



ASSISTANT SECRETARY FOR HOUSING –  
FEDERAL HOUSING COMMISSIONER

**Date: October 22, 2020**

**Mortgagee Letter 2020-36**

**To:** All FHA-Approved Mortgagees  
All Direct Endorsement Underwriters  
All Eligible Submission Sources for Condominium Project Approvals  
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

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**Subject**                    **FHA New Construction Requirements**

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**Purpose**                    This Mortgagee Letter (ML) updates the requirements for Federal Housing Administration (FHA) New Construction financing in alignment with the regulatory amendments announced in the 2018 Final Rules that streamlined inspection and warranty requirements.

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**Effective Date**        This guidance may be used immediately for existing cases and must be used for FHA case numbers assigned on or after January 4, 2021.

All policy updates will be incorporated into a forthcoming revision of the Department of Housing and Urban Development (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 feedback to the FHA Resource Center at [answers@hud.gov](mailto:answers@hud.gov). HUD will consider the feedback in determining the need for future updates.

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**Affected Programs**        This guidance applies to the origination of all FHA Title II Single Family forward mortgage programs.

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### **Background**

A series of regulatory and policy changes in 2018 and 2019, designed to streamline inspection and warranty requirements for FHA-insured mortgages, require the U.S. Department of Housing and Urban Development (HUD) to update maximum financing policy for New Construction.

The FHA Inspector Roster requirements, previously codified at 24 CFR 200.170-172, was eliminated by the Final Rule published on July 3, 2018 at 83 FR 31038. The Insured Ten-Year Protection Plan requirements, previously codified at 24 CFR 203.200-203.209, was eliminated by the Final Rule published on December 14, 2018 at 83 FR 64269. The corresponding policy updates removing the FHA Inspector Roster and the FHA Ten-Year Protection Plan requirement were published as ML 2019-04 and 2019-05, respectively. Both ML 2019-04 and 2019-05 were superseded in whole by Handbook 4000.1 issued on March 27, 2019.

As part of the December 14, 2018 Final Rule, 24 CFR 203.18(a)(3) was eliminated. This resulted in FHA no longer mandating a limit to maximum financing of New Construction without Pre-approval. In July 2019, HUD also updated policy requirements in the Single Family Handbook 4000.1, allowing Mortgagees to issue an Early Start Letter in jurisdictions that do not require building permits, if a case number has been assigned.

To ensure that eligible New Construction properties may obtain maximum financing in line with the updated regulations, HUD is issuing this ML to update and clarify policy requirements. These changes include removal of the Early Start Letter and Pre-Approval requirements, consolidation of financing requirements regardless of LTV, provision of alternative inspection options, and updates to documentation requirements.

These updates will be particularly relevant in jurisdictions where building permits are not issued, where Pre-Approval through an Early Start letter is not feasible for commencement of construction on properties without the identification of an FHA borrower, and where builder(s) are therefore unable to obtain Pre-approval of the property before issuance of form HUD 92800.5B.

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### **Summary of Changes**

Changes to HUD's maximum financing policy for New Construction (in Handbook 4000.1, Sections II.A.8.i.i-iv) include:

- Eliminating Early Start Letter and Pre-Approval requirements;
- Consolidation of requirements regardless of loan-to-value (LTV);
- Including Form HUD-92544 Warranty of Completion as a requirement for all New Construction;

- Providing alternative inspections by a third party, who is a registered architect or structural engineer, in the absence of International Code Council (ICC) certified Residential Combination Inspector (RCI) or Combination Inspector (CI); and
  - Updating when Form HUD-NPMA-99-B, New Construction Subterranean Termite Service Record is required to align it with the four acceptable termite treatment applications reflected on the form HUD-NPMA-99-A.
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**Single Family  
Housing Policy  
Handbook  
4000.1**

Sections II.A.8.i.i-iv of the HUD Single Family Housing Policy Handbook 4000.1 will be amended as follows:

**New Construction**

**i. Definitions**

New Construction refers to Proposed Construction, Properties Under Construction, and Properties Existing Less than One Year as defined below:

- Proposed Construction refers to a Property where no concrete or permanent material has been placed. Digging of footing is not considered permanent.
- Under Construction refers to the period from the first placement of permanent material to 100 percent completion with no Certificate of Occupancy (CO) or equivalent.
- Existing Less than One Year refers to a Property that is 100 percent complete and has been completed less than one year from the date of the issuance of the CO or equivalent. The Property must have never been occupied.

FHA treats the sale of an occupied Property that has been completed less than one year from the issuance of the CO or equivalent as an existing Property.

**ii. Eligible Property Types**

The following property types are eligible for New Construction financing:

- Site Built Housing (one- to four-units);
- Condominium units in Approved Projects or Legal Phases;
- Manufactured Housing

**iii. Required Inspections for New Construction Financing**

**(A) Site Built Housing and Condominium units (By Construction Status at Time of Appraisal)**

The Mortgagee must obtain:

**(1) Proposed Construction**

- copies of the building permit (or equivalent) and CO (or equivalent); or
- three inspections (footing, framing and final) performed by the local authority with jurisdiction over the Property or an ICC certified RCI or CI (for Modular Housing, footing and final only); or
- in the absence of such ICC certified RCI or CI, the Mortgagee may obtain three inspections (footing, framing, and final) performed by a disinterested third-party, who is a registered architect or a structural engineer and has met the licensing and bonding requirements of the State in which the property is located.

**(2) Under Construction**

- copies of the building permit (or equivalent) and CO (or equivalent); or
- a final inspection issued by the local authority with jurisdiction over the Property or by an ICC certified RCI or CI; or
- in the absence of such ICC certified RCI or CI, the Mortgagee may obtain a final inspection performed by a disinterested third-party, who is a registered architect or a structural engineer and has met the licensing and bonding requirements of the State in which the property is located.

**(3) Existing Less than One Year**

- a copy of the CO (or equivalent); or
- a final inspection issued by the local authority with jurisdiction over the Property or by an ICC certified RCI or CI; or
- in the absence of such ICC certified RCI or CI, the Mortgagee may obtain a final inspection performed by a disinterested third-party, who is a registered architect or a structural engineer and has met the licensing and bonding requirements of the State in which the property is located.

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4000.1, *cont'd*

**(B) Manufactured Housing (By Construction Status at Time of Appraisal)**

The Mortgagee must obtain:

**(1) Proposed Construction**

- copies of the building permit, (or equivalent) and CO (or equivalent); or
- two inspections (initial and final) performed by the local authority with jurisdiction over the Property or an ICC certified RCI or CI; or
- in the absence of a local authority with building code jurisdiction or ICC certified RCI or CI, the Mortgagee may obtain two inspections (initial and final) performed by a disinterested third-party, who is a registered architect or a structural engineer and has met the licensing and bonding requirements of the State in which the property is located.

**(2) Under Construction**

- copies of the building permit, (or equivalent) and CO (or equivalent); or
- a final inspection performed by the local authority with jurisdiction over the Property or an ICC certified RCI or CI; or
- in the absence of a local authority with building code jurisdiction or ICC certified RCI or CI, the Mortgagee may obtain a final inspection performed by a disinterested third-party, who is a registered architect or a structural engineer and has met the licensing and bonding requirements of the State in which the property is located.

**(3) Existing Less than One Year**

- a copy of the CO (or equivalent); or
- a final inspection performed by the local authority with jurisdiction over the Property or an ICC certified RCI or CI; or
- in the absence of a local authority with building code jurisdiction or ICC certified RCI or CI, the Mortgagee may obtain a final inspection performed by a disinterested third-party, who is a registered architect or a structural engineer and has met the licensing and bonding requirements of the State in which the property is located.

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4000.1, *cont'd*

iv. Required Documentation for **New Construction Financing**

The Mortgagee must obtain and include the following documents in the case binder:

- form HUD-92541, *Builder's Certification of Plans, Specifications, and Site*;
- form HUD-92544, *Warranty of Completion of Construction*;
- required inspections, as applicable;
- Inspections performed by ICC certified RCI or CI or a third-party, who is a registered architect or structural engineer must be reported on form HUD-92051, Compliance Inspection Report (CIR) or on an appropriate State sanctioned inspection form.
- Wood Infestation Report, unless the Property is located in an area of no to slight infestation as indicated on HUD's "Termite Treatment Exception Areas" list:
  - Form HUD-NPMA-99-A, *Subterranean Termite Protection Builder's Guarantee*, is required for all New Construction. If the building is constructed with steel, masonry or concrete building components with only minor interior wood trim and roof sheathing, no treatment is needed. The Mortgagee must ensure that the builder notes on the form that the construction is masonry, steel, or concrete.
  - Form HUD-NPMA-99-B, *New Construction Subterranean Termite Service Record*, is required when the New Construction Property is treated with one of the following: Termite Bait System, Field Applied Wood Treatment, soil chemical termiticide, or Physical Barrier System is installed, as reflected on the HUD-NPMA-99-A. The Mortgagee must reject the use of post construction soil treatment when the termiticide is applied only around the perimeter of the foundation.
- local Health Authority well water analysis and/or septic report, where required by the local jurisdictional authority.
- When a third-party, who is a registered architect or structural engineer is relied upon for required inspections due to the absence of ICC certified RCI or CI, include certification from such inspector that they are licensed and bonded under applicable state and local laws.

*The remainder of the New Construction guidance is unchanged*

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## Mortgagee Letter 2020-36, Continued

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### **Paperwork Reduction Act**

The information collection requirements contained in this document have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) and assigned OMB Control Numbers 2502-0059, 2502-0496, 2502-0525. In accordance with the Paperwork Reduction Act, HUD may not conduct or sponsor, and a person is not required to respond to, a collection of information unless the collection displays a currently valid OMB Control Number.

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### **Questions**

Any questions regarding this Mortgagee Letter may be directed to the FHA Resource Center at 1-800-CALL-FHA. Persons with hearing or speech impairments may reach this number by calling the Federal Relay Service at 1-800-877-8339. For additional information on this Mortgagee Letter, please visit [www.hud.gov/answers](http://www.hud.gov/answers).

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### **Signature**

Dana T. Wade  
Assistant Secretary for Housing –  
Federal Housing Commissioner

**Mortgagee Letter 2020-36, Continued**