

**HUD Office of General Counsel (“OGC”)  
Electronic Closing Protocols**

**Section I: Introduction**

**Section 1.1. Purpose and Applicability**

This Electronic Closing Protocol (the “ECP”) memorializes existing protocols<sup>3</sup> for using fully or partially electronic closing documents in transactions insured under Sections 207, 220, 221(d)(4), 232, 242, and 231 of the National Housing Act,<sup>4</sup> including those closing pursuant to Sections 223(a)(7), 223(f), 223(d) and 241(a). Its objective is to ensure that Electronic Records used to document FHA Multifamily and Healthcare Program loans (“FHA Loan Documents”) are legally enforceable, secure, and compatible with the applicable document retention requirements. The policies, procedures, and terminology established in this ECP are to be interpreted and applied consistently with all governing law, rules, and regulations, as well as the HUD/AFGE and HUD/NFFE Collective Bargaining Agreements (the “CBA”). Without limitation, these authorities include: (1) The Rehabilitation Act of 1973 (the “Rehabilitation Act”);<sup>5</sup> (2) The Americans with Disabilities Act of 1990, as amended by the ADA Amendments Act of 2008 (the “ADA”);<sup>6</sup> (3) Executive Order 13164; (4) the Equal Employment Opportunity Commission’s (EEOC) implementing regulations for the ADA in 24 C.F.R. Part 1630; and (5) Handbook 7855.1, dated April 2003 (Procedures for Providing Reasonable Accommodation for Individuals with Disabilities).

**Section 1.2. Legal Authority**

This ECP authorizes a Fully Electronic closing process to reflect and implement the requirements of the Electronic Signatures in Global and National Commerce Act (the “E-SIGN Act”);<sup>7</sup> the 21st Century Integrated Digital Experience Act (the “IDEA Act”);<sup>8</sup> and other provisions of federal law directing federal agencies to facilitate electronic commerce. It is further intended to encourage FHA lenders and borrowers to utilize the convenience and closing efficiencies afforded by the Uniform Electronic Transactions Act (the “UETA”) and similar legislation adopted at the state level.<sup>9</sup>

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<sup>3</sup> See J, Paul Compton, Jr. Memorandum, *Contingency Plans for Closing Multifamily Loans and Similar Loans during the Covid-19 Pandemic*, dated March 16, 2020; Damon Y. Smith Memorandum, *Updated Contingency Plans for Closing Multifamily Loans and Similar Loans during the Covid-19 Pandemic*, dated March 26, 2021; and National Supplement Between the United States Department of Housing and Urban Development and the American Federation of Government Employees, National Council of HUD Locals 222, Supplement 22, dated June 25, 2020.

<sup>4</sup> 12 U.S.C. § 1701 *et seq.*

<sup>5</sup> 29 U.S.C. § 701 *et seq.*

<sup>6</sup> 42 U.S.C. § 12101 *et seq.*

<sup>7</sup> 15 U.S.C. § 7001 *et seq.*

<sup>8</sup> Pub. L. No. 115-336 (2018) (44 U.S.C. § 3501 note).

<sup>9</sup> See also, The Government Paper Elimination Act of 1998 (the “GPEA”), Pub. L. No. 105-277, 1701-1710 (1998) (44 U.S.C. § 3501 *et seq.*).

### Section 1.3. Relationship to Other Closing Guidance

The scope of this ECP is strictly limited to the legal, information technology, and administrative requirements for documenting FHA closings using Electronic Records and signatures in lieu of hardcopy submissions. It is not intended to override any substantive Multifamily Housing or Healthcare Program policies related to the underwriting or insurance of FHA loans.<sup>10</sup> Except as expressly provided, this protocol does not authorize departures from the Multifamily Accelerated Processing Guide 4430.G (“MAP Guide”), Healthcare Mortgage Insurance Program Handbook 4232.1 (“Section 232 Handbook”), Hospital Mortgage Insurance Program Handbook 4615.1 (“Section 242 Handbook”), or any HUD forms; alter or countermand Program Obligations; or otherwise modify established closing procedures.

Due to differences in the closing process, Healthcare Program loans involving hospitals (Section 242) may warrant special considerations or other departures from this ECP. HUD Closing Attorneys should consult with Lender’s Counsel to identify the best avenues for addressing these circumstances. Any necessary or appropriate departures from this ECP should be submitted for approval in accordance with the process described in Section 5.3 C. These requests will be considered on a project-by-project basis.

### Section 1.4. Special Liability/Confidentiality Considerations

The adoption of Fully Electronic closing procedures is intended to increase the efficiency of the closing process and reduce costs for FHA lenders, borrowers, and the federal government. In keeping with these objectives:

A. At no point in the closing process may access to electronically submitted HUD forms, data rooms, or electronic storage sites be conditioned on a HUD employee’s agreement to terms of service that impose confidentiality requirements, limit the use of the documents, or create any theory of liability (e.g., indemnification/hold harmless clauses) that could be asserted against the federal government or a HUD employee.

B. All parties to the FHA closing process must recognize that FHA Loan Documents are generally subject to requests under the Freedom of Information Act.<sup>11</sup> They may also be discoverable and admissible under the Federal Rules of Civil Procedure, Federal Rules of Evidence, or other legal authorities (state or federal) in litigation involving HUD or related to HUD programs.

C. FHA lenders are responsible for identifying and protecting any Sensitive PII to be included in an electronic submission (and safeguarding such information while in the lender’s custody), whether in draft or at closing, and arranging for the separate transmission of such information to HUD through proper encryption or other secured means. The standard form FHA

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<sup>10</sup> This ECP provides legal practice standards for HUD Closing Attorneys as they encounter electronic documents and related issues when closing FHA loans. OGC anticipates that all or part of this ECP will be incorporated by future program notices, handbooks, or other formal policy directives.

<sup>11</sup> 5 U.S.C. § 552.

Loan Documents generally do not require the disclosure of Sensitive PII. Rent rolls, however, will usually include PII and should be safeguarded accordingly. Documents proffered to satisfy the firm commitment's "Additional Conditions" should also be carefully examined for this purpose prior to submission. Requests for confidentiality must be made in writing (see 24 C.F.R. §§ 15.107 and 15.108).

### Section 1.5. Definitions

As used in this ECP:

**Accessible** means that persons with disabilities (as defined by the ADA) have equivalent access and use of electronic materials to persons without disabilities, with or without the use of assistive technology, and consistent with the requirements of the Rehabilitation Act and the ADA.

**Closing Coordinator** means the designated program staff that serves as the main point of contact for the Program Office and works closely with all parties to ensure program and administrative requirements are satisfied prior to closing. This position may also be referred to as the "Closer" or "Account Executive."

**Digital Signature** means a type of Electronic Signature composed of encrypted data produced through the application of hash algorithms and public key cryptography. Digital Signatures may be distinguished from other Electronic Signatures by virtue of the secured means of their creation. Providing a Digital Signature may, for example, require the signatory to deliberately insert an identity card into a computer terminal, provide a unique personal identification number, and/or utilize special software with Digital Signature capabilities. The digital signing process leaves an audit trail that can serve as important evidence in the event a signature's authenticity is challenged. Digital Signatures are particularly useful in electronic commerce for this reason.

**Electronic Record** as defined by the E-Sign Act means a contract or other record created, generated, sent, communicated, received, or stored by electronic means.<sup>12</sup> All documents provided at closing in accordance with this protocol will be maintained by HUD as Electronic Records.

**Electronic Signature** as defined by the E-Sign Act means an electronic sound, symbol, or process attached to or logically associated with a contract or record and executed or adopted by a person with the intent to sign the record.<sup>13</sup> Electronic Signatures may include manual signatures scanned to an electronic format for transmission as a PDF or comparable file type; Digital Signatures created with the use of electronic authentication software; or such other means of electronic execution as may be sufficient to authenticate the document under governing law.

**Electronic Signature Action** refers to a specific act taken by an individual with the present intent to authenticate an Electronic Record. An Electronic Signature Action may include, for

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<sup>12</sup> 15 U.S.C. § 7006(4).

<sup>13</sup> 15 U.S.C. § 7006(5).

example, the act of keying in a personal identification number (“PIN”); inserting a validation card; clicking an onscreen consent button; or typing in the individual’s name.

**FHA Note** means a note endorsed for mortgage insurance under the National Housing Act pursuant to a firm commitment issued by the Office of Multifamily Housing or Office of Healthcare Programs.

**Final Executed Documents** means the FHA Loan Documents in their final, fully executed form, including all exhibits and attachments, prepared in accordance with the drafts previously reviewed and found acceptable for closing by the HUD Closing Attorney and Closing Coordinator.

**Fully Electronic** refers to the preparation, circulation, review, execution, and permanent retention of documents in an electronic format.

**Healthcare Programs** means the FHA mortgage insurance programs administered by the Office of Healthcare Programs (Office of Residential Care Facilities; Office of Hospital Facilities).

**HUD Closing Attorney** means the OGC attorney and any support staff assigned to close an FHA loan.

**Lender’s Counsel** means the law firm or attorney retained by an FHA lender as its legal representative for the closing of an FHA loan.

**Multifamily Programs** means the FHA mortgage insurance programs administered by the Office of Multifamily Housing.

**PDF** means an Electronic Record in portable document format that uses “.pdf” as its file extension.

**Program Office** means the FHA program office that issued a firm commitment with the intent to endorse a loan for insurance under the National Housing Act (i.e., the Office of Multifamily Housing, Office of Residential Care Facilities, or Office of Hospital Facilities).

**Personally Identifiable Information** or “**PII**” means information that can be used to trace an individual’s identity either by itself or when combined with other information that can be linked to a specific individual. Examples of PII include an individual’s name, date of birth, Social Security Number, e-mail address, mailing address, medical history, family relationships, vehicle identifiers, telephone number, or any other specific information that can directly identify an individual.

**Program Obligations** means the same as such term is used in the standard form regulatory agreements adopted for the Multifamily Housing and Healthcare Programs (*see* forms HUD-92466M; HUD-92466-ORCF; and HUD-92466-OHF) and as incorporated by each firm commitment issued for a Multifamily or Healthcare Program loan.

**Records Management System** means any information technology system established by a Program Office for the maintenance and retention of Electronic Records. This term may also include any central intake system established by a Program Office for receiving FHA Loan Documents, as well as any successor programs to these systems.

**Sensitive PII** is **PII** that could result in substantial harm, embarrassment, inconvenience, or unfairness to an individual if lost, compromised, or disclosed without authorization.

Capitalized terms not otherwise defined by this ECP should be understood as they are defined or used in the FHA Loan Documents or governing HUD Handbooks.

## **Section II: Draft Submissions**

### **Section 2.1. Pre-Closing Consultations**

A. Lender's Counsel should contact the HUD Closing Attorney as soon as practical following a firm commitment's issuance to proactively identify any technical or logistical issues to be resolved in conjunction with an electronic closing, including any issues of complying with Section V (*Electronic Signatures*).

1. Specifically, Lender's Counsel must confirm:

a. any special jurisdictional requirements related to the recording and acknowledgment of the security instrument, regulatory agreement(s), and other recording documents; and

b. the agreement of borrower's counsel to provide FHA closing opinions<sup>14</sup> incorporating the additional electronic closing assurances and confirmations referenced in Section 5.6 and without any special qualifications, assumptions, or other limitations related to the use of Electronic Records. [Instructions and sample language for modifying the FHA closing opinions](#) are available on the HUD website and should be provided to Lender's Counsel upon request.

2. After consulting with Lender's Counsel and the Program Office, the HUD Closing Attorney will advise if any specific closing documents or exhibits will need to be manually signed and/or provided in hard copy due to special jurisdictional requirements or exigent circumstances. Any determination by the HUD Closing Attorney to require hard copies or manual signatures must have prior supervisory approval.

B. For construction loan closings, the FHA lender should contact the assigned Closing Coordinator to arrange the pre-construction conference and discuss the process for efficiently transmitting any documents, such as the project plans and specifications, that may be unsuitable for Fully Electronic preparation or retention.

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<sup>14</sup> Forms HUD-91725M (Opinion of Borrower's Counsel); HUD-91725-ORCF (Guide for Opinion of Borrower's Counsel Section 232); HUD-92325-ORCF (Guide for Opinion of Operator's Counsel, and Certification Section 232); and HUD-92335-ORCF (Guide for Opinion of Master Tenant's Counsel Section 232); HUD 91725-OHF (Opinion of Borrower's Counsel).

## Section 2.2. Electronic File Types

A. Unless otherwise approved by the HUD Closing Attorney, all draft documents intended for electronic submission should be prepared and submitted as either PDF or Microsoft Word files.

1. Microsoft Word is the preferred format at the draft submission stage due to the available “comment” and “track changes” features.

2. Regardless of the submission format, documents must appear identical to hardcopy versions when viewed on screen (i.e., appearance and format must not change).

B. Special attention must be given to ensure the legibility of ALTA surveys and other documents which may prove difficult to review on a computer monitor.

## Section 2.3. Submitting Draft Closing Documents

This ECP addresses the submission of FHA Loan Documents to the HUD Closing Attorney for all FHA Multifamily and Healthcare Program loans. It may also apply to submissions to the Program Office when there is no protocol requiring the intake of draft or Final Executed Documents through a Record Management System.

A. For FHA insurance programs that have a Record Management System, documents intended for programmatic review should be submitted in accordance with instructions provided by the Program Office. Any specific questions in this context should be directed to the Closing Coordinator.

B. In general, and unless otherwise agreed by the HUD Closing Attorney, draft documents should be submitted to HUD through a download link from a secure site maintained by a law firm, title insurance company, or other record custodian. If this method is infeasible for a given transaction, Lender’s Counsel should discuss alternative arrangements with the HUD Closing Attorney as soon as possible.

1. If submitted through a secure download link per Section 2.3 B, draft documents should remain available for download for at least sixty (60) days.

2. It is the responsibility of the FHA lender and Lender’s Counsel to ensure the documents are Accessible (i.e., comply with accepted standards for use with assistive technology by persons with disabilities) to all HUD staff with review responsibilities including, without limitation, the HUD Closing Attorney, legal support staff, Closing Coordinator, underwriter, appraisers, and construction analyst. [Resources for making closing documents Accessible](#) can be found on the HUD website.

3. HUD Closing Attorneys may require an alternative method of submission (e.g., zip file) in the event burdensome password requirements make it impractical to access the electronic documents at any stage in the closing process. A password requirement may be considered unduly burdensome if, for instance, it becomes necessary to contact the document's custodian or a technical support representative to gain or regain access.

#### Section 2.4. Checklists and Document Organization Issues

A. The template closing checklists developed for each Multifamily Housing and Healthcare Program must be tailored for each closing to identify any non-standard documents required to address additional ("special") condition requirements, secondary financing sources, or other project-specific issues. Searchable files are strongly encouraged. The initial draft submission for each loan must include a copy of the proposed checklist in Microsoft Word format for ease of review and comment.

B. Due to HUD system requirements, it is critical to name each electronic file according to the naming convention provided by HUD. [Document Naming Conventions](#) for Multifamily and Healthcare Program closings are available on the HUD website. Periodic updates will be circulated or published as appropriate. As these conventions are meant to ensure, files must be named so they can be sorted within an on-screen folder for opening and viewing in checklist order.

1. The name for each file should begin with a number corresponding to the applicable exhibit number and document name on the checklist. Certain exhibits, as numbered on the template checklists, encompass multiple documents. Depending on length, these documents will warrant either separate files or consolidation. In particular:

a. The title policy; title exception documents; UCC searches; protection letter; and agent's authority letter should each be in separate PDF files.

b. If feasible, the closing opinion and incorporated exhibits (e.g., Borrower's Certification; Litigation Disclosure) should be submitted in a manner for easy referencing.

2. As the draft version of the closing checklist may evolve in response to review comments and altered business considerations, Lender's Counsel and the HUD Closing Attorney should review and confirm a final version of the closing checklist prior to the submission of the Final Executed Documents at closing. The template closing checklists for each Multifamily Housing and Healthcare Program are available on the HUD website.

C. The HUD Closing Attorney may reject a submission if the checklist is incomplete; the electronic files are not properly organized and named in accordance with the closing checklists and naming conventions described in this Section 2.4; or if otherwise materially deficient under this ECP or other HUD closing instructions.



## Section 2.5. Supplemental Submissions

The HUD Closing Attorney and Closing Coordinator will provide written comments on the initial closing document submissions to Lender's Counsel by e-mail (comments may be included in a separate document attachment(s) or within the body of the e-mail). Unless requested otherwise, Lender's Counsel should similarly provide the revisions and any supplemental documents via e-mail. If the HUD Closing Attorney's comments were particularly extensive, Lender's Counsel should first confirm the preferred means of response (i.e., e-mail or an updated download link). Lender's Counsel will ensure that responsive comments are transmitted in an organized manner that allows the HUD Closing Attorney and Closing Coordinator to quickly identify and resolve each comment (i.e., a list of responsive documents labeled to match a corresponding HUD comment). Consistent with Program Obligations, the HUD Closing Attorney may request that documents be submitted as comparisons ("redlines") showing changes from the HUD template and/or the last version reviewed. The HUD Closing Attorney may also request revisions be submitted in a comprehensive updated submission rather than accepting piecemeal responses. Lender's Counsel must ensure that revised electronic documents are appropriately labeled (e.g., by version number or date) to avoid any confusion with a prior draft.

### **Section III: Closing**

#### **Section 3.1. Preparing for Closing**

Lender's Counsel is responsible for coordinating with the HUD Closing Attorney, Closing Coordinator, and authorized signatory the delivery of all finalized documents requiring HUD's signature. Lender's Counsel should consult with the HUD Closing Attorney and Closing Coordinator as soon as practical before closing to discuss and resolve any remaining logistical concerns. When using Electronic Signatures, Lender's Counsel is responsible for ensuring compliance with Section V (*Electronic Signatures*).

At least two (2) business days before closing day (except as otherwise required by Program Obligations), Lender's Counsel must distribute to the Closing Coordinator and Closing Attorney a secured download link (or other media approved by the Closing Attorney) to a complete electronic set of the Final Executed Documents, except for those trailing documents that will not be delivered until the closing day or thereafter as approved by HUD. The linked documents should not include "placeholder" documents (unexecuted or prior drafts) the Lender's Counsel knows are incomplete or otherwise unacceptable for closing. The Lender's Counsel must use a secure record management program, cloud, or other site maintained by a law firm, title insurance company, or other record custodian that provides a secured download link for at least read-only access to the documents. Lender's Counsel must ensure the Final Executed Documents accurately reflect the draft closing documents as previously submitted and approved by the HUD Closing Attorney and program staff, and that the files are Accessible. Each document must be a separate file and labeled in accordance with the applicable FHA program's required naming conventions (*see* Section 2.4 B). At closing, the HUD Closing Attorney and the Closing Coordinator will separately review the closing docket in accordance with the FHA program guidance and established regional review procedures before authorizing endorsement of the FHA Note. This electronic process does not change the current reviewing responsibilities of the HUD Closing Attorney and Closing Coordinator.

#### **Section 3.2. Recording**

HUD recognizes that state and local requirements for the execution, acknowledgment, and recording of Electronic Records may vary. Lender's Counsel is responsible for ensuring these requirements are met including, without limitation, arranging for notary services and coordinating with the appropriate HUD signatory. Section V (*Electronic Signatures*) establishes the acceptable standards for authenticating authorized FHA Loan Documents with Electronic Signatures.

#### **Section 3.3. Virtual Closing Binders ("VCB")**

A. The HUD Closing Attorney is responsible for downloading the closing submission from the link or other approved media provided by Lender's Counsel. The downloaded documents should be placed in a project-specific folder created on the Closing

Attorney's (HUD employee) OneDrive account. This project-specific folder will be used as the initial storage location for a complete set of the Final Executed Documents in electronic form (the "Virtual Closing Binder" or "VCB"). The VCB replaces, and will share the same function moving forward, as the hard-copy binders field counsel historically delivered to their Program Offices after closing. These binders included (i) the Washington Docket, which was consolidated with certain underwriting exhibits held by the Program Office and transmitted to HUD Headquarters for permanent retention and (ii) an "insuring binder" that served as a reference set for program staff working on asset management assignments.

1. The VCB must remain under the HUD Closing Attorney's exclusive control until transferred to the Program Office. Prior to transfer, the HUD Closing Attorney should add the fully endorsed FHA Note (as indicated in Section 3.4) along with any trailing documents (e.g., time-stamped copies from the recorder's office). These additions to the VCB must be named in accordance with the conventions described in Section 2.4 B. The VCB should also include a copy of the Program Office's "clearance to close" memo and any other closing-related documents the Closing Attorney identifies as appropriate for permanent retention. Note that while responsibility for creating the VCB rests with the HUD Closing Attorney, the HUD Closing Attorney and the Closing Coordinator will separately review submissions in accordance with the applicable program guidance and established regional review procedures.

2. The HUD Closing Attorney is responsible for ensuring the VCB is accurate and complete. After making this determination, the HUD Closing Attorney (or designee) will release the VCB to the Closing Coordinator (or other HUD staff designated by the Program Office) using the OneDrive system's share feature. This feature generates an e-mail with a link permitting the designated recipient to download a shared folder and its contents.

3. OGC advises and expects the Program Offices to upload the VCB files, along with any relevant administrative documents, to their Record Management Systems within 30 days after receiving the HUD Closing Attorney's link. After 30 days, HUD Closing Attorneys should restrict access and manage VCB files in accordance with the procedures adopted in their respective regions (*see* Section 4.2).

4. The documents placed in the VCB constitute the legal documents reviewed and approved by OGC. In case of any conflict between the Electronic Records in the VCB and those maintained by the FHA Lender or Lender's Counsel, OGC will consider the VCB controlling. Any errors found in the closing documents post-closing should be corrected in accordance with sound legal practice and the corrections substituted into the VCB or, if the VCB has already been transferred to the Program Office, the appropriate Record Management System or other designated electronic storage location.

B. Current program policies require Lender's Counsel to deliver a complete set of the Final Executed Documents in electronic form within a certain number of business days after release of the endorsed FHA Note.<sup>15</sup> The Program Offices have adopted the practice of

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<sup>15</sup> See Section 19.1.3.5 of the MAP Guide; Section 9.4 E., Section II, Production, of the Section 232 Handbook.

uploading these electronic files into their Record Management Systems in lieu of those delivered to the HUD Closing Attorney at closing (electronically during the pandemic or, historically, hard copies that required scanning). The HUD Closing Attorney's OneDrive link to the VCB will offer a more secure and reliable alternative to this practice. However, the Program Offices may elect to continue relying on post-closing submissions from Lender's Counsel due to certain system and administrative limitations. When Program Offices elect this course, HUD Closing Attorneys are not responsible for reviewing or otherwise ensuring that documents delivered post-closing are identical to those placed in the VCB. Consistent with existing programmatic guidance,<sup>16</sup> OGC has developed certifications to address the risk of unauthorized amendments or revisions. The HUD Closing Attorney should still provide the OneDrive link as described in Section 3.3 A.2 to facilitate quality control (document consistency) reviews by the Program Office.

#### Section 3.4. The Note

As a negotiable instrument, the FHA Note must continue to be prepared, executed, and maintained as a single original hard-copy document executed with "wet signatures." Electronic Signatures are not authorized. HUD will maintain physical possession of the original FHA Note once manually signed by the borrower and delivered by mail or courier to the Program Office's designated signatory for endorsement on closing day. Once authorized for release, the Closing Coordinator will forward an electronic scan of the original FHA Note to Lender's Counsel and the HUD Closing Attorney. The HUD Closing Attorney will ensure the electronic scan is placed in the VCB. Lender's Counsel and the Closing Coordinator will coordinate the original FHA Note's transmission to the FHA Lender after closing. Section 5.2 A identifies additional FHA Loan Documents that must be maintained as "wet signature" hard-copy documents held in the FHA Lender's physical possession.

#### Section 3.5. Closing Certifications

A. HUD has developed additional certification requirements for loans closed electronically. All electronic closing submissions must include the FHA Lender's and borrower's electronic closing certifications. Sample [Electronic Closing Certifications](#) (including the post-closing certification referenced in 3.4 B) are available on the HUD website.

B. The HUD Closing Attorney will not confirm the authenticity, enforceability, and admissibility of any Electronic Signature, Digital Signature, Electronic Record, or Electronic Signature action with respect to any closing document or exhibit. The HUD Closing Attorney will rely solely on the FHA Lender's and borrower's electronic closing certificates and modified FHA closing opinions as to the enforceability of Electronic Signatures and Electronic Records.

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<sup>16</sup> See Section 19.1.4.6 of the MAP Guide and Section 9.4 F., Section II, Production, of the Section 232 Handbook.

## **Section IV: Electronic Storage**

### **Section 4.1. Document Retention Responsibilities**

The Program Offices retain full responsibility for maintaining all FHA Loan Documents, whether delivered in a VCB or otherwise, as official federal records. The Program Offices, and not OGC, are the official custodian of records for all FHA Loan Documents. This responsibility includes storing the Final Executed Documents in accordance with HUD's document retention requirements<sup>17</sup> and ensuring they remain accessible to HUD staff as needed to complete programmatic functions.

### **Section 4.2. Regional Storage Protocols**

A. While offering an efficient mechanism for transferring documents, OneDrive accounts are not suitable for permanently storing VCB files. Due to space limitations, HUD Closing Attorneys will need to periodically purge their OneDrive accounts to ensure there is always adequate room to accommodate new closing files. It is also important that OGC not inadvertently assume the custodian of record's role for the retention of these federal records. Each Regional Counsel will establish procedures governing this process for their respective regions. These protocols should address the following issues:

1. Notifications to ensure the Program Office's awareness of each VCB's availability and fair warning of the OneDrive link's expected expiration date;
2. An appropriate time frame for removing VCB files from OneDrive after the Program Office's 30-day download period (*see* Section 3.3 A.3);
3. Monitoring the status of trailing documents to ensure each VCB's timely completion and release;
4. Identifying closing exhibits that should be kept in working files, rather than deleted, and their transfer to a suitable electronic storage location (*see* Section 4.3);
5. Any related region-specific or local concerns identified in consultation with their Program Offices; and
6. Ensuring compliance with all applicable document retention policies.

B. OGC staff may continue accessing documents via Program Staff or from Record Management Systems in accordance with the access protocols developed by their administering Program Offices and the Office of the Chief Information Officer.

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<sup>17</sup> See HUD Handbooks 2225.6 (Records Disposition Schedules) and 2228.1 (Departmental Records and Information Management Manual).

### Section 4.3. Working Files

A. For convenience purposes, field counsel offices may establish local electronic closing archives to include the HUD Closing Attorney's work-product and select closing documents as authorized by their regional storage protocols. Novel or precedent setting memoranda and opinions should be submitted to the OGC Knowledge database.

B. Each Regional Counsel's Office has been allocated an additional terabyte of space on the OGC SharePoint site. Instructions for using OGC's document scanning options are available on the [OGC Scanning SharePoint](#) site.

### Section 4.4. FHA Lender's Responsibilities

This ECP does not alter or excuse the FHA lender's full compliance with the FHA contract of insurance, including (without limitation) the statutory, regulatory, or other legal requirements for claiming FHA insurance benefits.<sup>18</sup> The FHA Lender must continue to hold and maintain the original FHA Note, security instrument, and certain other FHA Loan Documents in hardcopy and with original "wet" signatures (*See Section V Electronic Signatures* for additional information).

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<sup>18</sup> See Legal Instructions Concerning Applications for Full Insurance Benefits - Assignment of Multifamily and Healthcare Mortgages to The Secretary (Form HUD-2510).

## **Section V: Electronic Signatures**

### **Section 5.1. Electronic Signatures in General**

HUD permits the use of Electronic Signatures, including Digital Signatures, for FHA Loan Documents and other closing exhibits when provided in accordance with the standards and requirements described in this ECP, Program Obligations, and other program requirements. These requirements are designed, and should be interpreted, to ensure that each signature is legally attributable to the signatory and that the signed document can be maintained for the required record retention period. The use of Digital Signatures is not compulsory when programmatically and legally permitted, and closing participants may continue using traditional wet signatures at their discretion.

### **Section 5.2. Restrictions**

A. Digital Signatures, or other means of Fully Electronic authentication, are unauthorized for the following documents (including any subsequent modifications, amendments, or assignments):

1. Mortgage/Deed of Trust/Security Instrument;
2. FHA Note (*see* Section 3.4); and
3. Building Loan Agreement.

B. The restrictions on Digital Signatures do not preclude scanning manually signed, wet signature documents into Electronic Records (i.e., PDF) for reliance by the HUD Closing Attorney. The HUD Closing Attorney will continue relying on such Electronic Records when releasing the FHA Note and compiling the VCB. However, FHA Lenders must safeguard and maintain the original versions.

C. Industry partners and their legal counsel must research and ensure that all applicable federal, state, and local requirements for electronic documents and related GNMA-eligibility requirements have been met. Industry partners and their legal counsel should be advised that any loans not meeting applicable federal, state, and local requirements for Electronic Records may be ineligible for inclusion in GNMA securities.

### **Section 5.3. Jurisdictional Requirements and Limitations**

A. Jurisdictional requirements or limitations may require the continued use of wet signatures for certain other closing documents including (without limitation):

1. Title Insurance Policy;

2. Original Security Agreement authorizing UCC filings; and
3. FHA Regulatory Agreement.

B. Lender's Counsel should consult with the HUD Closing Attorney to determine the preferred avenues for addressing state and local requirements for Electronic Records. If these requirements warrant deviation from this ECP, the Lender's Counsel is responsible for providing a written justification supporting the request. The Lender's Counsel's written request must explain and appropriately cite the governing legal authorities. Lender's Counsel is also responsible for identifying any related conflicts with other Program Obligations and providing all other supporting documentation requested by HUD. Lender's Counsel should be instructed not to contact OGC's headquarters' attorneys on such requests except in coordination with the HUD Closing Attorney.

C. The HUD Closing Attorney may refer any questions relating to state and local requirements to the jurisdiction's Regional Counsel (or the Regional Counsel's designee). The Regional Counsel may approve requests necessary to comply with state or local law, provided there is no federal statutory or regulatory conflict. If the HUD Closing Attorney identifies legal concerns beyond state and local requirements, these concerns must be documented in writing and submitted to OGC-ECP@hud.gov. The HUD Closing Attorney must ensure the referral submission includes the following information:

1. A description of the legal concern, including references to the relevant authorities and/or policy;
2. An explanation of the federal statutory or regulatory barriers, if any;
3. An explanation of why the preferred avenue is supportable. The justification should include enough detail, context, and rationale to allow for an informed determination, as well as establish that HUD is not acting in an arbitrary and capricious manner in its decision-making;
4. An explanation of the extent to which the request impacts other program directives or documents;
5. A discussion of additional legal considerations and concerns, if any, including reservations of the HUD Closing Attorney; and
6. A statement of any time constraints.

#### Section 5.4. Firm Commitment

The Program Offices are in the process of updating HUD directives (e.g., the MAP Guide and Section 232 Handbook) to include electronic signature performance standards for their FHA insurance programs. These standards will be part of each insured project's Program Obligations upon clearance and publication. Until program-specific guidance is published, HUD Closing



Attorneys must ensure that Firm Commitments are issued or amended to include the following condition before accepting closing documents with Electronic Signatures:

**Electronic Documents.** Acceptance of this Commitment includes the Lender's agreement to submit electronic copies of the fully executed and otherwise collected closing documents to the assigned HUD closing coordinator and the HUD closing attorney in accordance with HUD protocols. To the extent the Borrower and/or Lender have delivered documents to HUD in an electronic format and/or signed using digital signature software or other electronic means, consistent with Program Obligations and the FHA Lender Initial Approval Certification, any electronic signatures must conform to meet applicable legal, information technology, and administrative requirements, including the Electronic Signatures in Global and National Commerce Act (the "E-SIGN Act") as codified at 15 U.S.C. § 7001 et seq; the Uniform Electronic Transactions Act (or similar legislation adopted at the state level as in effect in the project's jurisdiction); and prevailing industry standards governing the use of electronic records and signatures in the closing of commercial real estate loans. At minimum, the Lender must ensure the security, integrity, and authenticity of all electronic records and signatures submitted for closing are comparable to those meeting the performance standards described in the "Policy on Use of Electronic Signatures" published as Section II A.1.a.i.(A)(4) of the Single Family Housing Policy Handbook 4001. Additional instructions on the submission of electronic documents are available on HUD's website.

#### Section 5.5. Software Compatibility

HUD does not require the use of a particular software program for the creation of Electronic Signatures. So long as an Electronic Records are submitted in accordance with the requirements of this ECP and Program Obligations, FHA Lenders and Lender's Counsel are free to choose from commercially available options. With respect to any documents to be executed by HUD, the FHA lender must proactively ensure the selected software, platform, or other signature methodology is fully compatible with the HUD signatory's information technology resources and complies with all applicable federal and state laws related to Electronic Signatures. HUD signatories are presently able to provide Digital Signatures on certain documents. The HUD Closing Attorney (with prior supervisory approval) may require manual signatures due to special jurisdictional requirements or exigent circumstances.

#### Section 5.6. Additional Electronic Signature Requirements

A. If any of the documents covered by an FHA closing opinion<sup>19</sup> are executed with an Electronic Signature, the opinion must be modified to include additional provisions related to

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<sup>19</sup> Forms HUD-91725M (Opinion of Borrower's Counsel); HUD-91725-ORCF (Guide for Opinion of Borrower's Counsel Section 232); HUD-92325-ORCF (Guide for Opinion of Operator's Counsel, and Certification Section 232); and HUD-92335-ORCF (Guide for Opinion of Master Tenant's Counsel Section 232); HUD 91725-OHF (Opinion of Borrower's Counsel).

this form of authentication. [Instructions and sample language for modifying FHA closing opinions](#) are available on the HUD website.

B. All closing exhibits, including the standard form FHA Loan Documents, that will be signed with one or more Electronic Signatures must be revised to include the following electronic counterpart signature clause:

This document may be executed in counterparts, including electronic signatures that shall be considered as an original signature for all purposes and shall have the same force and effect as handwritten or manual signatures. “Electronic signatures” shall include manual signatures scanned to an electronic format for transmission (e.g., via portable document format); digital signatures created with the use of electronic authentication software; or such other means of electronic execution as may be sufficient to authenticate the document under governing law. By signing electronically, each party further agrees and consents to waive any objection to the validity, enforceability, and admissibility of any signature contained herewith, to the fullest extent permitted by applicable federal, state, local law, or other requirement.

No other changes to a standard form FHA Loan Document’s format or substantive content are permitted unless approved by the HUD Closing Attorney in accordance with the established protocols for revising HUD forms.