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

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

December 15, 2008

MORTGAGEE LETTER 2008-40

TO: ALL APPROVED MORTGAGEES

SUBJECT: Refinance Transactions: New Maximum Mortgage Calculation

The Housing and Economic Recovery Act of 2008 revised the National Housing Act to:

- Eliminate the variable loan-to-value (LTV) limits that were based on the combination of the property value and the average closing costs of the State where the property is located and
- Limit the total FHA-insured first mortgage to 100 percent of the appraised value, and permit the inclusion of the upfront mortgage insurance premium (UFMIP) within that limit.

For simplicity purposes, and to eliminate any confusion in the marketplace, effective for case numbers assigned on or after January 1, 2009 the maximum LTV for most refinance transactions will be 97.75 percent. A summary of maximum LTVs is shown in the chart below.

The discussion of refinance transactions and mortgage calculation example shown in Mortgagee Letter 2008-23 are superseded by the instructions in this Mortgagee Letter. A matrix comparing rates and terms, streamlined with and without appraisals, is provided in the attachment to this Mortgagee Letter.

Underwriting requirements for rate-and-term and streamline refinances appear on the following pages; underwriting and eligibility requirements for cash-out refinances remain in ML 2005-43. Please note that in every example below, the loan amount before adding the UFMIP may not exceed the geographical limit where the property is located.

Type of Refinance	Maximum LTV	UFMIP[1]
Rate-and-Term	97.75%	1.75%
FHA-to-FHA Streamline w/Appraisal	97.75%	1.50%
FHA-to-FHA Streamline w/o Appraisal	n/a (see below)	1.50%
Cash-Out Refinances	95% and 85%	1.75%

[1] As of October 1, 2008

<u>Termination of *FHASecure*</u>:

Per the original announcement, the FHASecure program will terminate December 31, 2008. To meet this deadline, the loan application must be executed by the borrower(s) and a case number *assigned* no later than December 31, 2008 to be eligible for this program. A separate mortgagee letter will be issued with additional information.

MORTGAGE AMOUNTS ON REFINANCE TRANSACTIONS

<u>Rate and Term Refinances with Appraisals:</u> The maximum mortgage is the *lower* of the LTV limitation or the existing debt calculation described below, and may never exceed the geographical statutory limit except by the amount of any new UFMIP:

- <u>LTV Ratio Applied to Appraised Value</u>: Multiply the appraised value of the property by 97.75 percent. Any appraisal requirements, including repairs, must be satisfied before the mortgage is eligible for insurance endorsement.

- <u>Existing Debt:</u> Add together the amount of the existing first lien, any purchase money second mortgage, any junior liens over 12 months old, closing costs, prepaid expenses, borrower paid repairs required by the appraisal, discount points, and then subtract any refund of UFMIP.

  If any portion of the funds of an equity line of credit in excess of $1000 was advanced within the past 12 months and was for purposes other than repairs and rehabilitation of the property, the line of credit is *not* eligible for inclusion in the new mortgage.

  The amount of the existing first mortgage may include the interest charged by the servicing lender when the payoff will not likely be received on the first day of the month (as is typically assessed on FHA-insured mortgages). The amount also may include any prepayment penalties assessed on a conventional mortgage.

  In determining the existing debt as part of the mortgage amount calculation, the mortgagee may include accrued late charges and escrow shortages.

  Prepaid expenses may include the per diem interest to the end of the month on the new loan, hazard insurance premium deposits, monthly mortgage insurance premiums, and any real estate tax deposits needed to establish the escrow account regardless whether the mortgagee refinancing the existing loan is also the servicing lender for that mortgage.

<u>Additional underwriting and eligibility criteria</u>:

- The mortgage being refinanced must be current for the month due, e.g., a refinance of a mortgage anytime in November must have had the October payment made.
- Subordinate liens, including credit lines, regardless of when taken, may remain outstanding (but subordinate to the FHA-insured mortgage).
- New subordinate liens may be placed behind the FHA-insured mortgage and are subject to no CLTV cap.
- At closing, the borrower may not receive cash back in excess of $500.

<u>Streamline Refinance WITH an Appraisal.</u> The maximum insurable mortgage is the *lower* of 97.75 percent of the appraiser's estimate of value or the sum of the existing indebtedness and related closing costs and prepaid expenses for the refinance; both are described below.

- <u>LTV Ratio Applied to Appraised Value</u>: Multiply the appraised value of the property by 97.75 percent.

- <u>Existing Debt:</u> Add together the amount of the existing FHA-insured first lien, closing costs, prepaid expenses, discount points, and then subtract any refund of UFMIP.

  The amount of the existing first mortgage may include the interest charged by the servicing lender when the payoff will not likely be received on the first day of the month (as is typically assessed on FHA-insured mortgages). In determining the existing debt as part of the mortgage amount calculation, the mortgagee may include accrued late charges and escrow shortages.

  Prepaid expenses may include the per diem interest to the end of the month on the new loan, hazard insurance premium deposits, monthly mortgage insurance premiums, and any real estate tax deposits needed to establish the escrow account regardless whether the mortgagee refinancing the existing loan is also the servicing lender for that mortgage.

<u>Additional underwriting and eligibility criteria</u>:

- The mortgage being refinanced must be current for the month due, e.g., a refinance of a mortgage anytime in November must have had the October payment made. [Borrowers no more than 2 months delinquent may also be refinanced in this manner per instructions contained in handbook HUD-4155.1 REV-5, paragraph 1-12D6.]
- Subordinate liens, including credit lines, regardless of when taken, may remain outstanding (but subordinate to the FHA-insured mortgage).
- At closing, the borrower may not receive cash back in excess of $500.

<u>Streamline Refinances WITHOUT an Appraisal.</u> The maximum insurable mortgage is the *lower* of the two calculations shown below:

- <u>Original Loan Amount</u>: The original principal balance on the mortgage (which will include any UFMIP) plus the new upfront premium that will be charged on the refinance, or

- <u>Existing Debt</u>: Add together the amount of the existing FHA-insured first lien, closing costs, prepaid expenses, discount points, and then subtract any refund of UFMIP.

  The amount of the existing first mortgage may include the interest charged by the servicing lender when the payoff will not likely be received on the first day of the month (as is typically assessed on FHA-insured mortgages). In determining the existing debt as part of the mortgage amount calculation, the mortgagee may include accrued late charges and escrow shortages.

  Prepaid expenses may include the per diem interest to the end of the month on the new loan, hazard insurance premium deposits, monthly mortgage insurance premiums, and any real estate tax deposits needed to establish the escrow account regardless whether the mortgagee refinancing the existing loan is also the servicing lender for that mortgage.

Additional underwriting and eligibility criteria

- The mortgage being refinanced must be current for the month due, e.g., a refinance of a mortgage anytime in November must have had the October payment made. [Borrowers no more than 2 months delinquent may also be refinanced in this manner per instruction contained in handbook HUD-4155.1 REV-5, paragraph 1-12D6.]
- Subordinate liens, including credit lines, regardless of when taken, may remain outstanding (but subordinate to the FHA-insured mortgage).
- At closing, the borrower may not receive cash back in excess of $500.
- Properties no longer occupied by the owners or otherwise owned by an investor can only be refinanced in this manner, i.e., without an appraisal, and only for the outstanding principal balance. See handbook HUD-4155.1 REV-5, Chapter 1, Section 12 for additional information when refinancing investor-owned properties.

Additional Information

- Fees Charged by Non-Approved Broker: While FHA regulations (see 24 CFR 203.27(e)) permit a borrower to engage a broker who is not FHA-approved to assist in obtaining mortgage financing, the loan origination services *may not* be performed by that broker and the FHA approved mortgagee shall not compensate the broker for such services. FHA requires that these services be performed by either an FHA-approved lender or loan correspondent. Further, under no circumstances may a borrower be charged a fee that is *not* commensurate with the amount normally charged for similar services. If the payment bears no reasonable relationship to the market value of the services provided, the excess over the market rate may be used as evidence of a compensated referral or unearned fee in violation of section 8(a) or (b) of RESPA and 24 CFR 3500.14(g). See Mortgagee Letter 2008-17 for additional guidance.

- Title Issues Regarding Non-Borrowing Spouses or Other Parties in Interest: This section addresses the situation where two or more parties have an ownership interest in the property, but only one of the parties is applying for the loan (and credit qualifies for the loan on his or her own). Currently, Handbook HUD-4155.1 REV-5, paragraphs 2-2 A and D do not permit the non-applicant individuals to have an ownership interest in the property at the time of settlement without executing the mortgage note and mortgage, deed of trust, or security deed. Except as provided in this section, the Mortgagee Letter eliminates that requirement, regardless of whether the transaction is a purchase or a refinance.

  The lender is still required to ensure a valid and enforceable first lien on the property under state law, which may require the execution of the mortgage (but not typically the note) by all parties who have an ownership interest in the property. See Federal Reserve Regulation B for more information. If the party in question executes the mortgage, deed of trust, or security deed only for such reasons, he or she is not considered a borrower for FHA purposes, and therefore need not sign the loan application or be considered in credit underwriting.

- Second Appraisal Requirements/Loan-to-Value Limits for Cash-Out Refinances: The instructions in ML 2008-09 regarding when a second appraisal is needed, and the requirements for that second appraisal, as well as the 85 percent limitation on cash-out refinances when the loan balance will exceed $417,000, remain in effect.

In addition, FHA will now require a second appraisal for all cash-out refinances where the LTV, exclusive of the UFMIP, will exceed 85 percent of the appraiser's estimate of value. This second appraisal requirement applies regardless of the loan amount or the location of the property, i.e., whether the property is in a "declining area" or is not. This second appraisal requirement for cash-out refinances is effective for all case number assignments on or after January 1, 2009 and is to adhere to the instructions set forth in ML 2008-09. Please also note that cash-out refinances with LTVs exceeding 85 percent will be over-selected for post-endorsement technical reviews (PETR) to assure the quality of the underwriting.

Additional underwriting and eligibility criteria

- The subject property **must** have been owned by the borrower as his or her principal residence for at least 12 months preceding the date of the loan application.
- If said property is encumbered by a mortgage, the borrower **must** have made all of his/her mortgage payments within the month due for the previous 12 months, i.e., no payment may have been more than 30 days late and is current for the month due.
- The property that is security for the refinanced mortgage **must** be a 1- or 2-unit dwelling.
- Subordinate financing may remain in place, but subordinate to the FHA insured first mortgage, regardless of the total indebtedness or combined loan-to-value ratio, provided the homeowner qualifies for making scheduled payments on all liens.
- Any co-borrower or co-signer being added to the note **must** be an occupant of the property. Non-occupant owners may *not* be added in order to meet FHA's credit underwriting guidelines for the mortgage.

If you have any questions regarding this Mortgagee Letter, please contact the FHA Resource Center at 1-800-CALL-FHA (1-800-225-5342). Persons with hearing or speech impairments may access this number via TDD/TTY by calling 1-877-TDD-2HUD (1-877-833-2483).

Sincerely,

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

Attachment

ATTACHMENT

The following matrix provides a comparison of rates and terms, streamlined with and without appraisals.