

FILED
SUPREME COURT
STATE OF WASHINGTON
4/19/2019 11:03 AM
BY SUSAN L. CARLSON
CLERK

No. 96063-1

SUPREME COURT
OF THE STATE OF WASHINGTON

WASHINGTON STATE
HOUSING FINANCE
COMMISSION, a public body
corporate and politic of the State of
Washington,

Petitioner,

v.

NATIONAL HOMEBUYERS
FUND, INC., f/k/a Homebuyers
Fund, Incorporated, a California
nonprofit corporation; *et al.*,

Respondents.

PETITIONER WASHINGTON
STATE HOUSING FINANCE
COMMISSION'S STATEMENT
OF ADDITIONAL AUTHORITY

Petitioner, the Washington State Housing Finance Authority (the “Commission”), hereby submits the attached Mortgage Letter 19-06 regarding “Downpayment Assistance and Operating in a Governmental Capacity” issued by the U.S. Department of Housing and Urban Development and dated April 18, 2019. The document can be found on the HUD website at the following address:

<https://www.hud.gov/sites/dfiles/OCHCO/documents/19-06hsgml.pdf>.

Note that the highlighting on the attached is in the original document posted on-line.

The Mortgagee Letter relates to the following issues: (1) whether Washington law determines which entities are authorized to operate in a governmental capacity in Washington for the purposes of the FHA-approved mortgage program, and (2) whether Respondent National Homebuyers Fund, Inc. is authorized to claim status as an authorized government entity in Washington as part of the FHA-approved mortgage program.

RESPECTFULLY SUBMITTED this 19th day of April, 2019.

PACIFICA LAW GROUP LLP

By s/ Paul J. Lawrence
Paul J. Lawrence, WSBA #13557
Taki V. Flevaris, WSBA #42555
Alanna Peterson, WSBA #46502
Shae Blood, WSBA #51889

1191 2nd Ave, Suite 2100
Seattle, WA 98101
P: 206.245.1700
F: 206.245.1750
paul.lawrence@pacificalawgroup.com
taki.flevaris@pacificalawgroup.com
alanna.peterson@pacificalawgroup.com
shae.blood@pacificalawgroup.com



U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

WASHINGTON, DC 20410-8000

ASSISTANT SECRETARY FOR HOUSING-
FEDERAL HOUSING COMMISSIONER

Date: April 18, 2019

To: All FHA-Approved Mortgagees
All Direct Endorsement Underwriters
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

Mortgagee Letter 19-06

Subject	Downpayment Assistance and Operating in a Governmental Capacity
Purpose	The purpose of this Mortgagee Letter is to clarify documentation requirements that FHA-approved Mortgagees must satisfy when originating a mortgage for a Borrower using funds from another person or entity to satisfy a portion or all of the Minimum Required Investment (MRI), including specific documentation that adequately demonstrates the existing requirement that Governmental Entities are operating in their governmental capacity when providing downpayment assistance pursuant to the December 5, 2012 Interpretive Rule.
Effective Date	This guidance is effective for case numbers assigned on or after April 18, 2019, and will be incorporated into a forthcoming update of the HUD Single Family Housing Policy Handbook 4000.1 (Handbook 4000.1).
Public Feedback	We welcome feedback from all interested parties. To provide feedback on this policy document, please send comments to the FHA Resource Center at answers@hud.gov .

Mortgagee Letter 19-06,

Affected Programs

This guidance applies to transactions where a person or entity is providing any portion of a Borrower's MRI.

Background

HUD has long sought to strike the appropriate balance between making FHA-insured mortgages available to qualified borrowers and reducing programmatic risk. In addition, the National Housing Act has included specific provisions designed to mitigate risk by requiring the borrower to provide a minimum cash investment to purchase a property with FHA-insured financing and, since 2008, by prohibiting certain sources from providing funds to the borrower to satisfy this Minimum Required Investment (MRI). On December 5, 2012 at 77 F.R.72219, HUD published an Interpretive Rule "Prohibited Sources of Minimum Cash Investment Under the National Housing Act" (Interpretive Rule) to explain how HUD interprets these MRI requirements when funds are being provided by Governmental Entities, namely Federal, State, local governments and their agencies or instrumentalities. As explained in the Interpretive Rule, Housing Finance Agencies provide various services to assist citizens within their jurisdictions in attaining affordable housing options. This ML clarifies documentation requirements regarding the provision of downpayment assistance within the jurisdictions of governmental entities by providing clarification of documentation requirements to demonstrate compliance.

FHA's current handbook requires Mortgagees to confirm that a Governmental Entity is operating in its governmental capacity but, except for requiring a source of funds letter, does not specify the necessary documentation that demonstrates support for such a conclusion. It has come to FHA's attention that certain Governmental Entities may be acting beyond the scope of any inherent or granted governmental authority in providing funds towards the Borrower's MRI in circumstances that would violate Handbook 4000.1, the National Housing Act, and is contrary to established law. In reviewing its current documentation requirements for Mortgagees, FHA has determined that those requirements should be clarified to provide Mortgagees with specific guidance regarding documentation that will give greater assurances that the standards for providing the MRI have been satisfied by the Governmental Entity.

Continued on next page

Mortgagee Letter 19-06,

Summary of Changes

This Mortgagee Letter clarifies the documentation requirements for Mortgagees to confirm that Governmental Entities providing gifts or secondary financing, or both, towards the Borrower's MRI are doing so consistent with FHA requirements, section 203(b)(9) of the NHA, and established law.

This Mortgagee Letter will update Handbook 4000.1 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).

4000.1 Single Family Housing Policy Handbook

Source Requirements for the Borrower's Minimum Required Investment
II.A.4.d.ii (TOTAL) and II.A.5.c.ii (Manual).

(A) Definitions

Minimum Required Investment (MRI) refers to the Borrower's contribution in cash or its equivalent required by Section 203(b)(9)(A) of the National Housing Act, which represents at least 3.5 percent of the Adjusted Value of the Property.

(B) Standard

The Mortgagee must ensure that the Borrower's MRI is from a permissible source and meets the following requirements.

The Mortgagee must ensure that the source of funds for the Borrower's MRI to be provided fully complies with the Source Requirements for the Borrower's Minimum Required Investment.

The Mortgagee must ensure that no portion of the Borrower's MRI is provided by:

- (1) the seller of the Property;
- (2) any other person or Entity who financially benefits from the transaction (directly or indirectly); or
- (3) anyone who is or will be reimbursed, directly or indirectly, by any party included in (1) or (2) above.

While additional funds to close may be provided by one of these sources if permitted under the relevant Sources of Funds (II.A.4.d.iii (TOTAL) and II.A.5.c.iii (Manual)) requirements, none of the Borrower's MRI may come from these sources.

(1) Special Requirements for Family Members

A Family Member may provide the Borrower's MRI in accordance with Section 203(b)(9)(B) of the National Housing Act.

Mortgagee Letter 19-06,

4000.1 Single
Family
Housing
Policy
Handbook,
Continued

(2) Special Requirements for Government Entities

In accordance with the Prohibited Sources of Minimum Cash Investment Under the National Housing Act – Interpretive Rule, HUD does not interpret Section 203(b)(9)(C) of the National Housing Act to prohibit Governmental Entities, when acting in their governmental capacity, from providing the Borrower’s MRI where the Mortgage is being originated as part of a Governmental Entity homeownership program.

(C) Required Documentation

Where any portion of the Borrower’s MRI is provided by a person or entity other than the Borrower, the Mortgagee must also obtain documentation to support the permissible nature of the source of those funds.

The Mortgagee must document that all portions of the Borrower’s MRI come from an acceptable Source of Funds (II.A.4.d.iii (TOTAL) and II.A.5.c.iii (Manual)) in accordance with both the source requirements for the specific type of funds used, and the specific documentation requirements under the additional Source Requirements for the Borrower’s MRI set forth in this section.

Governmental Entity Funds

The Mortgagee must document that the Borrower’s MRI was provided by the Governmental Entity, as either a gift or through Secondary Financing, in a manner consistent with the National Housing Act and the additional provisions of this section. The Mortgagee must document that the Governmental Entity incurred prior to or at closing an enforceable legal liability or obligation to fund the Borrower’s MRI in its governmental capacity. It is not sufficient to document that the Governmental Entity has agreed to reimburse the Mortgagee for the use of funds legally belonging to the Mortgagee to fund the Borrower’s MRI.

Mortgagee Letter 19-06,

4000.1 Single Family Housing Policy Handbook, Continued

The Mortgagee 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:
 - the attorney has reviewed the Governmental Entity's downpayment assistance program; and
 - either
 - 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 the *SF Handbook*.;
 - 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
 - the Governmental Entity is a Federal Home Loan Bank;
- evidence that the downpayment assistance is being provided by the Governmental Entity by collecting either:
 - a letter from the Governmental Entity, signed by an authorized government official, establishing that the funds provided towards the Borrower's MRI were provided in the Governmental Entity's governmental capacity in the jurisdiction in which the Property is located consistent with its downpayment 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
 - 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 downpayment assistance program, at or before closing. The letter must make

Mortgagee Letter 19-06,

4000.1 Single
Family
Housing
Policy
Handbook,
Continued

clear that the provision of the downpayment assistance is not contingent upon any future transfer of the insured Mortgage.

Where such a letter from the Governmental Entity is submitted, 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:

- 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;
- the Governmental Entity has, at or before closing, incurred a legally enforceable obligation to provide the funds towards the Borrower's MRI; or
- the Governmental Entity has, at or before closing, authorized a draw on its account to provide the funds towards the Borrower's MRI.

The Mortgagee 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 failure of the Mortgagee to demonstrate the downpayment assistance provider has transferred the funds, the failure of the Governmental Entity to satisfy the obligation or liability, or any demand for reimbursement or indemnification for such funds by the Governmental Entity may call into question whether FHA requirements have been met and result in a determination that the funds were, in fact, provided by a prohibited source.

Mortgagee Letter 19-06,

**Paperwork
Reduction Act**

The information collection requirements contained in this document are 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 number 2502-0059. 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.

Questions

For additional information on this ML, please visit www.hud.gov/answers or call the FHA Resource Center at 1-800-CALLFHA (1-800-225-5342). Persons with hearing or speech impairments may reach this number via TTY by calling the Federal Relay Service at 1-800-877-8339.

Signature

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

PACIFICA LAW GROUP

April 19, 2019 - 11:03 AM

Transmittal Information

Filed with Court: Supreme Court
Appellate Court Case Number: 96063-1
Appellate Court Case Title: Washington State Housing Finance Commission v. National Homebuyers Fund, Inc., et al.
Superior Court Case Number: 15-2-12454-4

The following documents have been uploaded:

- 960631_State_of_Add_Authorities_20190419110246SC084826_6929.pdf
This File Contains:
Statement of Additional Authorities
The Original File Name was Statement of Add. Authority.pdf

A copy of the uploaded files will be sent to:

- TDo@mcnaul.com
- alanna.peterson@pacificalawgroup.com
- alipman@mcnaul.com
- mvl@wvbrlaw.com
- shae.blood@pacificalawgroup.com
- taki.flevaris@pacificalawgroup.com
- tdemonte@mcnaul.com
- tricia.okonek@pacificalawgroup.com
- wagstaffe@wvbrlaw.com

Comments:

Sender Name: Sydney Henderson - Email: sydney.henderson@pacificalawgroup.com

Filing on Behalf of: Paul J. Lawrence - Email: paul.lawrence@pacificalawgroup.com (Alternate Email: dawn.taylor@pacificalawgroup.com)

Address:
1191 Second Avenue, Suite 2100
Seattle, WA, 98101
Phone: (206) 245-1700

Note: The Filing Id is 20190419110246SC084826