

## **National Property Preservation Conference 2004**

### **Summary of HUD Sessions I through IV**

*Thursday, November 4, 2004*

#### 1. New M&M Contractors and Contract

The first topic on the HUD session agenda was the **new M&M contracts and the new contract awardees**. Laurie Maggiano began by introducing the four REO Directors from the HOCs: Tom Rose, Nancy Sullivan, Janice Cooper, and Cheryl Walker, who will be the people primarily responsible for overseeing the M&Ms. Laurie also introduced Wanda Sampedro, Director of the Office of Asset Management and Disposition.

Laurie then provided a brief overview of the new contract. Laurie noted that HUD had gone from recognizing 16 separate geographic areas to recognizing 24. Eighteen of the newly defined areas' contracts have been awarded to 11 different contractors; one area has not yet been awarded, and five other areas are currently being contested. Laurie noted that all but one of the new contractors are small or disadvantaged businesses.

The new contract establishes a new Work Performance Statement. The M&Ms are charged with three primary tasks: property management; property marketing and sales; and assuring mortgagee compliance. The servicers were encouraged to go to the HUD web site and review the section of the contract dealing with mortgagee compliance, pages 40 through 49.

Changes include formally stating the requirement that M&Ms accept a property conveyed with less than \$2500 worth of damages; a reduction in the amount of time the M&M has to respond to a mortgagee's preservation request, from 10 days to 5 days; and a program of performance incentives and disincentives. HUD will evaluate 15 key indicators of performance, four of which have to do with responding to mortgagees. HUD has implemented these new policies to make it easier for servicers to assure they remain in compliance with HUD's guidelines and requirements.

To reduce or do away with reconveyances and delays for smaller matters, HUD will now reimburse M&Ms for minor conveyance-condition work, like grass cuts, that they may do because the work was not done by the servicer prior to conveyance. HUD will, however, track the frequency with which these issues occur, and if a servicer appears to have a pattern of failing to complete routine conveyance work, HUD will report this non-compliance to the servicer's senior management.

The M&Ms are now required to maintain a web-based tracking system that HUD calls the EMS—the Electronic Monitoring System. The EMS will follow requests, response time, file documentation, etc. and will be regularly monitored by HUD. HUD advised that they will welcome feedback, suggestions, and continued collaboration from the M&Ms, the servicers, and others in the industry.

At this point, Marlene Robinson was introduced as the new Principal GTR. (There is also a new Principal Contracting Officer, Frank Slezak, who was not in attendance at this session.) Marlene's experience includes once working as a subcontractor on an M&M

contract, as well as four years working at HUD. Marlene worked on the contract award committee, and her role as the Principal GTR is to ensure standardization across all the contracts and geographical areas.

The M&M contractors in attendance were then introduced, and it was noted that the conference benefited from representation of all but two of the new contract awardees.

## 2. Interior Inspections

The conversation then turned to **Monthly Interior Property Inspections**. HUD has stated at previous preservation discussion sessions that they expect servicers to perform monthly interior inspections of vacant properties that the servicer has secured, and has pointed to guideline language dating from the 1994 handbook (*4330.4, pages 2-25, 2-26, and 2-27*), stating that inspections must report information such as the presence or absence of functioning appliances, and other information that can only be gained by interior inspection. HUD reiterated this stance during this discussion.

The servicers have previously expressed, and they expressed again in this session, the legal issues and barriers to entering properties. Servicers are concerned with minimizing the risk of litigation and with ensuring the safety of inspectors sent to perform inspections. HUD stated again, however, that interior inspections are required to prevent deterioration/progressive damages. HUD's position is that servicers who choose not to perform interior inspections do so at their own peril.

The servicers asked if HUD was considering an increase in cost allowables for interior inspections. *HUD has reviewed this matter with its contractor, DD&L, and is considering pricing changes.*

## 3. 25- to 35-Day Time Frame

Next there was discussion about **Claiming Inspections Completed Outside the 25- to 35-Day Time Frame**. HUD restated that the purpose of the time frame was to assure that inspections are completed roughly 30 days apart, not at the beginning of one month and the end of the next. Compliance with the guidelines therefore means performing all inspections inside that time frame. Moreover, reimbursement will not exceed 12 inspections per year.

However, inspections performed on the 24<sup>th</sup> or 36<sup>th</sup> day, for example, are still claimable. The danger in inspecting outside of time frame is increased exposure to liability: if any damages are discovered and the servicer is found to have been out of compliance on inspections, the damage *will be deemed mortgagee neglect*.

A question was raised about whether FEMA inspections are claimable in addition to regular monthly inspections. *HUD advised that they are not claimable* at this time, but HUD will review this issue again, along with the issue of alternate schedules for properties in "Hot Zones."

#### 4. First-time Vacancy

With that, the discussion turned to **first-time vacancy** issues: FTV date, and the documentation requirements upon finding FTV. *The FTV is the date the servicer enters the property and confirms vacancy, not the date that an exterior inspection of the property concludes that the property appears vacant.*

HUD noted that the FTV finding triggers the timeline to initiate foreclosure: 120 days from the date of vacancy. This goes to the importance of documenting how the FTV was determined. There was a request for clarification about properties which are vacant but not abandoned, where the borrower is not living in the house but has left the property full of personals, visits the property regularly, etc. HUD allowed that, as long as the servicer retains documentation of contact with the borrower and the borrower's expressed intent to maintain, this circumstance need not trigger the FTV. There was an inquiry about what to do in the case of occupancy by vagrants or other adverse occupants. HUD responded that it is the servicer's responsibility to protect against adverse occupancy of the asset, and so such circumstances will not change the FTV date.

HUD also stated again that any damage that is not thoroughly documented at the time of FTV will be assumed to be due to the servicer's failure to preserve and protect the asset. Asked about determining whether FTV is the date of the exterior inspection reporting that the property appears vacant or the date the servicer enters the property and confirms vacancy, HUD leaned toward the second date, stressing that the servicer must assure that the initial secure takes place promptly upon discovery of apparent vacancy. HUD suggested 24 hours as a reasonable amount of time.

#### 5. Hot Zones

The next topic for discussion had to do with **additional compliance inspections and monthly/weekly hot zones inspections.**

HUD was asked how HUD identified "hot zones" and whether servicers should expect additional zip codes to be added. HUD noted that ML 03-05 had added some additional zips, and 04-07 removed some. The servicers asked whether additional inspections would be claimable in an area where the guidelines require inspections "at least monthly," and the servicer believes the area is sufficiently high-risk that more frequent inspections are advisable to protect the asset. HUD indicated that additional inspections are claimable only where regional variations require them. HUD also noted that *where more frequent inspections are required by regional variations, the variations should explain whether or not to continue with such more frequent inspections following winterization.* HUD noted, however, that it is their expectation that an effective winterization will prevent freeze damage.

#### 6. 200-Mile Radius

The **200-Mile Radius** issue was raised for discussion. HUD commented that this is a servicing requirement, not a preservation requirement. HUD has always held that this section of the code was meant to refer to a servicing office, not an origination branch, preservation branch, or other location unlikely to have qualified loss mitigation staff. Moreover, the regulation was written before the business model in the industry changed, with so many more nationwide servicers. HUD is therefore working on a proposed rule

that will modify this language to express HUD's intent that the face-to-face inspection is required only when the property is located within 200 miles of a loss mitigation branch.

Asked whether a certified letter advising the borrower of loss mitigation options and requesting an appointment would be accepted as compliance with the current regulation, HUD advised that at present that is not considered sufficient. The matter is under review, though, and HUD is looking into all options.

#### 7. Resecuring Within Maximum Allowable Securing Fee

The discussion moved on to **securing** issues. HUD noted that the one-time securing fee was renamed the **Maximum Allowable Securing Fee** in ML 03-05, to clarify that the figure is an overall cap, not a flat fee. HUD also stated that **resecuring that can be accomplished without exceeding the maximum allowable fee** may be performed without seeking additional approval.

HUD advised that the M&Ms will be responsible for deciding what expenditures are reasonable and necessary. Servicers asked about appropriate action to secure an individual property that is identified as high risk, though it may not be located in a recognized high-risk area. HUD suggested that the M&Ms will have to apply their discretion to such cases and make a determination as to what is reasonable and necessary.

#### 8. Temporary Emergency Repairs Allowable

HUD also clarified that the **Temporary Emergency Repairs Allowable** is applicable to roof repairs only. *A separate cost schedule has been created (see ML 2003-05) to reflect temporary measures to protect the interior of the property from damage caused by leaking roofs. These temporary repairs, in the form of patchwork/covering or replacing loose shingles, should be performed promptly.*

Servicers who asked whether they could exceed the allowable if the repairs were absolutely urgent to prevent serious damage were advised to call the M&M from the property and advise that they need emergency approval, escalating the question to more senior staff as necessary for an immediate response.

#### 9. Photo Documentation at Initial Secure

HUD stressed again the importance of thorough **photo documentation** of all emergency repairs, all work completed, all damages, and everything else discovered at a property. A complete audit trail is the servicer's best protection and defense in the event of a dispute. It was confirmed that photos to document work per overallowable requests should be bid with the overallowable request: photos over the 45 allowable photos are not claimable unless pre-approved. HUD also warned that the cost allowable for photos is under review, as technological advances have dramatically reduced the cost of providing photos. *HUD is considering pricing changes.*

As for how to apply the 45-photo limit to multi-unit properties (per unit or per property), HUD indicated that the intent had been to set a limit of 45 photos per file, but they said they would take this question under advisement.

#### 10. Debris Removal

Turning to **debris removal**, brief discussion of how to distinguish between personals and debris on the property exterior led again to the conclusion that this is often a judgment call and an issue that must be decided on a case-by-case basis. Code enforcement offered the suggestion that servicers check local laws for an ordinance prohibiting illegal outdoor storage; others suggested that with pre-sale properties, anything and everything on the property exterior should be stored in a safe place until the property goes to sale, in order to minimize exposure to liability.

**Interior debris** is to be removed only if it poses a hazard to health and safety—generally understood to mean only items that pose an infestation risk or hazards as defined by local ordinance. Extermination services when pests/vermin are discovered do require approval. HUD said again that with good judgment and good documentation, 99% of the time the services will not be disputed. Servicers should proceed to remove qualifying hazards within the allowable. HUD advised that there are no immediate plans to return to a requirement that properties be conveyed in broom-swept condition, although the issue is being given consideration.

#### 11. Second Bids

Servicers asked what guidance the M&Ms have been given regarding **second bids**, commenting that some M&Ms are requesting more than two bids. The REO Directors advised that the M&Ms should only ask for additional bids if the bids they have received genuinely appear unreasonable or do not appear to have been independently prepared or secured. They encouraged servicers once again to provide thorough documentation with all bids and requests for approval.

Servicers pointed out that the guidelines require second bids only for debris removal requests, but the REO Directors advised that it is up to the M&M to determine what is a reasonable and properly documented request.

*HUD advised that the **cost of second bids** is not reimbursable, as HUD has not yet seen any evidence from the industry that the cost of second bids is an excessive burden on servicers.* They are willing to review any information that shows the cost of second bids creates an undue burden.

#### 12. Denied or Cut Bids

Servicers asked for guidance with regard to **denied or cut bids**: some M&Ms tend to “cherry-pick” items from different bids to arrive at a lower figure for approval, or to obtain lower bids from their own contractors as evidence that the servicer’s bids are out of line. It was pointed out that M&Ms are not held to the same bidding system as servicers and their field service providers, so the servicers question whether those bids are actually comparable. HUD responded that the M&Ms may and should set the cap for what is reasonable and customary for work in their region. They cannot compel servicers to use contractors that the M&M obtains lower bids from, though they can recommend or refer the contractor who will perform the work for the approved amount.

It was reaffirmed that M&Ms denying bids must provide the servicer with an explanation of the denial. If servicers find that they are receiving blanket denials with no explanation, they should refer the matter to the GTR for review.

Servicers also requested that M&Ms **clarify bid denials**, advising whether the bid was denied because the work is believed to be unnecessary at that time or because the M&M does not consider the work reimbursable. HUD advised that this is a training issue that will be addressed with the M&Ms, and they will be instructed to advise whether the work is denied because it is cosmetic, superficial, or unnecessary.

*To reiterate, if bids are denied, the M&M must provide a reason for the denial and provide an approved allowable amount with the name of a service or contractor that will perform the cost for that approved amount. The servicer is not required to use the M&M supplied contractor but can use one of their choosing for that allowed amount.*

Servicers asked whether a counter-bidder selected by the M&M is required to visit the property to provide a bid. HUD advised that this would depend on whether the work to be bid consisted of commonplace tasks or an unusual situation.

### 13. Dump Receipts

There was a question pertaining to **dump receipts** and whether servicers can use dump receipt “forms” if the actual receipt is not available (e.g. if the contractor has dumped a single load containing debris removed from a number of different locations). HUD said simply that the servicer should provide the best available documentation (which includes evidence that material was disposed of properly) as information for the audit trail.

### 14. Winterization

**Winterizations** are expected to be performed only once. If a property needs rewinterization or the winterization needs to be refreshed, servicers must provide documentation of the reason the rewint is necessary.

Discussion of **cost issues**, particularly as concerns wet/radiant heat winterizations, prompted HUD to advise that they will not approve **partial winterizations** (system shut-down per 97-31 specs), as they do not believe these are sufficient protection. Servicers were advised that if a system truly cannot be winterized per the guidelines within the allowable, they should contact the M&M at once to request emergency approval.

HUD stated that winterization photos are not claimable, but if the file is audited, the servicer must have photo evidence proving the winterization was completed properly. Servicers asked why the photos are not claimable if they are required for an audit, and HUD suggested that that was another question they could take under advisement and revisit during a best-practices discussion.

### 15. M&M Response Time to Servicers' Bids and Requests

There was some discussion of **bids for preservation work and M&M response time**. The new contract requires M&Ms to respond to servicers' requests for approval of preservation work within five days. (It was noted that contractors operating under the old contracts still have ten days to respond.) HUD advised servicers that delayed responses should be elevated to the GTR for the appropriate contract for review, and from there to Marlene Robinson if the matter cannot be resolved. HUD further advised that servicers

should not assume that silence indicates consent: servicers who assume they have approval because they have not been denied proceed at their own risk.

#### 16. Property Condition at Conveyance; Repairs and Reconveyance

Discussion about **property condition at conveyance, and repair and reconveyance**, led to a question about whether HUD will ever allow servicers to **perform work post-conveyance to prevent a reconveyance**. HUD advised that liability issues prohibit HUD from allowing servicers to perform any work while the property is in title to HUD.

#### 17. Work Performed after Conveyance or Scheduled Convey Date

**Work performed after the conveyance deadline on properties that did not convey** by the said deadline will be reimbursable if the mortgagee obtained an extension. **Work approved before the conveyance deadline but completed after** is a slightly cloudier issue. HUD is reviewing this with their general counsel and hopes to issue a clarifying mortgagee letter soon; in the meantime, the general opinion is that this should be okay as long as the mortgagee can document a legitimate reason for the delay on completing work.

#### 18. Requests for Extensions

With regard to **requests for extensions, if an M&M does not reply in a timely fashion**, the servicer has a duty to follow up on the request and to escalate as necessary in order to show that the servicer exercised due all diligence.

#### 19. M&M Signatures on Overallowables

For the present, HUD will continue to require **M&M signatures on approved overallowables**. As technology continues to advance, they will look into the acceptability of e-signatures of similar confirmation, but the signature will continue to be required until further notice.

#### 20. Appeals Process

HUD stated that the **appeals process** is clearly spelled out in the contract and in mortgagee letters. The servicer has 10 days from the M&M's notice of intent to reconvey. (It was noted that M&Ms may recommend reconveyance, but it is the HOC that says yea or nay.)

With regard to **denials of lender requests for extensions or for bid approval**, the lender has 10 days from the denial to appeal to the M&M. The M&M has one day to either rescind the denial or forward the matter to the GTR for review. While the number of M&M decisions that are appealed and the percentage of those that are upheld or overturned will not be one of the specific measures of M&M performance per se, the GTRs will monitor these statistics.

HUD indicated that hazard insurance claims filings and recovery will be watched closely in the future. Timely and successful filings may be considered in evaluating servicer performance, though the processes and best practices associated therewith will have to be reviewed at future best practices meetings.

M&Ms are required under the new contract to have an office in their contract area(s), so HUD expects M&Ms to be able to apply good judgment to determining when it may not be economically feasible to repair a property. Servicers who believe they have received a truly inappropriate decision in this respect should elevate the matter to the GTR.

Where hazard claims filings will cause delays in the standard time frame, servicers are urged to request extensions and provide all reasons for the delay.

#### 21. Grass Cuts

On the topic of lawn maintenance, it was agreed that servicers should advise their vendors of anticipated conveyance dates and of any change in the anticipated conveyance date, so that a vendor cutting on a preset schedule can assure **a cut is completed within the two weeks prior to conveyance.**

*HUD is considering policy changes to allow reimbursement for an initial cut per season, instead of the current policy which allows for one reimbursement per 12-month cycle. Regarding multiple recut bids for properties in excess of 15,000 square feet, HUD is considering policy change to reflect approving multiple recuts on a monthly basis during the cutting season.*

#### 22. Conveying with Damages

An issue of concern under the topic of **Property Condition at Conveyance** was whether a servicer may **convey, without prior approval, a property with damages** that are not attributable to either mortgagee neglect or one of the major perils. HUD indicated that this should be acceptable as long as the servicer identifies the damages as non-surchageable in the comments section of the claim and can provide sufficient documentation to prove the damages are not attributable to mortgagee neglect.

**Documentation of non-surchageable damages** must be thorough, complete, voluminous if necessary, to prove that there has not been mortgagee neglect. Any damages not clearly identified in the documentation from initial secure will be deemed mortgagee neglect.

A servicer noted that in cases of damage resulting from some major perils, the claim may be subject to very large deductibles, and the cost to repair may be less than the deductible. HUD's response was that HUD is an insurance company, and it insures within certain limits. Natural disasters are excluded from coverage. The servicer assumes this risk and is therefore obliged to either repair the damages, even if the repair cost is out-of-pocket, or reduce the claim by the amount dictated by HUD.

Some damaged properties may not be worth repairing after damage by, for example, this season's round of hurricanes. HUD will review such properties on a case-by-case basis and make a determination about whether repair is economically reasonable.

#### 23. Mold

The discussion turned to the issue of **mold**. If a property is discovered at FTV to have a mold condition, the servicer must identify the source of water that is causing the mold growth, take steps to resolve that issue and halt the progression of mold, and notify HUD

that the property will be conveyed immediately with mold damages. If there are constraints that prevent conveying right away, or if the property is vacant but still in pre-sale, the servicer should maintain to the best of their ability and take all necessary steps to prevent the advance of the mold condition. The REO Directors do not advise that servicers immediately obtain bids for professional remediation. Extreme cases should be evaluated on a case-by-case basis.

HUD stressed that in this as in all things, proper documentation of property condition and prompt attention to any issues are essential to protecting the property *and* the servicer's interests.

#### 24. Reconveyances and Claim Reductions; Responsibility for Maintenance During Appeal/Reconveyance Process

Laurie Maggiano noted at this point that, of the 78,000 properties on which HUD paid conveyance claims, only 13 reconveyance disputes were elevated to and had to be adjudicated by her office. She indicated that those major reconveyance issues were properties with multiple issues, not one single dispute. She felt that these figures demonstrate that the process is working very well overall.

**Reconveyances and claim reductions** occur when HUD determines that the servicer failed to comply with guidelines. Failure to inspect, failure to initiate foreclosure on a timely basis, failure to promptly identify vacancy, failure to take timely and appropriate action to secure and protect: if any of these deficiencies are discovered in the history of a damaged property, HUD will attribute the damages to mortgagee neglect.

As noted earlier, going forward, non-compliance issues having to do with conveyance requirements will be handled differently than they were under the old contract. If a servicer fails to winterize, or remove debris, or cut grass, etc., under a certain threshold, HUD will reimburse the M&M for performing the conveyance work that the servicer failed to do, HUD will notify the servicer's upper management of the incident. If a servicer believes the M&M's claim of work not completed is incorrect, they should by all means respond to HUD and provide whatever documentation they possess to support their position, and HUD will review the servicer's statement and evidence alongside the M&M's initial inspection report.

Some disputes have centered on the M&M's assertion that an eviction of personal property should have been performed, while the servicer maintains the remaining items were debris and were left in the property in compliance with HUD regulations. HUD recommended that the servicer might look to local law to see if there is guidance about **personal property vs. debris**. HUD also suggested that it is always beneficial to include information in the comments that may clarify such matters: the servicer should note that the items were considered debris and state the basis for that determination, etc.

Open discussion included an inquiry about the standard for an item deemed to be **mortgagee neglect that the servicer agrees to repair**. HUD confirmed that such repairs are expected to be to convey condition, not to marketable condition.

If a servicer accepts reconveyance, but the re-deeding process takes weeks or longer, HUD confirmed that the M&M, who is in title until the property is re-deeded, is responsible for maintaining the property and assuring that it sustains no further damage.

HUD also advised that HOCs will consider on a case-by-case basis a servicer's offer to "buy out" of reconveyance.

#### 25. M&M Initial Inspection

It was confirmed that the M&M contractors are required to do **their initial inspection within 24 hours of conveyance** and must then review the servicer's Part A claim and advise of any problems within 30 days. HUD was emphatic that the M&Ms must and will comply with these time frames, and HUD also noted that they will monitor this performance regularly using the EMS. In the event that an M&M's inspection were to occur late, HUD confirmed that such lateness would seriously undermine any claim they made of mortgagee neglect.

A servicer asked if HUD would make the M&M's initial inspection report available to the servicer in the event of the dispute; HUD will consider this in best-practices discussions down the road.

#### 26. Tarping

There had been a considerable amount of confusion surrounding the issue of **tarping roofs**. Many M&Ms have advised servicers that they will not accept a property with a tarped roof for conveyance, even where the tarping was approved and installed before the new contracts took effect. HUD clarified that they prefer not to have roofs tarped. Servicers should bid to repair if repair cannot be accomplished within the emergency allowable. Obviously tarps may be installed over active leaks pending bid approval if repair is not possible on the spot and further damage may occur, but it is HUD's intention to discourage the tendency to make tarping the first and preferred resort for addressing roof issues. Where extreme conditions may prevent repair, with outbuildings and garages, with dilapidated buildings or any other special circumstance, the issue will be reviewed on a case-by-case basis. The REO Directors did confirm, however, that the M&Ms should not refuse out of hand to allow servicers to convey properties with tarped roofs.

It was briefly suggested that if a roof leak was discovered upon eviction at a post-sale property, the servicer might tarp then and convey at once, and HUD indicated they might have to prepare a formal statement regarding the different actions to be taken when addressing roof issues on post-sale vs. pre-sale properties. It was noted, however, that the servicer would be required under those circumstances to file a hazard claim, which filing would delay conveyance in any event.

The final remarks were by one of the M&Ms, who stressed their commitment to building cooperative relationships, not adversarial ones. The sentiment was echoed by the servicers, HUD, the HOCs, and field service representatives: all agreed that these sessions helped to lay the foundation for business relationships that will be based on communication and cooperative efforts to resolve problems.

With that, the National Property Preservation Conference 2004 HUD Sessions were concluded.