

FAQs

MORTGAGEE LETTER (ML) 12-18

TEMPORARY APPROVAL PROVISIONS FOR THE FEDERAL HOUSING ADMINISTRATION (FHA) PROJECT APPROVAL PROCESS

1. What is the purpose of issuing the temporary guidance contained in ML 12-18?

FHA determined that temporary changes were needed to some of the current FHA condominium project approval policy provisions established in ML 11-22 and the attached Condominium Project Approval and Processing Guide (Guide) to address current housing market conditions.

2. Why are the changes only temporary and not permanent?

Interim guidance is provided via ML while staff continues work on crafting the proposed rules for FHA-approved condominiums under Section 203 of the National Housing Act, as required by the Housing and Economic Recovery Act of 2008 (HERA). These regulations will establish permanent requirements for the FHA condominium program.

3. Will the proposed condominium regulations be published in the Federal Register and allow a notice and comment period for interested parties to comment?

Yes, the customary rulemaking process will be followed.

4. What is the effective date of the requirements of the ML?

The ML is effective for all condominium project approvals, recertifications, annexations or reconsiderations submitted for review as of the date of the ML unless otherwise specified in a particular information block.

5. What is the expiration date of the temporary requirements contained in the ML?

The temporary requirements are effective from the publication date in September 2012 until August 31, 2014, unless further extended by FHA.

6. Is it anticipated that there will be an increase in the number of condominium projects that will now meet FHA's project approval requirements?

Yes, while the specific numbers of projects that will now be eligible are unknown, it is anticipated that there will be an increase in projects eligible for FHA approval based on the temporary policy revisions contained in the ML.

7. Why was the under construction definition revised?

There are many projects where construction has begun but the project isn't complete or there are still additional phases to be built. By revising the definition, it allows the use of the 30 percent presale requirements to be met for these projects; thus, increasing the number of units and projects that are available housing options.

8. What is the definition of newly converted conversions? How is the conversion defined after two years?

Newly converted means condominium project applications submitted for approval within two years from the date of conversion. Thereafter, the conversion will be considered as existing and subject to all applicable requirements for approval of an existing project.

9. When does conversion occur?

Conversion occurs as of the date on which all the documents, specifically, the condominium declaration, necessary to create a condominium regime have been recorded in accordance with state and/or local laws.

10. Were changes only made to the Non-Gut Rehabilitation Condominium Projects requirements?

Yes. No changes were made to the Converted, Gut-Rehabilitation Condominium Projects policy, including the Eligibility and Processing Requirements contained in Section 1.5.1.

11. What specific changes were made to the Non-Gut Rehabilitation Condominium Projects requirements?

The owner occupancy percentage requirement was reduced from 51 to 50 percent and the developer's ownership percentage was increased to 50 percent from 49 percent.

12. Why did FHA provide an additional exception request for mixed-use developments that were unable to meet the 25 percent and/or 35 percent exception for non-residential/commercial space requirements?

There are a number of mixed-use developments that may be acceptable for FHA condominium project approval wherein the commercial space does not meet the previously defined requirements. FHA is willing to consider requests, on a case-by-case basis if certain requirements are met. Regardless of the consideration, the project's use must remain primarily residential, homogenous with residential use and free of adverse conditions to the occupants.

13. Can DELRAP participating lenders process non-residential/commercial space exceptions?

No. Requests for exceptions must either go to the jurisdictional HOC or the Philadelphia HOC, depending upon the particular type of exception request.

14. Is there a maximum non-residential/commercial space percentage?

No; however, approval to grant an exception request where the percentage is > than 50 percent requires approval by the Commissioner or her/his designee.

15. What is the current investor ownership percentage; is it still 10%?

No. For all existing or non-gut rehabilitation projects, an investor/entity (single or multiple owner entities) may own up to 50 percent of the total units at the time of the project approval if at least 50 percent are conveyed or under a bona fide contract for purchase to owner-occupant principal residence purchasers.

16. What if a builder/developer owns units? Do these count as investor owned units?

Unoccupied and unsold units owned by a builder/developer are not considered as investor owned and subject to the requirements unless the unit is currently rented or has previously been occupied.

17. What are the requirements for non-profit and/or eligible governmental housing programs?

They are subject to the same investor and owner-occupied percentage requirements as an investor/entity (single or multiple owner entities).

18. What is the specific change to the delinquent homeowners association dues requirement?

No more than 15 percent of the total units can be in arrears (more than 60 days past due) on their condominium association fee payments (does not include late fees or other administrative expenses. The 15 percent includes all units (occupied, investor, bank owned and vacant). Further, there will be no exception requests granted.

19. Why does the 15 percent include bank owned, investor and vacant units?

FHA believes that all unit owners, regardless of type, must be responsible for payment of their condominium association fee payments as these funds are used for operation and maintenance of the condominium project. It is an unfair burden to the parties who demonstrate responsible behavior by paying the dues on a timely basis when other entities do not.

20. What additional flexibility was provided regarding Fidelity Bond/Fidelity Insurance requirements as relates to management companies whose services are solicited by a homeowners association?

The homeowners association's Fidelity Bond/Fidelity Insurance policy must: (1) specifically name the management company as an agent or insured; or (2) the policy must include a "Covered Employee" endorsement that states that a person employed by an employment contractor (management company) performing services subject to direction and control by the homeowners association is covered under the policy.

21. A number of project approval submitters are hesitant to sign the current Project Certification. Has the Project Certification been revised?

Yes, a revised Project Certification was developed. There are now four specific certifications that the individual responsible for submission of the approval package certifies to. While FHA does not require an attorney's certification, this may be obtained as part of the package submitter's due diligence.

22. Are there any other Project Certification requirements?

Yes. The Project Certification must be provided with the submission package for condominium approval, recertification or annexation packages for review under DELRAP and HRAP options. A new Project Certification will be required on reconsideration actions if the submitter of the reconsideration package is not the original package submitter.

The Project Certification must be submitted on letterhead, must be executed (signed and dated – signature stamps or electronic signatures are not permitted) by the individual submitting the package.

23. The Project Certification contains language regarding the requirements of Title 18 U.S.C. 1014. Is this applicable to the Project Certification only?

No. The inclusion of this language on the Project Certification is not meant to scare individuals but to make them aware of possible actions for false, fictitious, or fraudulent certifications. Title 18 U.S.C. 1014 has applicability in any matter in the jurisdiction of any department or agency of the United States.

24. Is the 30 percent presale requirement applicable to existing or non-gut rehabilitation conversion projects?

No, presale requirements are applicable only for proposed, under construction (including existing < than 12 months old) or gut-rehabilitation conversions. The pre-sale, owner-

occupancy and investor percentage requirements are provided in the chart on page 10 of the ML.

25. What is the owner occupancy percentage required for existing or non-gut rehabilitation conversions?

At least 50 percent of the units of a project must be owner-occupied or sold to owners who intend to occupy the units.