

*Via Email Only*

January 22, 2024

The Honorable Damon Smith  
General Counsel  
U.S. Department of Housing & Urban Development  
451 Seventh Street, Southwest  
Washington, DC 20410

Dear General Counsel Smith:

On behalf of the MBA Closing Subcommittee, we are writing with respect to the [recently published Electronic Closing Protocols](#) for certain HUD-insured multifamily and healthcare facility closings.

While we understand the memo was provided to OGC in December, we were notified of this new document by the Office of Multifamily on January 10, 2024. The memo states the effective date is January 31, 2024. We urge you to extend the effective date for this notice for 90 days (until April 10, 2024), so that industry has time to review and provide comment.

The ECP document provides that HUD intends that the document replace the HUD memorandum titled Contingency Plans for Closing Multifamily Loans and Similar Commercial Loans during the COVID-19 Pandemic published in early 2020 (the Compton Memo). We agree with you that the temporary protocols implemented by the Compton Memo were and continue to be, in your words, “very positive for both the Department and its external partners” and have made the closing process more efficient at every stage of a transaction. Moreover, in HUD’s new amendment and restatement of the Contingency Plans into a more detailed and well-organized document of Electronic Closing Protocols, the Office of General Counsel (OGC) has set forth what we believe will be a closing framework that is both broadly beneficial and durable.

However, we have several recommendations prior to implementation.

Recommendations:

1. **Engage the Industry.** HUD must allow the industry to familiarize itself with the document, engage in dialogue with HUD, ask and receive answers to questions, and provide substantive comment that both recognizes the practical, on-the-ground realities of the closing process and certain serious concerns that parties may have about discreet aspects of the ECP (e.g., the Opinion “supplement,” which, we note was not subject to Notice and Comment Rulemaking via the Federal Register under the Administrative Procedure Act, unlike the Opinion (and the FHA Loan Documents themselves).

The ECP invokes the applicability of various lengthy and relatively new statutes, including the Electronic Signatures in Global and National Commerce Act (the E-SIGN Act), the 21<sup>st</sup> Century Integrated Digital Experience Act (IDEA Act), and the Uniform Electronic Transactions Act (UETA), as well as HUD’s own Single Family Housing Policy Handbook 4001. HUD should provide additional guidance as to exactly what provisions in these various statutes have direct application to the ECP before the effective date.

Several other documents (such as the new draft certifications, the additional signature requirements and the instruction for supplementing closing opinions) also raise questions that should be answered prior to implementation.

2. **Allow time for Training.** We are pleased to see that HUD pledged to provide training on the new guidance yet are concerned that HUD finds it impossible for this to occur prior to the effective date. Extending the implementation timeframe will allow for this training, both for HUD staff and for industry.

Our members have also identified several areas of the notice that require additional information. These include:

**Applicability to Loan Assignments:** It seems there may be conflicting guidance coming from OGC and Asset Management related to retention of original documents. This should be resolved.

**Coordination with the Government National Mortgage Association (GNMA or Ginnie Mae):** OGC and GNMA must align their policies with respect to Electronic Signatures.

**Synchronization with the HUD MAP Guide and Section 232 Handbook:** This should be completed before implementation to avoid confusion.

**Clarification re reference to HUD Handbook 4000.1:** The 4000.1 includes prohibitions on “Documents Signed in Blank”, which should not be applicable to multifamily and healthcare closings, where the typical signatory parties are much more sophisticated, informed and commonly represented by counsel, unlike many of their single-family counterparts.

We strongly urge you to delay implementation of this important notice. 90 days is short enough to enable timely and orderly compliance but is necessary to resolve some outstanding issues and to provide adequate training. We welcome an opportunity to enhance our partnership with the Department and ensure a smooth transition to the new protocols.

Sincerely,

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