

April 25, 2022

US Department of Housing and Urban Development
451 7th Street S.W.
Washington, DC 20410

Re: Mortgage Letter 2022-06: Establishing the Claims Standard for Reasonable Payments for Property Preservation and Protection Costs

Ms. Kolluri and Ms. Joseph,

The Housing Policy Council (HPC)¹ and the Mortgage Bankers Association (MBA)², on behalf of our member companies, and the National Community Stabilization Trust (NCST)³ welcome the opportunity to offer comments on the Federal Housing Administration's (FHA) Mortgage Letter 2022-06, which established allowable claims payments for property preservation and protection (P&P) expenses. Both the servicing industry and policy advocates who monitor this sector appreciate the FHA's engagement with stakeholders to define the property preservation and protection timeframe. Like FHA, we want clear, operationally feasible property disposition standards that ensure HUD's lien interests are protected and limit the extent to which vacant or abandoned properties blight neighborhoods.

In that spirit, we want to address a potential policy interpretation that has been introduced through the publication of ML 2022-06. Specifically, we are concerned that, in establishing a clear P&P period, HUD has unintentionally eliminated its commitment to reimburse servicers for expenses that occur *prior to*

¹ The Housing Policy Council is a trade association comprised of the leading national mortgage lenders and servicers, mortgage and title insurers, and technology and data companies. HPC advocates for the mortgage and housing marketplace interests of its members in legislative, regulatory, and judicial forums. Our interest is in the safety and soundness of the housing finance system, the equitable and consistent regulatory treatment of all market participants, and the promotion of lending practices that create sustainable homeownership opportunities in support of vibrant communities and long-term wealth-building for families. For more information, visit www.housingpolicycouncil.org.

² The Mortgage Bankers Association (MBA) is the national association representing the real estate finance industry, an industry that employs more than 390,000 people in virtually every community in the country. Headquartered in Washington, D.C., the association works to ensure the continued strength of the nation's residential and commercial real estate markets, to expand homeownership, and to extend access to affordable housing to all Americans. MBA promotes fair and ethical lending practices and fosters professional excellence among real estate finance employees through a wide range of educational programs and a variety of publications. Its membership of more than 2,100 companies includes all elements of real estate finance: independent mortgage banks, mortgage brokers, commercial banks, thrifts, REITs, Wall Street conduits, life insurance companies, credit unions, and others in the mortgage lending field. For additional information, visit MBA's website: www.mba.org.

³ The National Community Stabilization Trust (NCST) is a national non-profit that supports families and communities by restoring distressed single-family homes, strengthening neighborhoods, and increasing sustainable, affordable homeownership. NCST does this by facilitating sales of distressed homes to community-based partners, providing technical assistance and capital for single-family rehab, and conducting federal policy advocacy grounded in our knowledge of local housing markets.

beginning the foreclosure process, potentially leaving servicers financially exposed for securing and maintaining vacant and abandoned properties. This would also be inconsistent with existing regulation.⁴

ML 2022-06 establishes a clear standard for when HUD will reimburse servicers for P&P expenses under the most common set of circumstances. It defines this period as follows: “HUD will reimburse Mortgagees up to the Maximum Property Preservation Allowance in Appendix 7.0, or as permitted by HUD as approved over-allowables, for P&P actions so long as: the actions are performed during the P&P period, even if the Mortgagee renders payment after conveyance.” This replaces language in the FHA Handbook that previously said that HUD will reimburse servicers for “P&P actions so long as the actions are performed before the date of conveyance.”⁵

The ML then goes on to define the P&P period to mean the following, “the P&P Period begins on the date of commencement of the Reasonable Diligence Time Frame and continues until the end of the date established based on the aggregate calculation of the total number of days in the Reasonable Diligence Time Frame (Appendix 6.0) and the Conveyance Time Frame (III.A.2.v.ii) or CWCOT time frame (III.A.2.t.ii(H)).” The ML also specifies that “the Reasonable Diligence Time Frame starts on the earlier of: the date the first legal action (Appendix 6.0) should have been filed; or the actual date the first legal action was taken.”

We understand these three segments of the ML were provided to establish a clear timeline where HUD commits to reimbursing servicers for P&P expenses that occur between the filing of the first legal action and the conveyance deadline. However, servicers are concerned that by starting the P&P reimbursement timeline at commencement of the first legal action and eliminating the commitment to reimburse for expenses incurred “before the date of conveyance.”⁶ HUD has unintentionally signaled that it will not reimburse servicers for the required maintenance of properties prior to initiating the first legal action.

To be clear, HUD has not wavered from its very clear expectations that servicers are required to take action to preserve properties during the default period, and prior to the first legal action, when borrowers voluntarily move prior to foreclosure, leaving properties vacant. Page 1073 of the Handbook says, “the Mortgagee must preserve and protect Properties that are the security for FHA-insured Mortgages that are in Default or presently in foreclosure. The Mortgagee is responsible for the management, scheduling, and execution of all activities and actions taken to preserve, secure, maintain and protect the Property, regardless of the amount that HUD may reimburse.”

The new Handbook does not actually say that servicers will *not* be reimbursed for allowable expenses during the default period prior to the first legal action. However, the previous Handbook committed HUD to reimbursing servicers for allowable expenses “before the date of conveyance,” and the fact that this language has now been eliminated creates the possible interpretation that HUD’s commitment to reimbursing these expenses has changed.

⁴ 24 CFR 203.402(g)(2) permits the reimbursement of reasonable payments made by the mortgagee . . . for the purpose of protecting, operating, or preserving the property, or removing debris from the property prior to the time of conveyance . . .

⁵ See Attachment 1

⁶ See Attachment 1

Even if that is not the intent of current HUD leadership, we have concern that an unwritten commitment to reimburse these expenses, with no Handbook language obligating it, could potentially change over time, as new leadership comes into place, or as auditors question servicing expenses, or even when future technology platforms are developed by people who are unaware of this unwritten commitment.

We know how important the obligation is to protect HUD's lien interest, secured by the real estate collateral, as well as to prevent community blight and will continue to ensure that properties that are in default are preserved and protected. However, as we are confident that is not HUD leadership's intent, we ask you to issue a revised version of ML 2022-06 that makes this clear. There are many ways to do this, but one suggestion is to simply affirm that "Additionally, HUD will reimburse the Mortgagee for allowable P&P expenses incurred during the default period, prior to the actual date the first legal action was taken or the date the first legal action should have been filed, when such activities are necessary to secure vacant properties." Alternatively, the highlighted language in Attachment A could be reinstated. Regardless, this simple addition to the ML will not give servicers any new rights or opportunities to claim additional reimbursement of expenses. Instead, this will simply reaffirm what has been the long-standing policy of HUD and eliminate any residual uncertainty to FHA's commitment to reimburse servicers to preserve and protect FHA properties and communities.

Thank you for the opportunity to comment on the changes to the Handbook and to provide the above recommendations on an important servicing issue. We look forward to working with HUD on these issues and others as part of our broader body of work intended to bring greater certainty and clarity to the FHA single family program, to expand lender participation and consumer access, and to protect communities from blight whenever possible. Should you have questions or wish to discuss this issue further, please contact Matt Douglas at matt.douglas@housingpolicycouncil.org, David Sanchez at dsanchez@stabilizationtrust.org, or Brendan Kelleher bkelleher@mba.org to discuss next steps.

Yours truly,

Housing Policy Council

Mortgage Bankers Association

National Community Stabilization Trust

Prior Handbook Language (pg. 952)

(D) Property Preservation and Protection Costs

(1) Standard

HUD will reimburse Mortgagees up to the Maximum Property Preservation Allowance, or as permitted by HUD as approved over-allowables, for Property P&P actions so long as:

- the actions are performed **before the date of conveyance**, even if the Mortgagee renders payment after conveyance; and
- the actions are performed in accordance with HUD guidance.

See [Appendix 7.0](#) – Maximum Property Preservation Allowances (applies to Servicing only) for Maximum Property Preservation Allowances per specific action and per Property.

The Mortgagee may not request reimbursement for any costs related to obtaining bids for P&P actions.

New Handbook Language:

ii. Computation of Claim Amount

(D) Property Preservation and Protection Costs

(1) Definitions

P&P Actions are maintenance, security, and repair work required by HUD to ensure the Property meets HUD's conveyance condition standards.

P&P Costs do not include real estate taxes and hazard insurance premiums.

The P&P Period begins on the date of commencement of the Reasonable Diligence Time Frame and continues until the end of the date established based on the aggregate calculation of the total number of days in the Reasonable Diligence Time Frame (Appendix 6.0) and the Conveyance Time Frame (III.A.2.v.ii) or CWCOT time frame (III.A.2.t.ii(H)).

(2) Standard

HUD will reimburse Mortgagees up to the Maximum Property Preservation Allowance in Appendix 7.0, or as permitted by HUD as approved over-allowables, for P&P actions so long as:

- the actions are performed during the P&P period, even if the Mortgagee renders payment after conveyance; and
- the actions are performed in accordance with HUD guidance.

The Mortgagee may not request reimbursement for any costs related to obtaining bids for P&P actions.