

Internal Use Only.
Significant FHA
Revisions
10/22/2020
(ML 2020-36)

UPDATED OCTOBER 2020 FHA NEW CONSTRUCTION FINANCING



- ▶ The Federal Housing Administration (FHA) published Mortgagee Letter (ML) 2020-36, FHA New Construction Requirements. This guidance updates the requirements for New Construction financing in alignment with the regulatory amendments announced in the 2018 Final Rules that streamlined inspection and warranty requirements.

WHAT CHANGED

NEW - CHANGES
TO HUD'S
MAXIMUM
FINANCING
POLICY FOR NEW
CONSTRUCTION
INCLUDE:

- ▶ Eliminating Early Start Letter and Pre-Approval requirements;
- ▶ Consolidating requirements regardless of loan-to-value (LTV);
- ▶ Adding Form HUD-92544, *Warranty of Completion of Construction*, for all New Construction; *(clarification as this was previously a retained requirement)*
- ▶ Providing alternative inspections by a third party, that 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 related Form HUD-NPMA-99-A, *Subterranean Termite Protection Builder's Guarantee*.

FHA TRANSACTIONS – DETERMINING STAGE OF CONSTRUCTION (NO CHANGE):

- ▶ 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.

These are not “New” definitions.



WHO DOES THIS PRIMARYLY IMPACT?

- ▶ 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.

(this is what we were obtaining waivers for)

PREVIOUSLY– FHA'S FINANCING LTV LIMIT

- ▶ Before these updates, FHA New Construction Properties were limited to a 90 percent LTV unless they met the Pre-Approval requirements and the Required Documentation for Maximum Financing.

Now, regardless of loan-to-value (LTV), requirements are the same!

EFFECTIVE DATE OF CHANGES

- ▶ This guidance may be used immediately for existing cases and must be used for FHA case numbers assigned on or after January 4, 2021

Early Start Letter



Pre-Approval

Pre-Approval refers to Properties that are one year old or younger

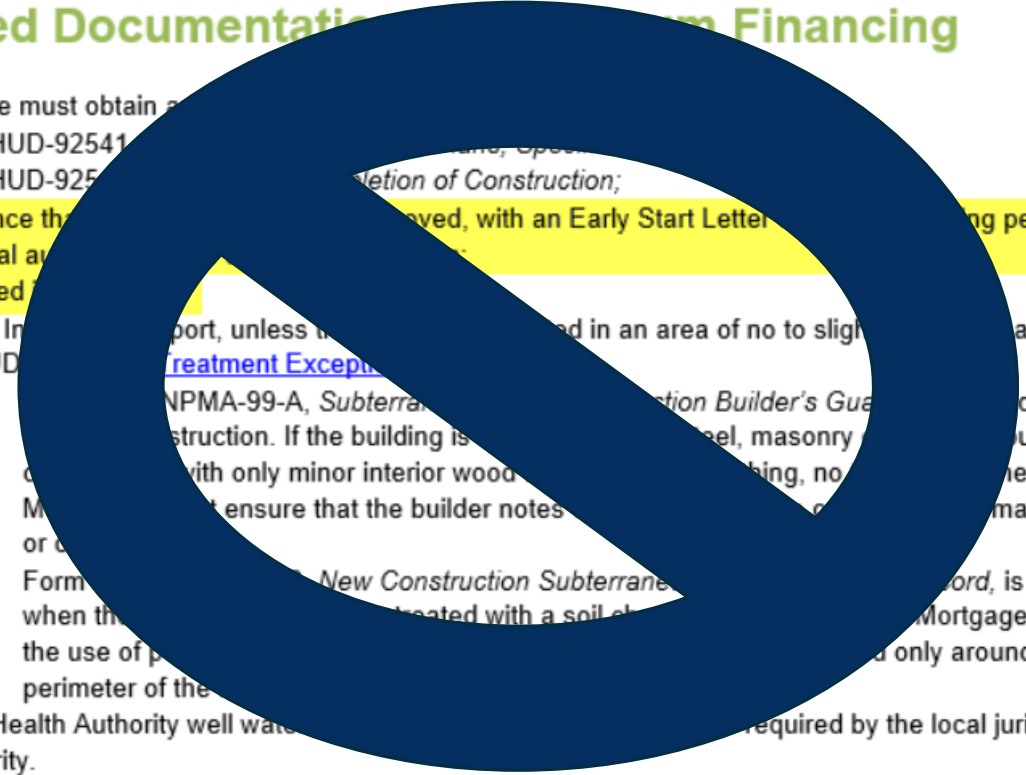
- the Property was appraised and the Mortgagee issued form HUD 90.5B, *Conditional Commitment Direct Endorsement Statement* Appraised before construction started;
- a building permit or its equivalent has been issued by local jurisdiction; or
- the Mortgagee issued an Early Start Letter.

Early Start Letter refers to the document issued in response to a builder's request to start construction before the appraisal is completed. The Letter indicates the Mortgagee's approval of

Required Documentation for Financing

The Mortgagee must obtain a

- form HUD-92541
- form HUD-925
- evidence that the property is approved, with an Early Start Letter
- required
- Wood Insect Report, unless the property is located in an area of no to slight risk as indicated on HUD
- Form NPMA-99-A, *Subterranean Termites Inspection Builder's Guarantee* required for construction. If the building is steel, masonry or concrete, no termite treatment is needed. The Mortgagee must ensure that the builder notes the presence of masonry, steel, or concrete.
- Form NPMA-99-B, *New Construction Subterranean Termites Inspection Record*, is required when the property is treated with a soil chemical. The Mortgagee must reject the use of pesticides only around the perimeter of the property.
- local Health Authority well water test required by the local jurisdictional authority.



REQUIRED INSPECTIONS FOR NEW CONSTRUCTION FINANCING

(1) Proposed Construction (site built and condos). The Mortgagee must obtain one of the following:

- ▶ copies of the building permit and CO (or equivalent);
- ▶ 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
- ▶ (Revised) 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. The Mortgagee must obtain:

- ▶ copies of the building permit and CO (or equivalent); or
- ▶ a final inspection issued by the local authority with jurisdiction over the Property or an ICC certified RCI or CI; or
- ▶ (Revised) 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 for Less than One Year (100 Percent Complete). The Mortgagee must obtain:


- ▶ 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
- ▶ (Revised) 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.

- ▶ For local jurisdictions that do not provide building code enforcement and requisite documentation, the rule allows inspections performed by the International Code Council (ICC) RCI or CI, who is licensed or certified as a home inspector in accordance with the applicable state and local requirements governing the licensing or certification of inspectors in the respective jurisdiction.
- ▶ For jurisdictions that have an absence of RCIs or CIs, the rule requires lenders to obtain an inspection performed by a third party who is a registered architect **OR A STRUCTURAL ENGINEER**, a professional engineer, or a trades person or contractor with a minimum of 5 years' experience and has met the licensing and bonding requirements of the state in which the property is located, as specified.
 - ▶ 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.**
 - ▶ **Under no circumstance can an employee of the builder perform inspections**
- ▶ **No change: 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.**

ADDITIONAL NEW CONSTRUCTION NOTES

- ▶ <https://www.hud.gov/sites/documents/92051.PDF>
- ▶ Link to check inspectors ID number:
<https://www.iccsafe.org/search-for-certified-professionals/>

FORM 92051

Compliance Inspection Report		U.S. Department of Housing and Urban Development Office of Housing Federal Housing Commissioner	OMB No. 2502-0189 (exp. 09/30/2026)
<p>Note: Reports of Final and Repair Compliance Inspections left at site always require reviewer's signature to be Official. Consult mortgagee for official reports.</p>			
Builder's Name and Address Empire Communities 3520 Executive Center Drive, Suite 100 Austin, TX 78731		<input checked="" type="checkbox"/> Report not left at site. <input checked="" type="checkbox"/> Report not official without reviewer's signature.	FHA Case Number Date of Inspection (mm/dd/yyyy) 07/20/2020
Mortgagee's Name and Address CMG Financial 3150 Crow Canyon Road, Suite 409 San Ramon, CA 94583		Property Address	
I. Inspection of On-Site Improvements Reveals			
1. Construction <input type="checkbox"/> was, <input type="checkbox"/> was not, begun prior to the date of mortgage insurance approval shown on the commitment, statement of appraised value or "Early Start" letter. (Apply to the initial report on new construction)		10. <input type="checkbox"/> Acceptable variations as described below (Request for Change, form HUD-82577, may be submitted).	
2. <input type="checkbox"/> Builder other than named in application		11. <input type="checkbox"/> Extensive noncompliance as explained below (see IV.A below)	
3. <input type="checkbox"/> Unable to make inspection. (Explain below)		12. <input type="checkbox"/> On-site improvements acceptably completed subject to receipt of certification that mortgagee's inspection reveals satisfactory completion of all items listed below.	
4. <input type="checkbox"/> Accepted construction exhibits not available at site		13. <input type="checkbox"/> On-site improvements acceptably completed except items listed below, completion of which is delayed by conditions beyond control of the builder (see IV.B below).	
5. <input type="checkbox"/> Individual Sewage disposal system; <input type="checkbox"/> Individual Water supply system <input type="checkbox"/> No noncompliance. <input type="checkbox"/> Correction essential as explained below. <input type="checkbox"/> Submit Health Department letter		14. <input checked="" type="checkbox"/> On-site improvements acceptably completed	
6. <input type="checkbox"/> Correction req'd. by spvt. dated _____ not acceptably completed		15. <input type="checkbox"/> Off-site improvements <input type="checkbox"/> a. Correction/Completion essential as explained below <input type="checkbox"/> b. Completion assured by escrow agreement or governing authority <input type="checkbox"/> c. Acceptably completed	
7. <input type="checkbox"/> Repairs required by form HUD-82800.5B not acceptably completed			
8. <input type="checkbox"/> Correction essential as explained below <input type="checkbox"/> a. Will examine at next inspection <input type="checkbox"/> b. Do not conceal until reinspected			
9. <input type="checkbox"/> No noncompliance observed			
II. Explanation of statements checked in Parts I and III			
<input type="checkbox"/> Initial Inspection		<input type="checkbox"/> Framing Inspection	
<input checked="" type="checkbox"/> Final Inspection		<input type="checkbox"/> Other (explain)	
<input type="checkbox"/> Repair Inspection		Inspection Number CHI-20-720.3	
No.		No.	
Certification: I certify that I have carefully inspected this property on this date. I have no personal interest, present or prospective, in the property, applicant, or proceeds of the mortgage. To the best of my knowledge I have reported all noncompliance, work requiring correction, and unacceptable work.			
Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3720, 3802)			
Signature 		Date (mm/dd/yyyy) 07/20/2020	<input checked="" type="checkbox"/> Fee Inspector <input type="checkbox"/> Appraiser <input type="checkbox"/> DE Staff Inspector <input type="checkbox"/> HUD Inspector
			ID Number ICC 9411877
III. Specific Conditions Required by the HUD-82800.5B, Not Requiring Field Inspection			
<input type="checkbox"/> Submit Items to Field Inspector <input type="checkbox"/> Acceptable Completion with all specific <input type="checkbox"/> Submit Items to <input type="checkbox"/> More			

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 *(revised and consolidated for all LTVs – for both existing and under construction a final inspection by an ICC certified RCI or CI on form 92051 is acceptable)*, 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 *(next slide contains the new change)*
- ▶ local Health Authority well water analysis and/or septic report, where required by the local jurisdictional authority.

Note: 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.

SUMMARY – REQUIRED DOCUMENTATION FOR NEW CONSTRUCTION FINANCING

- ▶ FHA Updated 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 related Form HUD-NPMA-99-A, *Subterranean Termite Protection Builder's Guarantee*.
- ▶ 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.

CHANGE TO WOOD INFESTATION REPORT – ADDED NEW ACCEPTABLE TREATMENT

- ▶ **Eliminating Early Start Letter and Pre-Approval requirements;**
- ▶ **Consolidating requirements regardless of loan-to-value (LTV);**
- ▶ Adding Form HUD-92544, *Warranty of Completion of Construction*, for all New Construction; *(clarification as this was previously a retained requirement)*
- ▶ Providing alternative inspections by a third party, that 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 related Form HUD-NPMA-99-A, *Subterranean Termite Protection Builder's Guarantee*.

IN CONCLUSION, YOU SHOULD NOW BE FAMILIAR
WITH THE ABOVE CHANGES FOR NEW
CONSTRUCTION FINANCING ISSUED VIA ML 2020-26

- ▶ This guidance may be used immediately for existing cases and must be used for FHA case numbers assigned on or after January 4, 2021
- ▶ [Link: Mortgagee Letter \(ML\) 2020-36, FHA New Construction Requirements](#)

EFFECTIVE DATE OF CHANGES

