



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: August 29, 2024

Mortgagee Letter 2024-17

To: All FHA-Approved Mortgagees
All Direct Endorsement Underwriters
All Eligible Submission Sources for Condominium Project Approvals
All FHA Roster Appraisers
All FHA-Approved 203(k) Consultants
All FHA-Approved Title I Lenders
All HUD-Certified Housing Counselors
All HUD-Approved Nonprofit Organizations
All Governmental Entity Participants
All Real Estate Brokers
All Closing Agents

Subject Interim Procedures for Nonjudicial Foreclosures with Secretary-Held Liens

Purpose This Mortgagee Letter (ML) establishes an optional interim process for releasing an FHA subordinate Secretary-held lien after a Mortgagee has completed a foreclosure sale through a nonjudicial process with no surplus funds.

Effective Date The provisions of this ML may be implemented beginning September 04, 2024, and will remain in effect until HUD publishes future guidance regarding subordinate Secretary-held liens for nonjudicially foreclosed Properties.

Affected Programs The provisions of this ML apply to all FHA Title II Single Family forward mortgage programs.

Background The United States (U.S.) Congress has provided HUD with the statutory authority to provide subordinate liens in support of its programs as well as guidance on how these liens are to be foreclosed and released. Examples of these federal, subordinate, Secretary-held liens include Partial Claims, Good Neighbor Next Door (GNND) Subordinate Mortgages, and Emergency Homeowners' Loan Program (EHLPP) Subordinate Mortgages.

28 U.S.C. § 2410(c) states that an action to foreclose a mortgage or other lien naming the U.S. as a party must seek judicial sale and 28 U.S.C. § 2410(e) provides agencies with flexibilities regarding releasing liens in specific circumstances. In July 2023, the U.S. Court of Appeals for the Eighth Circuit held that a subordinate lien held by the U.S. cannot be extinguished by a nonjudicial foreclosure sale (*Show Me State Premium Homes v. McDonnell*, 74 F.4th 911 (8th Cir. 2023)).

HUD recognizes immediate adverse financial and market impacts may result from proceeding with a judicial foreclosure in cases where a foreclosure sale was completed and resulted in no surplus funds that would have satisfied the subordinate Secretary-held lien. Therefore, HUD has determined that it is appropriate to establish optional, interim requirements for Mortgagees who completed a nonjudicial foreclosure sale where a Secretary-held lien exists and no surplus funds resulted from the foreclosure sale.

This ML does not apply where a nonjudicial foreclosure sale results in surplus funds. HUD is developing permanent policy to provide clarity for Mortgagees proceeding with foreclosures, including for situations outside the scope of this ML. That policy will be posted to the Single Family Drafting Table for public feedback.

HUD will continue to pay claims for reasonable and customary attorney fees associated with a foreclosure sale, including when Mortgagees complete a foreclosure through a judicial process in a nonjudicial state, as required.

**Optional
Interim
Exception for
Nonjudicial
Foreclosures**

Optional Interim Exception for Nonjudicial Foreclosures

(a) Definitions

Secretary-Held Liens covered by this optional interim procedure include the following Mortgages that are owed to the Secretary of HUD:

- Partial Claim Subordinate Mortgage;
- Section 235 Subordinate Mortgage;
- Nehemiah Subordinate Mortgage;
- Emergency Homeowners' Loan Program (EHLPP) Subordinate Mortgage;
- Asset Control Area (ACA) Mortgage;
- Hope for Homeowners (H4H) Subordinate Mortgage; and
- Good Neighbor Next Door (GNND) Subordinate Mortgage.

Preferred Method of Foreclosure refers to each state's method identified in HUD Handbook 4000.1, *FHA Single Family Housing Policy Handbook*

(Handbook 4000.1) [Appendix 6.0 – First Legal Actions to Initiate Foreclosure and Reasonable Diligence Time Frames.](#)

Judicial Foreclosure refers to a method of foreclosure that requires a Mortgagee to file suit with the judicial system to process the foreclosure.

Nonjudicial Foreclosure, also known as a power of sale, refers to a method of foreclosure that allows the Mortgagee to proceed with the foreclosure process without filing suit with the judicial system.

Surplus Funds refer to any amount included in the winning bid in excess of the amount required to complete the foreclosure sale, before additional proceeds are applied to any subordinate lien.

(b) Standard

Mortgagees may only request release of a subordinate Secretary-held lien where a nonjudicial foreclosure sale resulted in no Surplus Funds where nonjudicial is the Preferred Method of Foreclosure.

If the Property is subject to federal non-Secretary-held liens, the Mortgagee must comply with applicable law for those federal liens, including proceeding with a judicial foreclosure if required.

To request HUD release of the Secretary-held lien, the Mortgagee must log into HUD’s Single Family Mortgage Asset Recovery Technology (SMART) Integrated Portal (SIP), access the Foreclosure Dashboard, and submit the following for each Mortgage:

- the FHA Case Number;
- the date the foreclosure sale occurred;
- the Mortgagee’s final bid amount;
- the winning bid amount;
- the foreclosure attorney’s name, address, phone number, and email;
- whether the winning bidder was the Mortgagee or a third party;
- the method of foreclosure; and
- certification that there were no Surplus Funds from the foreclosure sale.

(c) Required Documentation

The Mortgagee must retain documentation of the information submitted to HUD through SIP in their claim file.

**Paperwork
Reduction Act**

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act (PRA) of 1995 (44 U.S.C. 3501-3520) and

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assigned OMB control numbers 2502-0005; 2502-0059; 2502-0117; 2502-0189; 2502-0302; 2502-0306; 2502-0322; 2502-0358; 2502-0404; 2502-0414; 2502-0429; 2502-0494; 2502-0496; 2502-0524; 2502-0525; 2502-0527; 2502-0538; 2502-0540; 2502-0556; 2502-0561; 2502-0566; 2502-0570; 2502-0583; 2502-0584; 2502-0589; 2502-0600; 2502-0610; and 2502-0611. In accordance with the PRA, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB control number.

Feedback or Questions

HUD welcomes feedback from interested parties and will consider feedback in determining the need for future updates. Any feedback or questions regarding this ML may be directed to the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342), answers@hud.gov, or www.hud.gov/answers. The FHA Resource Center is prepared to accept calls from persons who are deaf or hard of hearing, as well as individuals with speech or communication disabilities. Information on how to make an accessible phone call is available at <https://www.fcc.gov/consumers/guides/telecommunications-relay-service-trs>.

Signature

Julia R. Gordon
Assistant Secretary for Housing -
FHA Commissioner
