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To: Clients and Friends
From: David F. Dulock
Subject: New FHA Requirements for Down Payment Assistance Provided by Government Entities – Mortgagee Letter 19-06

On April 18, 2019, HUD issued Mortgagee Letter 19-06, ([click here](#)) setting forth new documentation requirements for down payment assistance to borrowers provided by government entities for FHA insured mortgage loans. **These new requirements are effective for case numbers assigned on or after April 18, 2019.**

On December 5, 2012, HUD published an Interpretive Rule in the *Federal Register* (77 F.R.72219, [click here](#)) to explain how HUD interprets the borrower's minimum down payment requirements when these funds are being provided by governmental entities – *i.e.*, Federal, State, local governments and their agencies or instrumentalities. Mortgagee Letter 2019-06 (ML 19-06) clarifies documentation requirements for FHA-approved mortgagees regarding the provision of down payment assistance by governmental entities by providing clarification of documentation requirements to demonstrate compliance.

The new documentation requirements apply when government entities provide gifts or secondary financing, or both, towards the borrower's minimum down payment required by the FHA (3.5% of the adjusted value of the property) in a manner consistent with the National Housing Act and HUD Handbook 4000.1. Specifically, ML 19-06's new documentation requirements provide in part that FHA-approved mortgagees must obtain:

- for federal, state or local government agencies, a copy of documentation from a jurisdiction in which the property is located, which granted governmental authority to the entity;
- a legal opinion signed and dated within two years of closing of the transaction by attorneys for the governmental entity stating:
 1. the attorney has reviewed the governmental entity's down payment assistance program; and
 2. either:
 - a) the governmental entity is considered within the jurisdiction in which the property is located to be either a federal, state (as defined in Section 201(d) of the National Housing Act (12 U.S.C. §1707(d)), or local government or agency or instrumentality thereof, as provided in Section 528 of the National Housing Act (12 U.S.C §1735f-6), and 24 CFR 203.32(b) and further clarified in Handbook 4000.1;
 - b) the governmental entity is a federally recognized Indian Tribe operating on tribal land in which the property is located or to enrolled members of the tribe; or
 - c) The governmental entity is a Federal Home Loan Bank;
- evidence that the down payment assistance is being provided by the governmental entity by collecting either:

1. a letter from the governmental entity, signed by an authorized government official, establishing that the funds provided towards the borrower's MRI [minimum down payment required by the FHA] were provided in the governmental entity's governmental capacity in the jurisdiction in which the property is located consistent with its down payment assistance program and that the provision of such funds is not contingent upon any future transfer of the insured mortgage to a specific entity, and a canceled check, evidence of wire transfer or other draw request showing that prior to or at the time of closing the governmental entity had authorized a draw of the funds provided towards the borrower's MRI from the governmental entity's account; or
2. a letter from the governmental entity, signed by an authorized official, establishing that the funds provided towards the borrower's MRI were funds legally belonging to the governmental entity and were provided in the governmental entity's governmental capacity in the jurisdiction in which the property is located or for the federally recognized Indian Tribe's enrolled member, consistent with its down payment assistance program, at or before closing. The letter must make clear that the provision of the down payment assistance is not contingent upon any future transfer of the insured mortgage. The precise language of the letter may vary, but must demonstrate that the funds provided for the Borrower's MRI legally belonged to the governmental entity at or before closing, by stating:
 - a) the governmental entity has, at or before closing, incurred a legally enforceable *liability* as a result of its agreement to provide the funds towards the Borrower's MRI;
 - b) the governmental entity has, at or before closing, incurred a legally enforceable *obligation* to provide the funds towards the Borrower's MRI; or
 - c) the governmental entity has, at or before closing, authorized a draw on its account to provide the funds towards the Borrower's MRI.

The new requirements further specify that FHA-approved mortgagees must either document the actual transfer of funds in satisfaction of the obligation or liability by the governmental entity prior to the submission of the mortgage for insurance or obtain documentation of the satisfaction of the obligation or liability by the governmental entity after submission and maintain such documentation in the mortgagee's files.

The new requirements of ML 19-06 will be incorporated into a forthcoming update of HUD Handbook 4000.1 by updating sections II.A.4.d.ii, Source Requirements for the Borrower's Minimum Required Investment (TOTAL), and section II.A.5.c.ii, Source Requirements for the Borrower's Minimum Required Investment (Manual).

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