U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: 3/2/2020

MORTGAGEE LETTER 2020-03

TO: All FHA Approved Multifamily Mortgagees

SUBJECT: Revision of the Section 223(f) Policy Requiring Three Years of Post-Construction Sustained Occupancy

Purpose

This Mortgagee Letter (ML) and related Housing Notice (HN) revise HUD's policy that applications for refinancing or acquisition of existing properties under Section 223(f) of the National Housing Act may not be accepted unless and until three years have passed since completion of construction or substantial rehabilitation of the property. Applications for refinancing of newly built or substantially rehabilitated properties will now be accepted as soon as properties achieve the applicable programmatic Debt Service Coverage Ratio (DSCR) for not less than one full month. This ML supersedes all previous guidance concerning the time elapsed between construction completion and the date of an application for Section 223(f) mortgage insurance, including the 2016 MAP Guide. To mitigate risks to the FHA Insurance Fund, this ML also outlines limitations that will apply to applications for properties with less than three years elapsed since completion of construction. This ML applies to all applications for mortgage insurance under Section 223(f) except health care properties under Section 232.

Background

Since implemented in 1975, the Section 223(f) program has required that applicants show three years of stabilized property-operating results post construction or substantial rehabilitation. Twice since that time program policy has been temporarily modified to meet program goals when economic conditions decreased the availability of credit. First, the original 1975 Section 223(f) Handbook set forth a Special Eligibility Program that was applicable to recently completed projects, whose construction was started before June 30, 1974, and completed before the end of 1975, to address liquidity shortages then prevailing. A second waiver of the policy was from 2009 through 2013 when HUD responded to the capital market credit freeze then prevailing by waiving the three-year policy.[1]

The program policy is being modified to provide greater opportunities for borrowers to refinance stabilized properties and to facilitate the supply of affordable and workforce housing. The policy change outlined in this ML makes FHA-insured mortgage financing available to

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[1] See ML 2009-06, HN 2009-08, ML 2009-22, HN 2010-05, ML 2010-06, ML 2010-30, HN 2010-19, HN 2011-06, ML 2011-13, HN 2012-12, ML 2012-12, and ML 2013-31

borrowers sooner after construction completion and lease-up.

Revised Project Eligibility for Section 223(f) Mortgage Insurance

As of the date of this ML, applications for Section 223(f) insured mortgages will be accepted by HUD provided that all construction is completed, and the property meets the following underwriting conditions, in addition to those currently set forth in the MAP Guide as part of an application for mortgage insurance, as follows:

1. All projects submitted to HUD for mortgage insurance within three years of issuance of the final Certificate of Occupancy must evidence a minimum Debt Service Coverage Ratio (DSCR) of 1.17 (on the requested insured loan) for market rate projects and 1.11 for projects meeting the definition of Broadly Affordable for a period of three consecutive months prior to loan endorsement. The criteria for Broadly Affordable projects are published in the Federal Register dated March 31, 2016 (24 CFR 266).

2. An income and expense statement commencing from initial occupancy to application submission, as well as a projection of income and expense for the succeeding twelve months.

3. A current rent roll evidencing existing achieved rents as well as rents that were used to underwrite the existing first mortgage.

4. A leasing history of the project commencing from initial occupancy to application submission, as well as the lease-up projection used to underwrite the existing first mortgage.

5. Rent concessions, other discounts and short-term leases (less than 12 months) that are offered by the owner to induce a prospective tenant to enter into a lease must be disclosed and discussed in the Lender's Narrative.

6. HUD will underwrite to actual revenue collected less normalized operating expenses in order to determine when and if the required programmatic DSCR has been achieved.

Cash out may be permitted, subject to the LTV limits of the MAP Guide; however, 50% of the available cash will be held by the lender until such time as the property achieves, for each of six consecutive months, the minimum applicable debt service coverage, inclusive of the months of minimum debt coverage required prior to endorsement.

The Multifamily Accelerated Processing Guide (Housing Guidebook 4430.G, the MAP Guide)[2] will be amended to reflect these underwriting modifications.

[2] See the MAP Guide at https://www.hud.gov/program_offices/administration/hudclips/guidebooks/hsg-GB4430

Policy Assessment

Two years from date of publication of this ML, HUD will conduct a review to assess whether the change is achieving its policy objectives, whether the loans insured under the policy change are furthering HUD's core mission, and whether the overall risk profile of the FHA portfolio is impacted by this change. HUD reserves the right to further modify this policy in response to the findings of this assessment.

For questions about this Mortgagee Letter, contact David B. Wilderman, Director of Technical Support at (202) 402-2803 or Thomas A. Bernaciak, Deputy Director, Office of Multifamily Production, (202) 402-3242.

Paperwork Reduction Act

The information collection requirements in this Mortgagee Letter are already approved as OMB Approval number 2505-0029 for multifamily mortgage insurance application forms, and therefore the Paperwork Reduction Act of 1995 (44 U.S.C. 3501-3520) does not apply. In accordance with the Paperwork Reduction Act, an agency 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.

Brian D. Montgomery
Assistant Secretary for Housing
– Federal Housing Commissioner