



MORTGAGE BANKERS ASSOCIATION

October 11, 2024

The Honorable Julia Gordon
Assistant Secretary for Housing & Federal Housing Commissioner
Federal Housing Administration
Department of Housing and Urban Development (HUD)
451 7th Street SW
Washington, DC 20410

RE: Request to Republish Draft Mortgagee Letter, *Partial Claim Document Recording and Payoff Statements*

Dear Commissioner Gordon,

Today, the Mortgage Bankers Association¹ (MBA) expresses our concern regarding the policy guidance proposed by the Federal Housing Administration's (FHA) draft Mortgagee Letter (ML), *Partial Claim Document Recording and Payoff Statements*. While we recognize and appreciate FHA's commitment to streamlining loss mitigation processes and improving transparency for borrowers, we are concerned FHA's proposal to require mortgage servicers to use HUD's SMART Integrated Portal (SIP) to provide borrowers with a payoff statement for all partial claims -- recorded and unrecorded alike -- creates significant operational and regulatory challenges. Considering servicers are not obligated to provide payoff statements to borrowers for Partial Claims today, we respectfully request that HUD reconsider its proposed policy and republish an alternative proposal once technology changes are complete.

Instead, we encourage FHA to continue implementing and validating further technology enhancements to the SIP process to expand access to partial claim payoff statements through the system to those responsible for this function. Pursuing this through a second policy proposal on the Single-Family Drafting Table would address our shared goal of protecting FHA's Insurance Fund by collaborating on alternative solutions to the challenges we understand FHA currently faces in the payoff process.

¹ 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.

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I. FHA's Proposal Would Transfer Significant Risk to Servicers

We welcome FHA's decision to extend the time for servicers to submit executed Partial Claim security instruments for recordation from 5 business days to 15 business days. Providing sufficient time for servicers to submit and record documents after the borrower executes them ensures servicers' strict compliance with HUD's mandatory servicing standards.²

However, FHA's proposed guidance would also substantially amend a servicer's obligation in connection with the partial claim payoff process creating significant risks for servicers. As noted, servicers are not required to provide payoff statements to borrowers for Partial Claims. Existing FHA guidance requires servicers to *contact* HUD's Loan Servicing Contractor (i.e., ISN) to request a payoff quote on outstanding partial claims.³ In addition to notifying HUD about a first-lien payoff through FHA's Single-Family Default Monitoring System reporting, servicers typically also notify borrowers in the payoff statements (or as a separate insert) and direct them to contact ISN for a Partial Claim payoff.

Despite servicers' compliance with FHA's existing standards and the additional steps many servicers presently take to ensure the borrower receives payoff information regarding the Partial Claim loan from ISN, FHA now proposes that servicers *provide* the borrower with a payoff statement for any outstanding Partial Claims, along with the payoff for the FHA-insured mortgage.⁴ This proposed change would significantly shift the responsibility for providing payoff quotes for outstanding Partial Claims from the actual servicer of the partial claim note and mortgage, i.e., ISN, to the FHA-approved servicer of the first-lien FHA-insured mortgage. Because the FHA-approved servicer is not a party to the Partial Claim note and mortgage, and thus does not have direct access to information regarding the outstanding balance of the partial claim loan, it would be required to rely on information in HUD's SIP to fulfill this new responsibility.

Given the significant risks such a shift would create for FHA servicers, we see no reason to alter a servicer's responsibility so significantly during the payoff process. A Partial Claim remains a non-interest-bearing subordinate lien executed by the borrower with a promise to repay HUD at payoff, refinance, or maturity. Servicers are not parties to the Partial Claim agreement. While we appreciate FHA's effort to ensure "the partial claim payoff is provided to the party requesting the payoff statement," the draft ML provides little context on the justification for FHA's new policy direction or necessary information to identify the problem that FHA seeks to solve.⁵ In other words, beyond preparing for the next refinance boom, FHA insufficiently describes how recorded partial claims are being missed by title insurers – not servicers or lenders - during the payoff process or how FHA's *existing debt collection* processes are inadequate to recover amounts owed under Partial Claim funds. FHA's existing

² Accordingly, we encourage FHA to implement the proposed changes in the section on "Recordation of Partial Claim Documents" in a future Handbook update.

³ 4000.1 Single-Family Housing Policy Handbook, III.A.2.k.v.(H)(9)

⁴ This obligation applies whether the partial claim is legally recorded and delivered to HUD or not.

⁵ [FHA Info #2024 – 64](#)

guidance should remain the same, absent a change in the relationship between the borrower, the servicer, and HUD to execute and recover funds under Partial Claim.

There is no justification for subjecting servicers to new legal and compliance risks. Even with enhancements to SIP, the proposed policy creates the following risks and challenges:

- 1. Competing payoff statements create borrower confusion and the potential for disputes.** The requirement to issue separate payoff statements for the FHA-insured mortgage and any outstanding Partial Claims will lead to confusion among borrowers and title insurers when processing refinance transactions. If not explained carefully, borrowers and/or title companies may misunderstand the total amount of the outstanding debt, leading to disputes and further delay of the payoff or refinancing process. Specifically, by providing simultaneous payoff statements, borrowers and/or title companies may confuse the amounts owed to the servicer to release the first lien and the Partial Claim amount owed to HUD to release the subordinate lien.
- 2. Uncertain technology adds administrative complexity and limits scalability.** The dependency on SIP to obtain accurate payoff statements for Partial Claims presents an operational and technological risk for servicers. Currently, servicers have overwhelmingly automated the first-lien mortgage payoff process. With the current volume of payoff requests, any disruption or delay in the portal's functionality would directly impact the ability to provide timely and accurate payoff statements, which could lead to borrower dissatisfaction and regulatory scrutiny.⁶ Effectively, FHA's proposed guidance risks creating a manual process, which inherently exposes servicers to the risk of human error and increased monitoring and oversight costs.

Of course, we welcome the anticipated enhancements to SIP in Q1 and Q2 of Fiscal Year 2025 to increase the portal's functionality.⁷ SIP will remain a central repository for FHA Partial Claim documentation. However, we understand that the system is unavailable for scalable use for servicers today, especially to comply with the new proposed Partial Claim payoff process. Moreover, SIP cannot handle requests in bulk and lacks application programming interface (API) connectivity to a servicer's system. These enhancements take time to program and test. We cannot provide substantive comments on the operational impact without the opportunity to properly evaluate SIP's functionality.

- 3. The potential financial and legal risks are significant.** Likewise, servicers' current payoff responsibilities are clear – to provide borrowers with accurate payoff statements for the first-lien mortgage. Servicers are not required to validate or ensure the accuracy of Partial Claim payoff statements generated by HUD. With extensive servicing transfer transactions, absent a safe harbor, errors in providing accurate payoff statements, delays in document retention, or delays in the timely delivery of recorded

⁶ Currently, 12 CFR § 1026.36 requires servicers to provide the payoff statement within 7 business days of receiving a borrower's written request. Many states impose similar timing requirements for payoff statements.

⁷ [FHA Info #2024 – 64](#)

documents to ISN could expose servicers to legal, compliance, and regulatory risks, including legal actions by borrowers.⁸

Additionally, the regulatory exposure of requiring servicers to take on more responsibility without additional compensation is a serious concern for servicers who must comply with multiple layers of federal and state regulations.⁹ If the proposal were finalized, FHA would place – perhaps unintentionally – the servicer into the role of a federal debt collector. Requiring the servicer of the FHA-insured first lien loan to provide the borrower with information regarding the Partial Claim, which is a debt owed to another entity, could implicate various federal and state laws. There is no apparent appreciation of these risks or guidance to servicers to mitigate such risks within the proposal.

II. FHA Should Explore Alternative Policy Solutions

Given these concerns, we encourage FHA to halt the implementation of its proposed policy and engage with servicers, lenders, and title insurers to develop a policy that appropriately aligns the risks of policy compliance with risks to the Insurance Fund.¹⁰ It is inappropriate to require servicers to bear additional regulatory and operational risk without any evidence of compliance failures under the existing guidance.

More specifically, we recommend that FHA re-propose alternative policy solutions to the Drafting Table that mutually address FHA and stakeholders' concerns after testing of SIP enhancements throughout Q1 and Q2 with servicers. We support *exploring* alternative policy solutions that are within the control of servicers in future discussions, with the objective of improving a servicer's existing obligation to contact ISN and provide notice to HUD of a borrower's request to pay off the first-lien mortgage.

These alternatives could include a clarification of existing guidance. As mentioned, servicers currently notify HUD of first-lien payoffs through SFDMS. However, we recognize that SFDMS reporting is retroactive, often occurring a month after the mortgage payoff. If ISN needs real-time notice, FHA could reset expectations with servicers by providing explicit guidance defining the terms of contact to ISN through a scalable process after servicers generate a payoff quote. For instance, guidance could define the method and timing of contact after a borrower's initial payoff request or after the transaction has closed. To that end, FHA could consider adjusting its policy to clearly state that servicers must notify ISN/FHA of a payoff request via the SIP portal after enhancements to SIP are completed.

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⁸ In addition to UDAAP risk under the Dodd-Frank Act, this risk also includes potential scrutiny under FHA's proposed Servicing Defect Taxonomy, which could lead to a refund of the entire partial claim amount.

⁹ In that spirit, while we are advocating for FHA to not proceed with finalizing its proposed guidance, we otherwise recommend that servicers are appropriately compensated by FHA for taking on additional servicing responsibilities on behalf of FHA should this guidance be finalized.

¹⁰ For instance, if title insurers are missing recorded partial claims during the refinance process but later insuring title, then it is not unreasonable for FHA to recover potential losses from title insurers, not servicers.

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While the mortgagee letter's goals are understandable, the risks it introduces far outweigh the benefits to both servicers and borrowers. The proposed changes place an undue burden on servicers, increase the likelihood of non-compliance, and could lead to borrower confusion and disputes. Given these concerns, FHA should republish an alternative proposal by pursuing a collaborative process with servicers to develop more practical and effective solutions.

Thank you for FHA's continued commitment to the Drafting Table. We welcome the opportunity to discuss these issues further and provide input on alternative approaches that balance borrowers' needs with the operational realities facing mortgage servicers today.

Sincerely,

Brendan Kelleher
Director, Loan Administration
Residential Policy and Strategic Industry Engagement
Mortgage Bankers Association