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June 26, 2025

**VIA OVERNIGHT COURIER**

Nacheshia Foxx  
Senior Clearance Officer  
Department of Housing and Urban Development  
451 Seventh Street SW, Room 10276  
Washington, DC 20410-0500

Re: **Docket No. FR-7102-N-02; OMB Control No. 2510-0006: 60-Day  
Notice of Proposed Information Collection: Legal Instructions  
Concerning Applications for Full Insurance Benefits - Assignment of  
Multifamily and Healthcare Mortgages to the Secretary**

Dear Ms. Foxx:

Thank you for the opportunity to comment on the proposed Legal Instructions. We have substantial experience representing FHA lenders in connection with the assignment of insured loans to HUD under the current Legal Instructions.

Our comments below track the order of the proposed form HUD 2510 Legal Instructions followed by comments on one sample form document and the Appendix A-2 Checklist form.

The Notice provides for “26.5 Burden hours” as an estimate of time to complete work for an assignment under the Legal Instructions. In our experience, such estimate is very low and the actual preparation time is at least double such estimate. The time spent to complete the legal work for a simple assignment under the Legal Instructions is closer to 50 hours.

**Legal Instructions - Part A**

**First line.** The first sentence, “[t]hese instructions apply both to assignments of mortgages in default under Section 207(g) of the National Housing Act (12 U.S.C. S 1713(g)).” What is the purpose of “both”? Is some text missing?

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**Fourth paragraph.** “ . . . Mortgagee’s counsel must provide, or cause to be provided hard copy originals of all the legal documents previously submitted electronically no later than 1 business day after HUD counsel submits a written request for the documents . . .” The time to respond to the request to send documents should be lengthened to a more reasonable time frame such as within 3 business days. If counsel is out of the office or away on vacation, then such provides additional reasonable time to receive and process the request.

**Section 3. Assignment of Security Agreement(s).** The Instructions require language that fails to account for HUD-approved liens such as those related to accounts receivable financing, and such language is missing a crucial phrase required by 24 C.F.R. § 207.258(b)(4), which provides as follows (*emphasis added*):

(4) Chattel lien warranty. In assigning its security interest in chattels, including materials, located on the premises covered by the mortgage, or its security interest in building components stored either on-site or off-site at the time of the assignment, the mortgagee shall warrant that:

- (i) No act or omission of the mortgagee has impaired the validity or priority of the lien created by the chattel security instruments; and
- (ii) The mortgagee has a good right to assign the security instruments; and
- (iii) The chattel security instruments are a first lien on the items covered by the instruments except for such other liens or encumbrances as may be approved by the Commissioner.

The Instructions clearly omit a key provision from the Regulations, which results in an unfair and unreasonable requirement and a warranty that goes beyond what is required by the Regulations. The instructions must be revised to be consistent with the Regulations and to include “except for such other liens or encumbrances as may be approved by the Commissioner” in the required language for assignments of security agreements (and in the sample form of Assignment of Security Agreement).

**Section 4. Other Recorded Instruments.** This section requires that the assignment to HUD of any other recorded instruments must contain the same “first lien” language as set forth in Part A, Item 3. This language is inappropriate for the assignment of certain documents such as an SNDA or subordination agreement (or any other document), which do not create the priority lien as the required language suggests. Thus, for the same reasons stated above, such “first lien” language must be eliminated and HUD must follow the language of the Regulations.



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## **Legal Instructions - Part B**

**Section 6. Assignment of Security Agreement(s)/Chattel Mortgages.** Please see the same comment as set forth above for Part A, Item 3. The required language should be revised to match the warranty required by the Regulations.

**Section 8. UCC Financing Statements, Section (iv) UCC-11 Searches.** HUD is proposing requiring UCC-11 Searches from both county and state jurisdictions (which searches cannot be dated before the filing of the assignment to HUD). This new requirement is problematic for the following reasons specific to each jurisdiction:

*Fixture filing/county UCC-11 Searches.* This requirement must be eliminated with respect to fixture filing/county searches because it is onerous and duplicative of the requirement for a date down title endorsement. HUD should not invent additional requirements that exceed requirements for loan closings and have the effect of frustrating the assignment process while providing no new information. Further, this requirement is punitive in nature if a lender has properly serviced the loan and maintained current UCC filings. Moreover, the FHA lender is already providing the required warranty to HUD. HUD should rely on the title endorsement insuring the priority of the mortgage lien and which endorsement reflects the interim and “new” items of record. Further, many counties no longer provide a UCC-11 search service and direct parties to third party searches (which is the same as that conducted by the title company). Further, even if the county has the ability to provide a UCC-11 search, it can take several weeks, if not longer, to obtain this search which exceeds the 45-day requirement (or 60 days with the 15-day extension) resulting in curtailment of the interest or possible rejection of the claim. A lender should not be penalized because a county search is unavailable, and which search is duplicative of the date down endorsement title endorsement. Moreover, the FHA lender already incurs the out-of-pocket costs for a date down endorsement (which can be very costly in some states), so it is unfair to incur additional costs for duplicative information. The requirement for county UCC-11 searches must be completely eliminated in all instances.

*State UCC-11 Searches.* This search should only be required if there was a lapse in the original UCC filing. This requirement is punitive in nature for a lender that has properly serviced the loan and maintained current UCC filings. HUD appears to indicate that the purpose of this search is only to ensure the priority of the lien. Thus, if there has been no lapse in the original UCC filings, then this search is unnecessary and needlessly penalizes the lender.

HUD’s instruction that states that the “Search must demonstrate or evidence that the lien being assigned to the Secretary is a first lien” must be eliminated. Otherwise, this essentially requires a lender to pay off every equipment lease or purchase money security interest or accounts receivable financing or HUD may deny the mortgage insurance claim simply because a UCC related to an equipment lease exists (even before a loan closed) as previously approved by HUD. Such result is unfair and unreasonable. Such “first lien” language is problematic and

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must be deleted because it is contrary to the Regulations (as discussed above) and fails to accommodate for filed UCCs related to equipment leases and/or accounts receivable financing or/or purchase money security interests, which may have priority and may or may not have existed prior to the closing of the Loan.

UCC-11 searches can take many weeks to obtain depending on the jurisdiction, which can easily exceed the 45-day requirement (or 60 day requirement with the 15-day extension). HUD's requirement that the searches cannot predate the filing of the assignment to HUD is unfair and unnecessary. HUD indicates the purpose of the search is to ensure priority, but the filing of the assignment to HUD has no affect on the priority of the underlying UCC. Such search need not include the assignment to HUD. Thus, if there has been a lapse, HUD should accept State UCC-11 searches that pre-date the assignment to HUD. This would help alleviate concerns regarding the timing and availability of such searches.

### **Section 15(c) Title Exceptions and Endorsements.**

(i) Please include a footnote regarding the pre-printed exception for "delivery of the note" that such is acceptable if the verbiage "on the date of endorsement" is removed. This is standard language for nearly all date down endorsement forms (including Texas and California) to ensure the validity of the mortgage assignment. Rather than an exception to coverage (like other standard pre-printed exceptions), the endorsement relies on the proper transfer of the note as a condition of coverage. HUD's prohibition of this language should be limited to the words "on the date of endorsement". The mortgage insurance claim cannot be completed until HUD receives the Note, so, as long as the phrase "on the date of endorsement" is deleted from the preprinted verbiage, there is no question about the effectiveness of the title endorsement, and should not be an issue.

(iv) Footnote 5 prohibiting the language "payable but not yet due" should be eliminated. The requirement that real estate taxes be shown as not yet due and payable is inconsistent with HUD's instruction in Item 16 that a lender must pay taxes that become delinquent within 45 days after the assignment of the mortgage to HUD. Item 16 also states that "[t]axes that become delinquent within 45 days after the assignment of the mortgage to the Secretary has been filed for record may not appear as an exception on the loan title insurance policy" indicating that taxes due beyond that, but payable, may be included as an exception. It is not uncommon for taxes to be payable but not delinquent for many months. Item 16 also instructs that a notation on the loan title policy endorsement may state when the current year's taxes will become delinquent. For example,

- Assignment of Mortgage to HUD recorded on January 3, 2025,
- 2024 1<sup>st</sup> installment is due and payable on October 1, 2024, but not delinquent until January 31, 2025.
- 2024 2<sup>nd</sup> installment is due and payable but not delinquent until June 30, 2025.



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The Lender would pay the 1<sup>st</sup> installment as required by Item 16. However, the 2<sup>nd</sup> installment is payable but not delinquent until June 30, 2025, which is outside of the 45-day window. The title company cannot and will not make a statement that the 2<sup>nd</sup> installment is “not yet due and payable” because it is payable (just not delinquent). Is HUD requiring that the lender obtain HUD’s approval to pay the 2<sup>nd</sup> installment far in advance, which HUD must confirm that such amount will be added to the claim (or paid from escrow, if available)? Why wouldn’t HUD allow the exception to read that the 2<sup>nd</sup> installment is due and payable but not delinquent until June 30<sup>th</sup>?

**Section 15(d) Letter of Authority/Agency Verification Letter.** In Section II, “and the Mortgagee” should be deleted since the letter must be dated the date of the assignment to HUD and HUD is the sole assignee.

**Section 15(f) Additional Requirements for New Title Policy.** In the last paragraph, the Instructions provide that if the loan was not finally endorsed for mortgage insurance prior to the election to assign, “a pro forma or specimen loan title policy must be submitted for prior approval within the 45-day period.” Is there a reason that HUD requires a new policy as opposed to a date down in this instance? We would expect that a date down endorsement would be acceptable as well.

**Section 18. Additional Documents and Assignments.** This section requires the mortgagee to deliver “all other agreements, instruments, documents, . . . which evidence, secure, or otherwise relate to the FHA-insured mortgage whether executed or delivered by or on behalf of a borrower, operator, master tenant, or other parties.” This instruction is open-ended, overly burdensome and impossible to meet. This vague and overly broad language would extend to every single piece of paper from the Loan Application, closing, interim servicing, etc. and may even extend to every single email that lender has received for the life of the loan. It is unfair for HUD to include such broad language and must provide reasonable specificity. HUD could use such provision to reject a mortgage insurance claim for failure to deliver a single innocuous document that has no bearing on the priority or validity of the loan or effectiveness of the assignment. This should be revised to require additional documents that HUD may request.

**Section 19 Healthcare Documents and Assignments, Subsection (e).** The verbiage “or otherwise relate” should be eliminated as too broad and overly burdensome as further described above for Section 18.

**Section 19 Healthcare Documents and Assignments, Subsection (f).** HUD should not require an original of the DACA, DAISA or lockbox agreements. Since Covid, many large banks will no longer provide wet ink signatures. If the documents contain a provision for electronic signature or copies being deemed an original, then an Indemnification Agreement should not be required. Further, original signatures on leases or memoranda of leases should not be required.

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The lender is not a party to these documents and the lender would rarely ever receive original signatures in connection with closing of a loan.

**Sample form of Assignment of Security Agreement.** This should be revised consistent with our comments on Part, A, Section 3 above. The warranty language must be consistent with and track the language of the Regulations.

**Appendix A-2 Checklist.** Below are our comments on the Checklist.

- Please change the numbering regime from 1, 1.1, 1.2, etc. to 1.A, 1.B., 1.C, etc. We have prepared many assignment packages, and we conveniently provide organized tabbed packages. Tabs come in letters (A-Z, not 1.1, 1.2, etc.). Legal packages are better organized by Tab 1 followed by Tabs A, B, C. etc. for related documents. Also, computers will automatically sort 1.1 before 1 so it is helpful to use the above numbering regime for the order of documents in sharefile links and zip files.
- Change the number of the State UCC Filings to “9” instead of “8.1”. Computers will automatically order a file named “8.1” before “8”. In the healthcare section, the State UCC is a separate Exhibit number so the same should be done for the State UCC in the housing section.
- Item 10 – insert missing space in “mortgageis”.
- Items 10.1 and 10.2 – change to 10.A and 10.B.
- Item 12.1 – change to 12.A.
- Item 15.1 – change to 15.A.
- Item 15.2 – change to 15.B. Also, make consistent with instructions as to whether this is required only with new policies.
- Items 18.1-18.7 – change to 18.A – 18.G.
- Healthcare Items – same comments as above with respect to numbering.
- Insert a line item for a Subordination Agreement/SNDA with respect to an operating lease, which is common on 232 transactions. We would suggest inserting such after reference to the Operator Memorandum of Lease. Of course, this would also affect the rest of the numbering.

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- Item H7 – HUD should not require an original or certified copy of the Memorandum of Lease. These originals are returned to the Borrower or Operator, not the Lender. The Lender is never a party to that document and is not a custodian of Memoranda of Leases. It is unreasonable to require an Indemnification Agreement from the lender for lack of an original document where the lender is not a party and not entitled to receive an original.
- Items H14 and H21 (Master Lease) are duplicative. Please delete Item H21.
- H6 and H14. Why does HUD require an original Estoppel Certificate? This is not required by GNMA. The requirement for an original of the Estoppel certificate or the underlying lease should be eliminated.

Very truly yours,



Ariel A. Mullin

Enclosures