

WFG Underwriting Bulletin



To: All Policy Issuing Agents of WFG National Title Insurance Company
From: WFG Underwriting Department
Date: May 26, 2016
Bulletin No. NB 2017-02
Subject: FHA/HUD Seconds Require a Separate Payoff

We recently have been dealing with a string of claims which bear nearly identical facts. The circumstances of these transactions requires that all direct operations and our agents be aware of the situation below to avoid future claims.

During the recent housing crisis, HUD through the Federal Housing Administration developed several "Save Your Home" programs including HAMP. These programs provided homeowners who had defaulted on their secured home loan to obtain, in some cases, "Partial Claim" assistance. The program worked as follows:

- Owner purchases property and finances the acquisition with a purchase money loan from Lender X
- Owner defaults on the purchase money loan
- Lender X commences the foreclosure process
- Lender X, as required by law, advises Owner of loan programs to prevent the foreclosure; one such program is the HUD Partial Claim Program
- Owner with the assistance of Lender X obtains approval of the Partial Claim loan
- HUD advances the sums payable to Lender X to cure past due amounts
- Owner is not required to pay off or pay down the amounts advanced by HUD; the Owner is required to payoff the HUD Deed of Trust/Mortgage when the subject property is sold, transferred or refinanced
- The HUD advances are **not** added to the principal amount of the Lender X loan
- HUD requires and obtains a second deed of trust secured by the subject property (in some cases, Lender X's name is included within the HUD Deed of Trust/Mortgage, even though Lender X is not the mortgagee/beneficiary)
- Several years later, Owner enters into a contract to sell the property or refinances
- The escrow/settlement provider submits payoff demand to Lender X
- The escrow/settlement provider is advised by Lender X that the payoff demand statement is for both the Lender X obligation and the HUD obligation

- The transaction is closed with the HUD obligation remains unpaid

The new owner/insured then receives notice from HUD (or its collection servicer) that the HUD obligation remains unpaid and the lien is still valid as against the subject property.

We have confirmed in every instance that the primary lender does not collect payment on behalf of HUD and their estoppel letters/demand statements do not specifically refer to the HUD Deed of Trust/Mortgage.

The HUD obligation is separate and apart from the primary lender's loan amount. In all circumstances, a payoff demand must be submitted to and returned from HUD, or the servicer acting on behalf of HUD.

Under **NO** circumstance shall any assurance from the primary lender, in writing or verbally, be relied on for clearing a second mortgage held by HUD or FHA.

NOTE: The information contained in this Bulletin is intended solely for the use of employees of WFG National Title Insurance Company, its title insurance agents and approved attorneys. Disclosure to any other person is expressly prohibited unless approved in writing by the WFG National Title Insurance Company's Underwriting Department.

The Agent may be held responsible for any loss sustained as a result of the failure to follow the standards set forth above.