



ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: May 16, 2019

Mortgagee Letter 2019-08

To: All FHA-approved Mortgagees
All Direct Endorsement Underwriters
All FHA Roster Appraisers
All FHA-Approved 203(k) Consultants
All HUD-Approved Housing Counselors
All HUD-Approved Nonprofit Organizations
All Governmental Entity Participants
All Real Estate Brokers
All Closing Agents

Subject Construction to Permanent and Building on Own Land Programs

Purpose The purpose of this Mortgagee Letter (ML) is to provide clarification of and revise policy for Construction to Permanent (CP) and Building on Own Land (BOOL) programs as follows:

- clarify distinctions in policy between each program based on financing structure, and
- revise guidance for use of the Borrower's equity in land for the purpose of satisfying the Borrower's Minimum Required Investment (MRI) in both programs.

Effective Date This guidance may be implemented immediately but must be implemented for mortgages with case numbers assigned on or after June 17, 2019. All policy updates will be incorporated into a forthcoming update of the HUD Single Family Housing Policy Handbook 4000.1 (Handbook 4000.1).

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Public Feedback

HUD welcomes feedback from interested parties for a period of 30 calendar days from the date of issuance. To provide feedback on this policy document, please send any feedback to the FHA Resource Center at answers@hud.gov. HUD will consider the feedback in determining the need for future updates.

Affected Programs

This guidance applies to all CP and BOOL FHA Title II forward mortgages.

Background

The CP and BOOL policy was amended with the implementation of HUD Handbook 4000.1. The policy for each program was amended to separate each program based upon the length of the Borrower's ownership of the land.

This separation simplified the calculation of the mortgage amount for each program by utilizing the established calculations, which varied based upon the length of ownership of the land.

However, FHA has become aware that separating the two programs based on the length of ownership of the land may not adequately take into consideration the other differences in each program.

The other primary difference between each program is the "one time close" feature of the CP program, while the BOOL program contemplates a "two-step close" structure with either separate or builder financed construction and an ultimate FHA "take out" mortgage after construction completion.

Summary of Changes

The Construction to Permanent and Building on Own Land policy is being revised to separate the programs according to the "one time close" versus "two-step close" structure instead of the length of time the Borrower has owned the land. This revision preserves the existing mortgage calculations that vary based on the length of time of land ownership and are now available in either program.

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j. Construction to Permanent (II.A.8.j)

i. Definitions

Construction to Permanent (CP) refers to the construction of a dwelling on land owned or being purchased by the Borrower. The CP program combines the features of a construction loan with that of a traditional long-term permanent residential Mortgage using a single mortgage closing prior to the start of construction.

A construction loan refers to a short-term interim loan for financing the cost of construction.

ii. General Eligibility

The Borrower must have contracted with a builder to construct the dwelling. The builder must be a licensed general contractor.

The Borrower may act as the general contractor, only if the Borrower is also a licensed general contractor.

iii. Property Eligibility

The Borrower must either be purchasing the land at the closing of the construction loan, or already own the land.

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iv. Calculating Maximum Mortgage Amount

The Mortgagee must use the lesser of the appraised value or the documented Acquisition Cost to determine the Adjusted Value.

The maximum mortgage amount is calculated using the appropriate purchase Loan-to-Value (LTV) percentage of the lesser of the appraised value or the documented Acquisition Cost.

The documented Acquisition Cost of the Property includes:

- the builder's price (includes cost of land if being purchased from builder), or the sum of all subcontractor bids and materials (if land is already owned by the Borrower);
- Borrower-paid options and construction costs not included in the builder's price to build;
- closing costs associated with any interim financing of the land, and
- either of the following:
 - the lesser of the cost of the land, or appraised value of the land, if the land is owned six months or less at case number assignment;
 - or**
 - the appraised value of the land if the land has been owned for greater than six months at case number assignment, or was received as an acceptable gift.

For Manufactured Housing, the builder's price to build includes the sum of the cost of the unit(s), the cost to transport the unit from the dealer's lot to the installation site, and all on-site installation costs.

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v. Minimum Required Investment

(A) Standard

The Borrower may utilize any cash investment in the Acquisition Cost of the Property **or land equity** to satisfy the Minimum Required Investment (MRI) **in accordance with Calculating Maximum Mortgage Amount.**

(B) Required Documentation

The Mortgagee must document that the cash investment was from an acceptable source of funds in accordance with TOTAL or **Manual Underwriting** requirements as applicable.

vi. Required Documentation

The Mortgagee must obtain the Closing Disclosure or similar legal document showing the cost of the land and the date of purchase.

The Mortgagee must obtain evidence that the funds used to pay Borrower-paid options were derived from an acceptable source. The Mortgagee must obtain an itemization of the options and expenses, and cost of each item.

The Mortgagee must comply with New Construction requirements.

The remainder of the Construction-to-Permanent guidance is unchanged, and the headings will be renumbered as follows: vii Mortgage Interest Rate, viii. Required Documentation for Closing, ix Escrow Account, x Required Documentation for Endorsement, xi Endorsement, xii Start of Amortization.

k. Building on Own Land (II.A.8.k)

i. Definition

Building on Own Land refers to the permanent financing of a newly constructed dwelling on land owned by the Borrower and may include the extinguishing of any construction loans.

ii. Eligibility

The Borrower must have contracted with a builder to construct the dwelling. The builder must be a licensed general contractor.

The Borrower may act as the general contractor, only if the Borrower is also a licensed general contractor.

iii. Calculating Maximum Mortgage Amount

The Mortgagee must use the lesser of the appraised value or the documented Acquisition Cost to determine the Adjusted Value.

The maximum mortgage amount is calculated using the appropriate purchase Loan-to-Value (LTV) percentage of the lesser of the appraised value or the documented Acquisition Cost.

The documented Acquisition Cost of the Property includes:

- the builder's price or the sum of all subcontractor bids and materials;
- Borrower-paid options and construction costs not included in the builder's price to build;
- interest and other costs associated with a construction loan obtained by the Borrower to fund construction, if applicable; and
- either of the following:
 - the lesser of the cost of the land, or appraised value of the land, if the land is owned six months or less at case number assignment;
 - or**
 - the appraised value of the land if the land has been owned for greater than six months at case number assignment or was received as an acceptable gift.

For Manufactured Housing, the builder's price to build includes the sum of the cost of the unit(s), the cost to transport the unit from the dealer's lot to the installation site, and all on-site installation costs.

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iv. Minimum Required Investment

(A) Standard

The Borrower may utilize any cash investment in the Acquisition Cost of the Property or land equity to satisfy the MRI in accordance with Calculating Maximum Mortgage Amount.

(B) Required Documentation

The Mortgagee must document that the cash investment was from an acceptable source of funds in accordance with TOTAL or Manual Underwriting requirements as applicable.

If the land was given as a gift to the Borrower, the Mortgagee must verify that the donor was not a prohibited source.

The Mortgagee must obtain standard gift documentation for any gift of land.

v. Borrower's Additional Equity in the Property

The Borrower may not receive cash back from the additional equity in the Property, but the Borrower may replenish their own cash expenditures for any Borrower-paid extras over and above the contract specifications and any out-of-pocket expenses not included in the builder's price. The Mortgagee must obtain an itemization of the extras and expenses and the cost of each item.

vi. Required Documentation

The Mortgagee must document the date of purchase of the land by obtaining the Closing Disclosure or similar legal document.

The Mortgagee must obtain evidence that the funds used to pay Borrower paid options were derived from an acceptable source. The Mortgagee must obtain an itemization of the options, expenses, and cost of each item.

The Mortgagee must comply with New Construction requirements.

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Questions

For additional information on this ML, please visit www.hud.gov/answers or call FHA's Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

Signature

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