



December 19, 2013

Honorable Charles Coulter
Deputy Assistant Secretary for Single Family Housing
U.S. Department of Housing and Urban Development
451 7th Street SW
Washington, DC 20410

Dear Deputy Assistant Secretary Coulter:

Thank you again for meeting with MBA staff and members during our Annual Convention and for your willingness to consider the concerns we raised regarding the issuance of demand letters pursuant to 24 CFR § 203.402(g)(2). We appreciate the rescission of the demand letters as detailed in the November 13 letter to the industry from the Director of Single Family Asset Management. MBA believes that the long-term viability of the FHA insurance program depends on an effective partnership between HUD and mortgagees, and we are pleased to continue our close working relationship as we address these remaining issues.

In our meeting, you explained that HUD was in the process of reassessing the circumstances surrounding demand letters and that HUD would release a Mortgagee Letter to provide further resolution upon the conclusion of this evaluation. MBA feels strongly that any demand activity by FHA or its Mortgagee Compliance Monitor (MCM) should be prospective for new activities and based solely on the statutory language. As you continue to evaluate these issues, our members offer the following recommendations for your consideration.

I. Demands should be prospective

FHA policies and enforcement actions should be clear, consistent, and transparent. As such, FHA should provide mortgagees with advance notice of any intended change in policy or practice. This notice should ensure that mortgagees have a reasonable amount of time to align processes with any new directives and to implement the necessary procedural changes. Denying reimbursement for protection and preservation expenses after the conveyance deadline is a departure from FHA's longstanding pattern and practice and should only occur, if at all, after clear guidance is provided, and only on a prospective basis.

In recent years, mortgagees have been required to take on responsibilities to groom

properties for conveyance beyond those required by the regulation. Mortgagees have been able to meet these additional requirements because HUD generally grants additional time and reimburses the costs of these additional services, even if they occurred after the conveyance timeframe. This results in the conveyance of properties in much better condition with fewer problems. Should FHA decide to alter these practices, it should only do so prospectively for future defaults and only after issuing a formal Mortgagee Letter that includes clear directives, requirements, and guidelines for allowable extensions of the conveyance deadline. FHA should also ensure that mortgagees are not punished for projects in process at the time of this guidance.

II. Demands should be based on statutory requirements

24 CFR § 203.257 establishes the Code of Federal Regulations (CFR) as the basis of the insurance contract between HUD and the mortgagee. Demands for reimbursement of advances for paid claims should adhere to these established requirements as a baseline. Reimbursement for taxes and insurance are specifically addressed in 24 CFR §§ 203.402(a) and (c), respectively. The language in these sections is clear as to the reimbursement of taxes and insurance through the conveyance date. Although there has been some discussion that taxes and insurance could be included within 203.402(g) as an “operating” cost, such a reading would render sections (a) and (c) unnecessary and redundant. Advances for taxes and insurance should instead be paid in accordance with the statute’s plain language, conforming to longstanding HUD practice.

III. Demands should not conflict with policy direction

While the CFR establishes a baseline, HUD routinely informs mortgagees of changes in FHA operations, policies, and procedures through the issuance of Mortgagee Letters (ML). In addition, mortgagees are subject to FHA oversight and periodic audits, which serve to identify gaps between FHA policy and mortgagee practices. The guidance provided through these channels supports the process mortgagees have been using to convey properties. FHA should not seek reimbursement for advances where such demands conflict with its own prior policy direction.

24 CFR §§ 359 & 402(g) establish the deadline to convey as the end point for certain advances. However, through subsequent policy directives, HUD has provided alternate deadline language:

- ML 2002-10 allows claims for reimbursement of property preservation expenses up to the conveyance;
- MLs 2008-31 and 2010-18 allow claims for reimbursement of property preservation expenses up to the date the deed is recorded;
- HUD Handbook 4330.4 REV-1 provides an example in which a claim includes debris removal occurring after the deadline to convey. The only penalty in the example was loss of interest.

The totality of these regulations regarding the payment of advances associated with

conveyance claims is ambiguous. This ambiguity led the industry to seek clarification from HUD on their intent regarding the reimbursement of expenses relative to the date of conveyance. The Servicing Team Leader in the Office of Single Family Asset Management provided guidance to servicers that: 24 CFR § 402(g)(2) had unintended consequences with regards to property preservation action and reimbursement; and HUD's intent was to ensure that all required preservation and protection actions required were taken and reimbursed. Specifically, HUD communicated that its claims staff had been instructed to pay claims for work performed, and that reimbursement of these expenses would not result in post-claim reviews. HUD should not issue retroactive demands for reimbursement of advances incurred and claimed by mortgagees in accordance with HUD's communicated expectations regarding ambiguous regulations.

IV. Historical practice

HUD has consistently audited mortgagees for compliance with HUD guidelines and expectations. Specifically, claim audits have reviewed mortgagee expenses for both eligibility and amounts. Consistent with the direction provided by a HUD official, until the recent demand activity, servicers were never penalized during post-claims reviews or QAD servicing reviews for claiming expenses required by HUD that may have occurred after the deadline to convey. The lack of findings on post-claim reviews and servicing audits was intentional and supported the policy guidance provided to the industry.

If FHA decides to alter its reimbursement practices, mortgagees must have proper notice in order to make appropriate changes to their operational practices and claims processes. FHA should not issue demands for reimbursement of advances which it has historically reimbursed unless and until mortgagees receive sufficient notice that these practices will change.

V. Timeframes should be clearly defined

24 CFR § 203.402(g)(2) provides for reimbursement of expenses incurred "for the purpose of protecting, operating, or preserving the property, or removing debris from the property prior to the time of conveyance required by 203.359." The plain language of this section focuses solely on the conveyance deadline. However, mortgagees have received demand letters seeking repayment of expenses that go beyond the referenced deadline, in some cases going back to the reasonable diligence timeframes of 24 CFR § 203.356. A separate provision, 24 CFR § 203.402(k), establishes the penalty for failing to meet those timeframes, and includes only the curtailment of debenture interest. FHA should provide clear guidance to ensure that these two timeframes are not conflated.

Conclusion

MBA appreciates the opportunity to provide recommendations to FHA in support of its upcoming Mortgagee Letter. A clear process that ensures that all parties are aware of the requirements and restrictions going forward will benefit the conveyance process and everyone involved. To that end, if HUD determines it is necessary to alter its

reimbursement practices, mortgagees must receive ample notice and time to change their operational practices and claims processes. Such changes, if necessary, should only be implemented prospectively, and any attempt to issue such demands retroactively would have a chilling effect on the program as a whole.

As discussed previously, MBA is also in the process of gathering detailed data from its members regarding the benefits of increasing the conveyance timeline from thirty to sixty days and will provide that information to FHA as soon as possible.

We welcome the opportunity to discuss our recommendations with you and your staff at your earliest convenience. Please contact me at jsnook@mba.org or (202) 557-2861.

Sincerely,

A handwritten signature in black ink, appearing to read "John Snook". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

John Snook
Director of Loan Administration Policy
Mortgage Bankers Association

cc:

Ms. Ivery Himes, Director, Single Family Asset Management
Mr. Matt Martin, Director, HUD's National Servicing Center