is a separate debt that must be paid to a servicer that is a different party from the first-lien holder. This process would then allow servicers to provide this information directly to the borrower, as a separate document to accompany the first-lien payoff information. If the final policy adopts this recommendation, we believe that this would help to reduce inevitable borrower confusion, by reiterating and clarifying for borrowers that there are two separate and distinct payoffs that they are responsible for satisfying – the one owed to their servicer on the first lien, and the one owed to FHA/HUD to pay off the subordinate lien(s).

Additionally, we request that the final ML provide answers to the following operational questions; such information would enhance and accelerate servicers’ ability to meet FHA’s objectives. These include:

- Will the automation include building a web-based Application Programming Interface (API), for business-to-government connectivity, so that this isn’t a manual process? Many servicers have automated the payoff statement process and/or allow for “self-service” options for borrowers. An even better alternative approach to providing servicers with an API, would be to allow a borrower “self-service” option to access the payoff for their partial claim, directly through an FHA portal.
- What does FHA plan to do to prevent errors with case numbers, which may cause partial claims to be missed? We strongly recommend that the API logic include partial match capability to prevent false negatives that could result from transposition errors or data field differences between HUD’s system and the mortgagee’s system.
- How will the system flag that a particular loan has multiple partial claims, and thus need multiple payoff statements from HUD? What if one partial claim is identified and the other is missed?
- What if partial claim is not in the HUD system at the time the servicer logs into the SMART Integrated Portal (SIP)? Will there be a time record reflecting when FHA or the HUD contractor logs the partial claim data into the system?
- How will HUD minimize the risk that the partial claim funds will be sent to the first-lien servicer rather than to HUD to pay off the partial claim? We recommend that the HUD letter providing the borrower with information on the payoff of the subordinate lien/partial claim include concise and explicit instruction for where funds must be delivered. The ML also needs to define HUD’s expectations and remedy should the settlement agent fail to follow the HUD letter instructions.

⁴ Id.

b. The proposal will unintentionally shift liability and risk from FHA’s contractor to the primary lien mortgage servicers.

The responsibility for managing partial claims is currently held by HUD/FHA and their assigned contractor, Information Systems & Networks Corporation (ISN). FHA pays a significant amount of money to ISN for services under this contract. We are concerned that this proposal shifts this responsibility for managing these liens to the primary lien servicers, without the servicer having responsibility for, or direct access to, the necessary information.

If HUD believes that ISN is not doing an effective job of “ensur[ing] that borrowers...are aware of the partial claim subordinate lien amount owed” then they should first consider changing ISN’s frequency, cadence, and methods of communicating this information to borrowers.⁵ Well-written and well-timed communications from ISN should prevent borrowers from forgetting that they owe money to HUD/FHA.

Additionally, the proposal raises a series of liability and risk questions 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.
- What happens if the HUD provided partial claim amount is wrong? It can be no surprise to FHA that our unequivocal position is that primary lien servicer cannot be held accountable for mistakes in the HUD- provided partial claim amount/subordinate lien balance. We would appreciate an explicit statement within the policy, to make this clear.
- We recommend that HUD provide a disclaimer making it clear that the government is responsible for any errors/payments in flight that are owed on the subordinate lien.

III. FHA should consider alternative ways to address the problem.

If FHA maintains that a new process is necessary to help “minimize losses to the FHA Mutual Mortgage Insurance Fund and prevent any potential challenges related to the subordinate lien for borrowers refinancing their mortgages or selling their homes,” it is our preference for the agency to rely on existing contract oversight authorities, working with ISN to remedy the problem,

In addition to reassessing the ISN contractor practices and reinforcing oversight, we recommend that FHA pursue a policy process that is more consistent with historical practice and responsibilities.⁶ Specifically, FHA should consider resurrecting the policy found in ML 2003-19, which required mortgagees to notify HUD, through its servicing contractor (now ISN), when the first mortgage is being paid in full or refinanced, in order for HUD to provide a payoff figure on the partial claim.⁷ As envisioned by ML 2003-19, this policy would “ensure that no partial claim is overlooked when preparations are made to pay the first mortgage in full.” Adopting this historically sound and operationally feasible process would not only require fewer technology upgrades for FHA and fewer operational and process changes for servicers, but also would likely result in less confusing borrower communications. Borrowers would receive the partial claim/subordinate lien payoff statement directly from the servicer responsible

⁵ FHA INFO [2024-64](#).

⁶ Id.

⁷ FHA Mortgagee Letter 2003-19, issued on November 20, 2003.

for collection and would receive this information when borrower action is required. In sum, we believe that this approach would offer a significantly easier technology buildout for FHA and avoid many of the challenging operational and liability issues identified in Section II above.

IV. Other Issues

If FHA doesn't adopt our alternative proposal discussed in Section III above, but instead moves forward with shifting the responsibility of providing borrowers with notice about partial claims as described in the Draft ML, then we believe that FHA should provide a new servicer incentive payment to cover this new responsibility and workload. Our position is that \$250 per payoff statement is reasonable for the additional level of work and responsibility.⁸

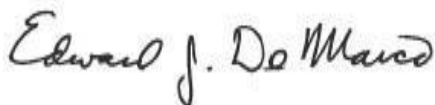
Additionally, the requirement in the Draft ML, that the "Mortgagee must also produce a payoff statement for any Partial Claims where the Partial Claim has not been legally recorded and delivered to HUD or a claim has not been filed" is unclear. How would this work? How is a servicer supposed to know about another servicer not recording a partial claim? Also, what exactly is meant by the clause "a claim has not been filed" and how does that relate to the requirement?

Conclusion

As expressed previously, we support FHA's objectives to improve the partial claim payoff processes, in light of the huge uptick in the utilization of partial claims to bring borrower's mortgages current and avoid foreclosure. 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.

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

Yours truly,



Edward J. DeMarco
President
Housing Policy Council

⁸ Compensation is particularly necessary if servicers are to become financially responsible should they fail to notify the borrower of a partial claim; we do not think that FHA can transfer this responsibility, but want to reiterate that we believe that such an action would be a policy misstep.