



OFFICE OF HOUSING

FEDERAL HOUSING ADMINISTRATION



Questions and Answers
Office of General Counsel
FHA Multifamily Housing Production Closings During Pandemic
Updated 09/10/2020

1. What is the Office of General Counsel (OGC) doing in response to the current COVID-19 Coronavirus outbreak and President’s declaration of a national emergency?

While the Department of Housing and Urban Development and its offices remain open for business at this time, many employees, including closing attorneys are now engaged in full-time telework. OGC, in collaboration with Multifamily and the Office of Healthcare Programs has established protocols, rules, and procedures to best ensure continuity of operations in the event of an extended closure of a specific division, regional or field office, or the determination that OGC in its entirety should work remotely.

2. Will OGC continue to conduct in-person closings?

OGC’s first goal is ensuring the health and safety of its employees, clients, and stakeholders. To that end, OGC has adopted a policy of avoiding in-person attendance at gatherings, including all in-person closings, to the greatest extent possible. Limited in-person closings will continue only under special circumstances in which closing by mail or electronic submission is clearly not feasible. The number of attendees should be limited as much as possible with signatures, document collation, and other closing functions coordinated by the FHA lender’s counsel and completed before arrival at the closing location. Rarely should it be necessary for the attendees to include individuals other than the FHA lender’s counsel, HUD closing attorney, and paralegal support staff.

3. How will OGC closing attorneys conduct reviews of closing packages?

OGC closing attorneys will continue the usual practice of providing comments on closing submissions by e-mail or telephonically with the recognition there is no “business as usual” across the country at this time. Additional conference calls to address logistical and other pertinent issues will be arranged as needed to ensure free and open communication during the review and closing process.

4. How will OGC closing attorneys receive and review packages electronically?

OGC closing attorneys will rely on electronic transmission of closing documents in lieu of hard copies in performing their initial reviews. This approach will ensure the continuation of reviews

even if our external partners are unable to physically transmit the volume of paper documents needed at this stage.

While providing increased flexibility to lenders in submitting closing documents, this protocol does not authorize any additional substantive modifications to the closing process without approval of the appropriate Regional Counsel and the Office of Insured Housing in Headquarters.

5. Are there any standards for submission of draft closing packages?

OGC closing attorneys will accept draft closing packages in fully electronic form. If a hard copy of the survey is available for submission, it should be provided by mail to the closing attorney. OGC closing attorneys will not delay review of a closing package if a hard copy of the survey is unavailable. Closing, however, will remain contingent on an adequate title and survey review and the appropriate resolution of any identified issues. FHA Lender's counsel will need to make arrangements with the OGC closing attorney for the delivery of a hard copy of the survey if electronic review is not feasible due to the survey's size and complexity.

Additionally, to ease the transition to an electronic review process, OGC has developed a series of "Best Practices" for electronic transmission, available for your closing attorney. This document can be found online at: [best practices](#).

6. Is there a preferred method of electronic submission?

OGC understands that the various lenders and their counsel have differing security protocols in place governing the transmission of electronic documents. OGC has not established any mandatory submission method, but will accept electronically transmitted documents in various means, provided the transmitter can provide assurances as to the security of the transmission. Additionally, the electronic submission must be accessible by all HUD reviewers and cannot be unnecessarily restricted to impede access from appropriate parties within the Department.

7. How should I send in a supplemental submission?

The OGC closing attorney will provide written comments to the FHA lender's counsel by e-mail or telephonically (depending on local field counsel practice). The FHA lender's counsel should submit the revisions and supplemental documents via email or in the same fashion as the original electronic submission. The documents submitted should include comparisons ("redlines") showing changes from the last version reviewed when specifically requested by the OGC closing attorney or otherwise appropriate.

8. Can we expect to have different protocols being used in different field offices or by different closing attorneys?

While the circumstances on the ground in any office or for any specific closing attorney may require flexibility in the closing process, the Regional Counsel will be working to ensure the temporary protocols established by the General Counsel are adopted and applied consistently across the regional and field offices within their purview.

9. Will there be any changes in the attorney assignment process?

Regional Counsel will continue to manage the attorney assignment process for closings, asset management requests, and other transactional work, as necessary. The Regional Counsel will consider staff availability, client deadlines, and the IT resources available to each employee in making assignments. OGC is working to ensure all closing attorneys have the necessary technology to perform electronic reviews at remote locations, where necessary.

The assigned OGC closing attorney will making prompt contact with the requesting program office and industry partners to establish mutual expectations, communication protocols, and shared goals for completion of the work matter, regardless of their physical working location. Should circumstances arise making closing by mail is impractical and the assigned Closing Attorney is unable to reasonably close the loan electronically, the appropriate Regional Counsel may reassign the transaction for closing.

10. Will the closing process be delayed or disrupted if the Regional Counsel has to change the attorney assignment?

OGC will strive to limit delays or disruptions to the closing process related to the reassignment of the closing. In particular, the attorney receiving the reassignment will generally be expected to rely on the legal work previously completed and continue with the closing as scheduled.

However, circumstances are in flux and all parties cautioned to anticipate delays. FHA lenders and their counsel should be cognizant that HUD closing attorneys may face significant workload challenges as they adapt to these new procedures and navigate local exigencies created by the pandemic (e.g. limited support staff and IT resources while working from home or other remote locations). Complete and well-prepared documents should be submitted as early as possible to ensure closing dates can be scheduled and accommodated well in advance of significant deadlines. The HUD Closing Attorney will strive to manage the expectations of all parties to a transaction and communicate developments as soon as it is reasonably possible in order to facilitate an orderly closing process.

11. How will the Lender and Lender's counsel know how to submit documents pre-closing?

Once HUD has provided written clearance to the Lender that the transaction is ready to close, the FHA lender's counsel is responsible for coordinating the submission of the final, executed documents by mail or electronic form, subject to specified limitations. The HUD closing attorney should hold a call with the Lender's counsel prior to the final submission to ensure that everyone is clear on the method of and requirements for submission. If closing by mail, the HUD closing attorney will advise the Lender's counsel as to the address for delivery of the closing dockets.

12. With the status of recorders' offices around the country uncertain, what flexibilities is HUD able to provide?

OGC prefers the pre-recording of the FHA security instrument, regulatory agreement, and other

recorded documents where possible. OGC will accept Gap coverage (as has typically been offered in New York) when pre-recording is not feasible, provided the coverage clearly protects the status of the first lien through recordation, regardless of any unusual delay due to the closure of the recorder's office.

13. How will OGC closing attorneys conduct the closing?

OGC closing attorneys will conduct closings either by mail or through the use of electronic transmission of documents to ensure closing takes place as planned. The use of electronic transmission methods will require additional submissions and certifications for this method to be utilized.

14. Will HUD allow electronic signatures or the electronic transmission of a scanned document containing wet signatures on closing documents?

OGC **cannot** authorize the execution of the FHA note, mortgage, regulatory agreement, or other loan documents using a digital signature or other means of fully electronic authentication. However, OGC closing attorneys will accept electronic copies (i.e. scanned PDFs) of manually executed documents and will rely on such documents for purposes of releasing the endorsed FHA note at closing. The closing opinion delivered by borrower's counsel may not be modified to include additional qualifications or limitations related to the use or reliance on scanned documents unless discussed and approved by the OGC closing attorney. Such changes will not be approved unless (i) clearly warranted by a duly cited state statute or local ordinance and (ii) the modification results in no additional risk to HUD.

15. How will the documents requiring wet signatures be handled?

The FHA Lender's counsel should arrange for delivery of the note, mortgage, regulatory agreement and any other transaction-specific recording documents to the authorized HUD signatory via an overnight courier. At times, HUD will need the Lender's counsel to provide a mobile notary to facilitate the execution process. The FHA Lender's counsel should also include prepaid mailing labels to ensure (i) the delivery of all documents to be recorded to the appropriate recipient for recording and (ii) the release of the endorsed note, and any other documents that must be held by HUD for safe-keeping until the closing is completed, to the FHA Lender (or its designee).

Except as may be arranged otherwise to address local circumstances, HUD's signatory will retain the FHA Note in the signatory's physical possession until advised by the HUD closing attorney on the closing date to endorse and release. Best efforts will be made to provide a scan of the endorsed note immediately after closing. FHA Lenders should be mindful, however, that scans may not be available on the day of closing depending on the HUD signatory's access to scanning equipment. Under no circumstances should HUD staff be requested to incur courier fees, reimbursable or otherwise, for the delivery of loan documents.

(Updated on 09/10/2020)

16. What will happen at a remote closing?

As with a roundtable closing, the OGC closing attorney will ensure the documents, as executed, conform to the approved drafts.

17. Is there a deadline for submission of the documents – whether by mail or electronically?

The FHA Lender’s Counsel and HUD Closing Attorney will need to discuss and establish a starting time for the closing that takes into account the submission method (electronic or hard copy); the closing location (field office or remote); mail/courier delivery times; and, when special circumstances compel an in-person closing, the essential attendees. Generally, submissions should arrive no later than 10:00 a.m. the morning of closing unless all parties have agreed to an alternative time. In HUD offices where closings begin earlier than 10:00 a.m. as a standard practice, the HUD Closing Attorney may require submission by the usual starting time.

18. What considerations are there for delivery of the Title policy?

The FHA Lender’s counsel should make every effort to ensure the title insurance policy and, if customary in the closing jurisdiction, the recorded documents are organized and included in the same submission as the other closing documents. However, the OGC closing attorney may permit a separate submission from the title company or outside counsel when warranted by jurisdictional requirements, local custom, or other good cause. Additionally, if the time-stamped recorded documents are not available, the title company’s recording certification should be scanned as the first page. If delivered or signed electronically, the title insurance policy should contain an electronic signatures endorsement.

19. What considerations are there for the electronic delivery of documents for closing?

Where closing documents must be delivered by electronic means, the following is required:

- The submission must be organized for easy and efficient review on a computer monitor. Each submission should include a complete FHA closing checklist (identifying all standard and transaction-specific documents) to ensure efficiency of review and document location.
- If delivering via an electronic medium, the medium must be brand new, unencrypted, and contain no files other than the closing submission. Further, the drive may not be write-protected or otherwise secured in a manner that precludes the HUD staff from adding additional files.
- If alternative electronic delivery is arranged through a law firm’s or title company’s proprietary document storage site, or other such web-based arrangements, these sites may not impose use conditions on HUD staff (e.g. requiring an agreement to indemnify the firm or site host).
- The electronic submission should include signed certification evidencing the FHA lender’s agreement (i) to provide an original, hard-copy set of the electronic documents once normal operations resume and (ii) to include a certification with the hard copy set that confirms the documents fully conform to the electronic versions accepted at closing.

20. What if errors are discovered requiring revision at closing?

In the event a need for revisions is discovered at closing, the FHA Lender's counsel will be responsible for transmitting, electronically or via courier, the complete corrected document(s) for the OGC closing attorney to consolidate with the full submission. Slip pages will generally not be accepted for electronic closings. The HUD Closing Attorney may suspend the closing, upon consultation with the client office and Regional Counsel, if the provided documents are determined to be materially deficient.

21. Given the remote work scenarios that are likely, will HUD agree to release the endorsed note to Lender's counsel or a third party to hold in escrow until closing?

At this time, HUD cannot release the FHA note prior to closing even if the Lender's counsel offers to hold the note in escrow or have the note escrowed by a third party. Arrangements will be made by OGC and Housing to ensure the note is endorsed prior to closing and held by the HUD closing attorney or other designated HUD official for safekeeping until the closing is completed. The OGC closing attorney or the closing coordinator will provide instructions in the event a mobile notary will be needed to complete the closing process.

22. When will the endorsed note be released?

Once all closing conditions are met, the OGC closing attorney will advise the Lender's counsel that the note is ready for release. FHA Lenders should be cognizant that a HUD Closing Attorney working remotely may be unable to accommodate requests to have the endorsed note scanned and circulated via e-mail on the day of closing. Upon request, it may be possible for the OGC closing attorney to have a photograph of the endorsed note transmitted.

23. How should I handle personally identifiable information ("PII"), including items such as a home address or personal cell phone number, provided by a HUD closing attorney to facilitate the closing of an FHA multifamily or healthcare loan?

Unless advised otherwise by the providing party, FHA lenders and their counsel should assume any PII provided by a HUD closing attorney was intended for the sole purpose of facilitating the timely and efficient completion of a real estate transaction during a nationally declared pandemic. The PII should not be used for any other purpose, including redisclosure to other parties, without the express consent of the individual providing the PII. If the real estate transaction has concluded, please immediately delete the PII from all systems and records. If the real estate transaction has yet to conclude, please ensure the information is deleted upon completion or, if earlier, at the request of the HUD employee.

(Added on 09/10/2020)