



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

ASSISTANT SECRETARY FOR HOUSING-  
FEDERAL HOUSING COMMISSIONER

1 **Date:** XXXX, 2024

2 **Mortgagee Letter** 2024-XX

3 **To:** All FHA-Approved Mortgagees  
4 All Direct Endorsement Underwriters  
5 All Eligible Submission Sources for Condominium Project Approvals  
6 All FHA Roster Appraisers  
7 All FHA-Approved 203(k) Consultants  
8 All FHA-Approved Title I Lenders  
9 All HUD-Certified Housing Counselors  
10 All HUD-Approved Nonprofit Organizations  
11 All Governmental Entity Participants  
12 All Real Estate Brokers  
13 All Closing Agents

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14 **Subject** Nonjudicial Foreclosure Process for Mortgages with Secretary-held Liens

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15 **Purpose** This Mortgagee Letter (ML) updates the requirements for foreclosure sales  
16 where a Secretary-held Lien is present.

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17 **Effective Date** The provisions of this ML may be implemented immediately and must be  
18 implemented for foreclosures initiated 90 days from the date of publication.  
19 All updates will be incorporated into a forthcoming update of the HUD  
20 Handbook 4000.1, *FHA Single Family Housing Policy Handbook*  
21 (Handbook 4000.1).

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

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1 **Background**

2 The United States (U.S.) Congress has provided HUD with the statutory  
3 authority to provide subordinate liens in support of its programs as well as  
4 guidance on how these liens are to be foreclosed and released. Examples of  
5 these federal, subordinate, Secretary-held liens include Partial Claims, Good  
6 Neighbor Next Door (GNND) Subordinate Mortgages, and Emergency  
7 Homeowners' Loan Program (EHLP) Subordinate Mortgages. 28 U.S.C.  
8 § 2410(c) states that an action to foreclose a mortgage or other lien naming  
9 the U.S. as a party must seek judicial sale and 28 U.S.C. § 2410(e) provides  
10 agencies with flexibilities regarding releasing liens in specific  
11 circumstances. In July 2023, the U.S. Court of Appeals for the Eighth  
12 Circuit held that a subordinate lien held by the U.S. cannot be extinguished  
13 by a nonjudicial foreclosure sale because such a proceeding does not qualify  
14 as a judicial sale under 28 U.S.C. § 2410(c) (*Show Me State Premium  
Homes v. McDonnell*, 74 F.4th 911 (8<sup>th</sup> Cir. 2023)).

15 The National Housing Act, 12 USC § 1710(b), provides HUD the ability to  
16 consent to the release of its Secretary-held liens on terms and conditions it  
17 prescribes. Additionally, for Partial Claims, the National Housing Act and  
18 HUD's regulations at 24 CFR § 203.371 permit HUD to require Mortgagees  
19 to service Partial Claims on HUD's behalf.

20 HUD recognizes that in the case of Secretary-held liens, a Judicial  
21 Foreclosure greatly increases the costs of collecting those obligations due to  
22 the long periods required to complete the foreclosure process and the  
23 additional federal government and Mortgagee resources needed to complete  
24 the action. HUD further recognizes that the Mortgagee's costs to collect  
25 these Secretary-held liens through a judicial process, which are reimbursed  
26 by HUD, may exceed the amount of the obligation. Further, HUD also has a  
27 vested interest in the return of such Properties to the housing market where  
28 they contribute to the availability of single family housing supply.

29 Therefore, HUD is issuing this ML to provide a procedure for Mortgagees to  
30 request that HUD release its Secretary-held liens following a Nonjudicial  
31 Foreclosure sale.

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32 **Summary of**  
33 **Changes**

This ML:

- 34 • adds Exceptions for Foreclosures with Secretary-Held Liens and  
Federal Liens (III.A.2.s.ii(A)(5));
- 35 • adds Request to Proceed with a Judicial Foreclosure due to Other  
36 Issues (III.A.2.s.ii(A)(6);
- 37 • updates Reasonable Diligence in Completing Foreclosure –Standard  
38 (III.A.2.s.ii(E)(2));
- 39 • adds Delay due to Proceeding with a Judicial Foreclosure Where it Is  
40 Not the Preferred Method of Foreclosure (III.A.2.s.ii(E)(2)(f));

- 1 • updates Allowable Foreclosure Attorney Fees (III.A.2.s.ii(F)(2)(a));
- 2 • updates CWCOT Post-Foreclosure Sales Efforts (III.A.2.s.iii(F));
- 3 and
- 4 • adds Foreclosure Sale Surplus Funds Collection Fee
- 5 (IV.A.2.c.vii(D)).

6 **FHA Single**  
7 **Family Housing**  
8 **Policy**  
9 **Handbook**  
10 **4000.1**  
11  
12 **Servicing and**  
13 **Loss Mitigation**

The policy changes will be incorporated into Handbook 4000.1 as follows:

**Initiating Foreclosure (III.A.2.s.ii(A))**

**(5) Exceptions for Foreclosures with Secretary-Held Liens and Federal Liens**

**(a) Definitions**

Secretary-Held Liens covered by this exception include the following Mortgages:

- Partial Claim Subordinate Mortgage (including Payment Supplement Subordinate Mortgages);
- 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.

The Preferred Method of Foreclosure refers to the state method identified in [Appendix 6.0 – First Legal Actions to Initiate Foreclosure and Reasonable Diligence Time Frames](#).

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

A 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 pay off the debt of the foreclosing lien holder, before additional proceeds are applied to any subordinate lien.

**(b) Standard**

In jurisdictions where the Mortgagee has the option to foreclose an FHA-insured Mortgage through a Nonjudicial Foreclosure process and

1 the Property is also subject to a Secretary-Held Lien, the Mortgagee  
2 must use the following procedures for foreclosure sales.

3 The Mortgagee must take action to obtain Surplus Funds on behalf of the  
4 Secretary within the state's prescribed time frame for all Partial Claims  
5 where the foreclosure sale results in Surplus Funds.

6 If the Property is subject to Secretary-held liens that are not Partial  
7 Claims, the Mortgagee is not required to take any action to obtain  
8 Surplus Funds.

9 If the Property is subject to other federal liens in addition to a Secretary-  
10 held lien, the Mortgagee must comply with the applicable law for those  
11 other federal liens, including proceeding with a Judicial Foreclosure, if  
12 required, after receiving an approved variance from HUD.

13 **(c) Prior to First Legal Action to Initiate Foreclosure**

14 **(i) Notification of Intent to Proceed with Nonjudicial Foreclosure**

15 If the Property is subject to a Secretary-Held Lien in a jurisdiction  
16 where the Preferred Method of Foreclosure is nonjudicial, the  
17 Mortgagee must submit a variance via EVARS to notify HUD of its  
18 intent to proceed with a Nonjudicial Foreclosure sale.

19 The variance request must:

- 20 • itemize all Secretary-Held Liens;
- 21 • certify the Mortgagee will take necessary actions to obtain  
22 Surplus Funds on behalf of the Secretary within the state's  
23 prescribed time frame for all Partial Claims where the  
24 foreclosure sale results in Surplus Funds, unless directed  
25 otherwise by HUD; and
- 26 • confirm that the Mortgagee will provide HUD with the  
27 notification of foreclosure sales results through the SMART  
28 Integrated Portal (SIP) within the prescribed time frame.

29 **(ii) Validity Period and Resubmission Requirements**

30 The Mortgagee must receive the approved variance from HUD prior  
31 to initiating the first legal action to foreclose.

32 The approval remains valid if the foreclosure sale date is moved, if a  
33 federal foreclosure moratorium is in place, or if the foreclosure  
34 proceeds after a foreclosure has been stopped and restarted, as  
35 allowed by state law.

1 The Mortgagee must submit a new variance request via EVARS to  
2 proceed if:

- 3 • any Secretary-Held Liens present at the time of foreclosure  
4 are not itemized in the initial HUD approval; or
- 5 • the Mortgage was brought current and is proceeding to  
6 foreclosure after a new Default episode.

7 **(d) Notification of Foreclosure Sale Results**

8 Notification of foreclosure sale results refers to the submission of the  
9 foreclosure sales data to HUD where Secretary-Held Liens are present.

10 The Mortgagee must notify HUD via SIP of the foreclosure sale results  
11 for all foreclosures where a Secretary-Held Lien is present within five  
12 business days of the foreclosure sale.

13 The Mortgagee must submit the following data to HUD via SIP:

- 14 • the FHA case number;
- 15 • the method of foreclosure (judicial or nonjudicial);
- 16 • the date the foreclosure sale occurred;
- 17 • the Mortgagee's final bid amount;
- 18 • the winning bid amount;
- 19 • whether the winning bidder was the Mortgagee or a third party;
- 20 and
- 21 • for Partial Claims with Surplus Funds, the name and contact  
22 information for a point of contact at the Mortgagee to receive  
23 foreclosure related documents and questions; or
- 24 • for non-Partial Claims, the name and contact information for the  
25 foreclosure attorney or trustee or other party that conducted the  
26 foreclosure sale.

27 **(e) Remittance of Surplus Funds to HUD**

28 For Partial Claims, no later than five Days after the receipt of Surplus  
29 Funds, the Mortgagee must remit the Surplus Funds to HUD via Pay.gov  
30 - Single Family Notes Non Lender Entry Form.

31 **(f) Accounting to HUD**

32 The Mortgagee must:

- 33 • upload documentation to SIP showing the results of the  
34 Nonjudicial Foreclosure Sale including the disposition of Surplus  
35 Funds, if any; and
- 36 • report the:
  - 37 ○ disposition of the Surplus Funds and the amount of Surplus  
38 Funds being remitted to HUD, if any; and

- the amount of remaining outstanding Partial Claim debt(s) still owed to HUD.

**(g) Release of Secretary-held Liens Following a Nonjudicial Foreclosure Sale**

HUD will initiate the process for a release of a Partial Claim after the Mortgagee reports either:

- that there are no Surplus Funds resulting from the foreclosure sale; or
- that there are Surplus Funds resulting from the foreclosure sale and the Mortgagee completes the accounting to HUD, and has remitted funds, if any, through Pay.gov.

HUD will initiate the process for a release of other Secretary-held liens once it has concluded collection activities.

**(h) Required Documentation**

The Mortgagee must retain documentation supporting the disposition of the Surplus Funds and the approved variance, if required, in the Claim Review File.

**(6) Request to Proceed with a Judicial Foreclosure due to Other Issues**

When a Mortgagee determines the need to proceed with a Judicial Foreclosure and the Preferred Method of Foreclosure is nonjudicial, the Mortgagee must submit a variance via EVARS to obtain HUD approval to proceed with a Judicial Foreclosure sale. The Mortgagee must provide the justification to proceed with a Judicial Foreclosure.

The Mortgagee must retain the approved variance in the Claim Review File.

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**Reasonable Diligence in Completing Foreclosure (III.A.2.s.ii(E))**

**(2) Standard**

The Mortgagee must exercise reasonable diligence when processing foreclosures and acquiring title to and possession of Properties, in accordance with HUD's [Reasonable Diligence Time Frames](#) (Appendix 6.0).

When circumstances beyond the Mortgagee's control occur, the Mortgagee may treat delays in completing the foreclosure process as exceptions to the Reasonable Diligence Time Frames and may exclude such delays when calculating the time to complete a foreclosure.

1 **(a) Delay due to Use of Loss Mitigation Home Retention Option**

2 When determining compliance with the Reasonable Diligence Time  
3 Frame, the Mortgagee may exclude the time that the Borrower was  
4 performing under an SFB-Unemployment Agreement or TPP.

5 **(b) Delay due to Foreclosure Mediation**

6 Where mediation is required after the initiation of foreclosure but before  
7 the foreclosure sale, the Mortgagee may exclude the time required to  
8 complete the mediation when determining compliance with the  
9 Reasonable Diligence Time Frame.

10 **(c) Delay due to Active Duty Military Service**

11 If a Borrower is on Active Duty military service and the Mortgage was  
12 obtained prior to entry into Active Duty military service, the Mortgagee  
13 may exclude the period during which the Borrower is on Active Duty  
14 military service when computing the Reasonable Diligence Time Frame.

15 **(d) Delay due to Bankruptcy**

16 When a Borrower files bankruptcy after foreclosure proceedings have  
17 been initiated, an automatic 90-Day extension for foreclosure and  
18 acquisition of the Property will be allowed if:

- 19 • the Mortgagee ensures that all necessary bankruptcy-related legal  
20 actions are handled in a timely and effective manner;
- 21 • the case is promptly referred to a bankruptcy attorney after the  
22 bankruptcy is filed; and
- 23 • the Mortgagee monitors the action to ensure that the case is  
24 timely resolved through dismissal, termination of the automatic  
25 stay, or trustee abandonment of all interest in the secured  
26 Property.

27 The time frame for completing the bankruptcy action will vary based on  
28 the chapter under which the bankruptcy is filed.

29 **(i) Chapter 7 Bankruptcy**

30 HUD allows the Mortgagee an additional 90 Days from the date of  
31 the release of stay of the Chapter 7 bankruptcy to commence or  
32 recommence the foreclosure.

33 **(ii) Chapter 11, 12, or 13 Bankruptcy**

34 When the Mortgagee cannot proceed with foreclosure action because  
35 of a Chapter 13 (or Chapter 11 or 12) bankruptcy, the Mortgagee  
36 must closely monitor the payments required by the bankruptcy court.

1 If the Borrower becomes 60 Days delinquent in payments required  
2 under a Chapter 13 (or Chapter 11 or 12) plan, the Mortgagee must  
3 ensure that prompt legal action is taken to resolve the matter.

4 Any delay the Mortgagee encounters must be fully documented and  
5 must be beyond the Mortgagee's control.

6 **(e) Delay in Acquiring Possession**

7 When a separate legal action is necessary to gain possession following  
8 foreclosure, an automatic extension of the Reasonable Diligence Time  
9 Frame will be allowed to cover the actual time necessary to complete the  
10 possessory action.

11 HUD provides this automatic extension if the Mortgagee takes the first  
12 required public legal action to initiate the eviction or possessory action  
13 within 30 Days of the later of:

- 14 • the completion of foreclosure proceedings; or
- 15 • the expiration of federal or local restrictions on eviction.

16 The additional time needed under applicable federal, state, or local laws  
17 to obtain possession of a Property is taken into consideration when  
18 evaluating a Mortgagee's compliance with HUD's Reasonable Diligence  
19 Time Frame. Upon the expiration period associated with the applicable  
20 occupancy rights, Mortgagees are expected to proceed promptly with  
21 possessory actions.

22 **(f) Delay due to Proceeding with a Judicial Foreclosure Where it Is**  
23 **Not the Preferred Method of Foreclosure**

24 If the Mortgagee is required to proceed with a Judicial Foreclosure  
25 where it is not the Preferred Method of Foreclosure as listed in [Appendix](#)  
26 [6.0 – First Legal Actions to Initiate Foreclosure and Reasonable](#)  
27 [Diligence Time Frames](#), due to the presence of a federal lien other than a  
28 Secretary-Held Lien, the Mortgagee must receive an approved variance  
29 per the requirements listed in [Exceptions for Foreclosures with](#)  
30 [Secretary-Held Liens and Federal Liens – Prior to First Legal Action to](#)  
31 [Initiate Foreclosure](#) to exclude the additional time required to complete  
32 the foreclosure when determining compliance with the Reasonable  
33 Diligence Time Frame.

34 If the Mortgagee determines a Judicial Foreclosure is necessary where it  
35 is not the Preferred Method of Foreclosure as listed in [Appendix 6.0 –](#)  
36 [First Legal Actions to Initiate Foreclosure and Reasonable Diligence](#)  
37 [Time Frames](#) due to other issues, the Mortgagee must receive an  
38 approved variance per the requirements in [Request to Proceeds with a](#)  
39 [Judicial Foreclosure due to Other Issues](#).



1 **Allowable Foreclosure Attorney Fees and Fees Associated with**  
2 **Bankruptcy Clearance, Possessory Actions, and Completion of a DIL –**  
3 **Standard (III.A.2.s.ii(F)(2))**

4 **(a) Allowable Foreclosure Attorney Fees**

5 Mortgagees may claim reimbursement from HUD for attorney fees related  
6 to routine foreclosure actions for the Preferred Method of Foreclosure based  
7 on the [Fannie Mae Allowable Foreclosure Attorney Fees Exhibit](#) in the  
8 Fannie Mae Servicing Guide Exhibits & Resources. The amount claimed for  
9 attorney fees cannot exceed the actual fees charged for work performed.

10 Mortgagees may not request HUD approval to proceed with a method of  
11 foreclosure in states where an amount is not specified on the Fannie Mae  
12 Allowable Foreclosure Attorney Fees Exhibit. The footnotes included are  
13 not applicable to FHA-insured Mortgages.

14 If the Mortgagee is required to proceed with a Judicial Foreclosure where it  
15 is not the Preferred Method of Foreclosure as listed in Appendix 6.0, due to  
16 the presence of a federal lien or other issues and has received an approved  
17 variance, the Mortgagee must submit the cost breakdown for any attorney  
18 fees that exceed the amount provided under the preferred method in the  
19 Exhibit, as required under [For Amounts Exceeding the Maximum Fee and](#)  
20 [Not Provided for in HUD Schedule \(IV.A.2.a.ii\(K\)\(1\)\(b\)\)](#).

21 Fannie Mae revises this Exhibit frequently, so Mortgagees must ensure the  
22 fees claimed for reimbursement are based on the Exhibit in effect as of the  
23 date foreclosure is initiated. HUD reserves the right to revise amounts which  
24 it considers reasonable and customary at any time.

25 Mortgagees may claim no more than 75 percent of the maximum attorney  
26 fee for fees incurred for a routine foreclosure that was not completed  
27 because any of the following occurred after the Mortgagee initiated  
28 foreclosure:

- 29 • the Borrower filed a bankruptcy petition;
- 30 • the Borrower successfully completed a Home Retention Option;
- 31 • the Borrower successfully completed a PFS; or
- 32 • the Borrower executed a DIL.

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33 **Claims Without Conveyance of Title (III.A.2.s.iii)**

34 **(F) CWCOT Post-Foreclosure Sales Efforts**

35 If the Property does not sell to a third party at the foreclosure sale, the  
36 Mortgagee may pursue post-foreclosure sales efforts and may utilize

1 independent third-party providers to conduct such sales prior to making a  
2 final decision to convey a Property to HUD.

3 The Mortgagee’s third-party provider must indicate that the Property is  
4 being sold in an “as is” condition, and the condition is unknown and may  
5 include defects, possible health or safety hazards, or debris, or be located in  
6 a Special Flood Hazard Area (SFHA).

7 Where the Property is occupied, based on the appraisal or property  
8 inspection, the Mortgagee’s third-party provider must clearly indicate that  
9 the Property is occupied in the auction information.

10 Where the Mortgage associated with the Property previously had a  
11 subordinate Secretary-held lien and a Nonjudicial Foreclosure was held in  
12 accordance with [Exceptions for Foreclosures with Secretary-Held Liens and](#)  
13 [Federal Liens](#), the Mortgagee must include information in the sale listing  
14 that all subordinate Secretary-held liens associated with the title have been  
15 released or will be released by HUD.

16 **FHA Single**  
17 **Family Housing**  
18 **Policy**  
19 **Handbook**  
20 **4000.1**

22 **Claims and**  
23 **Disposition**

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**Claims for Additional Funds (IV.A.2.c.vii)**

**(D) Foreclosure Sale Surplus Funds Collection Fee**

If the Mortgagee collects Surplus Funds on behalf of the Secretary, the Mortgagee may submit a supplemental claim for reasonable and customary fees incurred for that collection.

The supplemental claim may only be filed after:

- the Mortgagee has remitted the Surplus Funds [to HUD](#) via Pay.gov - Single Family Notes Non Lender Entry Form; or
- the Mortgagee has received confirmation that all Surplus Funds have been disbursed to junior lien holders in order of priority and no funds are available to satisfy the Secretary-held liens.

**Required Documentation**

31 The Mortgagee must submit to HUD with Part B of form [HUD-27011](#) a  
32 copy of the supporting invoices or receipts.

33 The Mortgagee must retain copies of these documents in the Claim Review  
34 File.

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1 **Paperwork**  
2 **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 assigned OMB control numbers 2502-0005; 2502-0059; 2502-0117; 2502-0189; 2502-0302; 2502-0306; 2502-0322; 2502-0328; 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.

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13 **Signature**

14 Julia R. Gordon  
15 Assistant Secretary for Housing -  
16 FHA Commissioner

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