CMG FINANCIAL

Experience Extraordinary

Escrow Holdback Guideline Addendum

Updated April 20, 2018

Supplements CMG's Conventional, FHA, VA, and USDA Guidelines with guidance specific to repair escrows for weather-related delays.

CMG Financial, a Division of CMG Mortgage Inc.
NMLS #1820
Corporate Headquarters:
3160 Crow Canyon Rd. Ste. 400
San Ramon, CA 94583

Table of Contents

A – Overview of Repair Escrows

CMG requires that every effort be made to complete property repairs or improvements prior to loan closing. However, weather conditions in certain areas may result in the need to close a loan prior to the completion of required repairs. When this occurs, CMG may allow the establishment of a repair escrow subject to the requirements in this guideline addendum. Under no circumstances may a loan close or be purchased if the repairs will affect the livability, safety, or structural integrity of the property, or affect the ability to obtain a Certificate of Occupancy on new or proposed construction. For Wholesale and Retail transactions, all escrow holdbacks require approval from an CMG Renovation Department. Only purchase transactions are eligible for escrow holdbacks. Under no circumstances will CMG consider an escrow holdback on a refinance transaction.

B – Establishment of Escrow Account

- Retail/Wholesale— the repair escrow must be approved by the CMG Renovation Department prior to issuing clear to close. The following documentation must be provided in order to obtain approval:
  - Itemization of work to be completed
  - Bid for repairs/improvements (see topic below)
  - Completion date
  - Party providing escrow funds (borrower or seller)
- Underwriter must condition for a fully executed Escrow Holdback Agreement.
- If the contract indicates that the borrower is financially responsible for the required repairs, the source of the funds must be documented. Follow standard requirements for documentation of assets/funds to close.

Documentation of Repair Items/Cost

- The appraiser, builder or a disinterested (but relevant) third party must provide a cost to complete the repairs.
- Acceptable third parties include, but are not limited to:
  - A contractor/painter who provides an estimate.
  - A representative of a home improvement store.
  - An independent contractor that performs the services needed to complete the improvements.

Escrow Holdback Agreement

- A fully executed Escrow Holdback Agreement must be obtained.
- For Retail and Wholesale transactions, CMG will provide a fully completed escrow agreement with the closing package. However, if CMG's Escrow Holdback Agreement is not utilized, the agreement must be reviewed/approved by the CMG Renovation department and must include all of the following:
  - Amount of the escrow holdback.
  - Itemized list of repairs to be completed.
  - Identification of Title Company or Closing Agent holding funds.
  - Funds to be released only with CMG's written authorization.
  - Application of excess funds remaining after repairs.
  - Process if repairs are not completed.
- For VA loans, CMG will require use of the VA Escrow Holdback Agreement for Postponed Exterior On-site Improvements (VA Form 26-1849) in lieu of the CMG Holdback Agreement.
- The Title Company must agree in writing to hold the escrowed funds.
- The agreement must be signed and returned with the final signed closing documents.

LOS Requirements

- The underwriter/auditor is responsible for insuring that the LOS reflects the:
  - Existence of the repair escrow
  - Escrowed amount
  - Source of the escrowed funds (seller, builder or borrower)
  - Required completion date of the repairs

C – Completion Term

Repairs must be completed within **120 days** of the note date.

Conventional and FHA only - Extension for Weather Related Delays

- Inclement weather extension exception:
  - Allowed only on external improvements in geographic areas that experience severe adverse weather conditions.
  - An extension of up to 150 days after the note date may be allowed when repairs are delayed due to inclement weather.
  - The loan file must include an explanation for the need for and use of this exception.
- This exception is NOT allowed on VA or USDA loans.

D – Title Insurance

- Title Insurance may not be adversely affected during or after the completion escrow is in effect.
- The Underwriter must determine if a final title report is required and condition the loan accordingly.
- The final title report may not:
  - Reflect any outstanding mechanic's liens, or
  - Take any exceptions to the postponed improvements, or
  - Take any exceptions to the escrow agreement.
- If the final title report is issued before the completion of the improvements, an endorsement to the title policy that ensures the priority of the subject first lien must be obtained.

E – Closing Requirements

The closer must inform the closing agent of the following requirements:

- Escrow Holdback Agreement must be executed by the borrower(s) and seller(s), if applicable.
- Title Company must acknowledge agreement to hold funds and responsibility to release the funds only at the written direction of CMG.

F – Conventional Loan Requirements (Freddie Mac & Fannie Mae)

- Allowed for completion of minor repairs or deferred maintenance items when inclement weather prevents the repairs from being completed prior to loan closing.
- Escrow Holdbacks are allowed only as follows:
  - When the appraisal is completed "subject to" repairs or alterations.
  - When the sales contract includes repairs to be paid for by the seller.
  - When the appraisal is completed "as is," provided the incomplete repairs are reflected in the appraiser's opinion of market value.
- If the appraisal is completed "as is", the repairs are not part of the sales contract or reflected in the appraiser's opinion of market value, and the seller is responsible for the completion of repairs prior to closing.
- Retail/Wholesale— approval is required for all repair escrows and eligibility is subject to CMG Renovation Department discretion.

Ineligible Repairs

The following list of items are ineligible for repair escrows, however the list is not all-inclusive. Approval is required for all repair escrows and eligibility is subject to CMG Renovation Department discretion, including items not expressly prohibited by this list.

- Interior repairs of any kind
- Installation or repair of a swimming pool
- Completion of a partially finished addition or renovation
- Well/Septic repairs
- Roofing, including active roof leaks, and curled or cupped roof shingles
- Extensive electrical or plumbing repair
- Foundation or structural repairs, including cracks or settlement in the foundation or water seepage
- Termite damage (excluding minor repairs)
- Environmental hazards

Eligible Repairs - New Construction

- Incomplete items that do not affect the ability to obtain a Certification of Completion or Occupancy Certificate.
- Exterior repairs/improvements not listed as Ineligible.

Eligible Repairs - Existing Construction

Minor conditions or deferred maintenance items included, but are not limited to:

- Exterior painting
- Minor exterior plumbing leaks
- Replacement of window glass and/or screens
- Replacement of rotted exterior wood

Escrow Amount

- Total repair costs may not exceed 10% of the "as completed" appraised value.

- New or proposed construction:
  - 120% of the repair cost.
  - 100% of the repair cost if the builder/contractor offers a guaranteed fixed price contract for completion.
- Existing construction:
  - 120% of the repair cost

Evidence of Completion

- If the appraisal is completed "subject to" repairs or alterations, the appraiser must perform a final inspection and complete the Certificate of Completion report on Form 1004D. The Certificate of Completion must:
  - Be completed by the appraiser, and
  - State that the improvements were completed in accordance with the requirements and conditions in the original appraisal.
- If the appraisal is completed "as is", the borrower must verify that the repairs have been completed to his/her satisfaction and authorize release of the escrowed funds.
- The Underwriter/auditor will be responsible for:
  - Confirming the repairs are complete
  - Confirming receipt of final invoice
  - Notate in CMG's systems when the funds have been released
  - Retail/Wholesale— Authorizing Title Company to release the funds

Failure to Complete Repairs

- Retail/Wholesale – if the appraisal was completed "subject to" repairs and alterations, and the repairs have not been completed within the required timeframe, CMG will order the completion of the repairs by a qualified contractor and obtain a final inspection.
- If the appraisal was completed "as is", escrowed funds must be applied as a principal reduction on the subject loan.
- Correspondent – loans with incomplete repairs outside the allotted timeframes are subject to repurchase by the seller

Mortgage Insurance Requirements

- For loans with LTV >80%, Mortgage Insurance (MI) requirements must be reviewed to insure that the MI provider allows loans that are closed subject to completion of repairs.
- The Mortgage Insurance may not be impaired or adversely affected during and after the completion period.
- Refer to the MI Matrix and/or the MI provider website for additional information.

G – FHA Loan Requirements (Non-HUD REO)

The Mortgagee may establish a repair escrow for incomplete construction, or for alterations and repairs that cannot be completed prior to loan closing, provided the housing is habitable and safe for occupancy at the time of loan closing and the following are met:

- Allowed for exterior repairs and/or improvements not completed prior to closing due to weather related delays.
- The total cost of repairs may not exceed $5,000 prior to adding the required contingency. Exceptions are not allowed.
- Escrow Holdbacks are allowed only when the appraisal is completed "subject to repairs or alterations".
- The property must meet FHA minimum property standards at closing.
- Minor repair/improvement items may be completed by the borrower provided acceptable evidence of completion is obtained.

- If the appraisal is completed "as is" or the repairs are not part of the sales contract, the seller is responsible for the completion of repairs prior to closing.
- Retail/Wholesale— approval is required for all repair escrows and eligibility is subject to CMG Renovation Department discretion.
- Effective for case numbers assigned on or after October 31, 2016, after the repair escrow account is closed, the Mortgagee must complete the Escrow Closeout Certification screen in FHAC within 30 Days after the escrow account is closed.

Note: The cost for Borrower labor may not be included in the repair escrow account.

Appraisal Requirements

- The appraisal must include a list of the required exterior repairs and the estimated cost to cure.

Eligible Repairs

The following list of items are potentially eligible for repair escrows. For Retail/Wholesale transactions, approval is required for all repair escrows and eligibility is subject to CMG Renovation Department discretion, including for items listed below.

- Escrow holdbacks are typically allowed for repairs that are not required to meet FHA's minimum property standards, such as exterior painting or/and landscaping.
- Escrow holdbacks are not allowed for structural repairs, foundation work, roofs or pools.

Escrow Amount

- Escrowed funds must be equal to the greater of 150% of the estimated repair costs or $500.

Evidence of Completion

- The Mortgagee must certify on form HUD-92051, *Compliance Inspection Report*, that the incomplete construction, alterations and repairs have been satisfactory completed.
- The Underwriter/auditor will be responsible for:
  - Confirming the repairs are complete
  - Completing HUD Form 92300, Mortgagee's Assurance of Completion (required in all cases)
  - Notate in CMG's system when the funds have been released
  - Retail/Wholesale— authorizing Title Company to release the funds

Failure to Complete Required Repairs

- Retail/Wholesale— if the repairs have not been completed within the required timeframe, CMG will order the completion of the repairs by a qualified contractor and obtain a final inspection.
- Correspondent – loans with incomplete repairs outside the allotted timeframes are subject to repurchase by the seller
- CMG/Correspondent must ensure satisfactory completion of repairs, regardless of adequacy of funds reserved in escrow.

H – FHA Loan Requirements (HUD REO)

In all cases, the housing must be habitable and safe for occupancy at the time of loan closing.

- The HUD REO Property does not meet HUD's MPR in its as-is condition, but if repairs of no more than $10,000 are completed, the HUD REO Property would meet HUD's MPR. An escrow account to complete the repairs necessary to meet MPR after closing is required. Cannot be combined with Good Neighbor Next Door. Max 30 day holdback period. Leaseholds not permitted.
- The total escrow amount, including the 10 percent contingency, must not exceed $11,000. The maximum amount of the escrow account with $10,000 worth of needed repairs would be $11,000.
- A contractor must provide an estimate for required repairs. Contractors must agree to complete the repairs within 30 days of closing/signing.
- Retail/Wholesale— approval is required for all repair escrows and eligibility is subject to CMG Renovation Department discretion.

Appraisal Requirements

- Mortgagees must order a new appraisal. The Asset Manager REO Appraisal is used to establish list price only.
- Appraisal Review and Property Acceptability. The Mortgagee must review the appraisal and property conditions in accordance with standard FHA requirements for Underwriting the Property.
- Borrower choice items are not permitted.
- FHA appraisal standards and current HUD appraisal validity time periods apply.

Eligible Repairs

The following list of items are potentially eligible for repair escrows. Approval is required for all repair escrows and eligibility is subject to CMG Renovation Department discretion, including for items listed below.

- Escrow holdbacks are typically allowed for repairs that are not required to meet FHA's minimum property standards, such as exterior painting or/and landscaping.
- Escrow holdbacks are not allowed for structural repairs, foundation work, roofs or pools.

FHAC Insuring Application

- The Mortgagee must check "Yes" in the Escrow Data field. The Mortgagee must enter the amount of the escrow, including the contingency, in the HUD REO Repair Amount field.

Loan Amount Calculation

- **Section 203(b) With Repair Escrow.** Mortgagees must initially calculate the mortgage amount in accordance with the requirements for Section 203(b) above. Mortgagees must add to the amount resulting from that calculation the amount of an escrow account for the completion of repairs after closing. The maximum escrow amount must be based on the sum of the repairs required to meet the intent of HUD's MPR, plus a 10 percent contingency. The total escrow amount, including the 10 percent contingency, must not exceed $11,000.
- **$100 Down -** Calculate the maximum mortgage amount by subtracting $100 from the sum of the Adjusted Value plus 110 percent of the estimated cost of repairs, not to exceed $11,000.
- Note: With Mortgagee Letter 2015-17 the Upfront Mortgage Insurance Premium may be financed with no restriction.

Completion of Repairs

- Underwriter must must execute form HUD-92300, *Mortgagee's Assurance of Completion*, to indicate that the repair escrow has been established.
- The repair work may not begin until the loan has closed. The contractor must complete all work within 30 days of the escrow set up and is required to sign the Escrow Holdback Agreement.
- If the escrow account is financed into the loan, any excess escrow funds must be applied back to the loan as a principal payment.
- HUD Form 92051 CIR is required upon completion of repair
- The Mortgagee must certify on form HUD-92051, *Compliance Inspection Report*, that the incomplete construction, alterations and repairs have been satisfactory completed.
- After the repair escrow account is closed, the Mortgagee must complete the Escrow Closeout Certification screen in FHAC within 30 Days after the escrow account is closed.

I – VA Loan Requirements

Allowed only as follows:

- The appraisal must be completed "subject to" repairs or alterations.
- Allowed only on purchase transactions of new construction for minor items not completed prior to closing due to weather related delays. CMG only permits escrow holdbacks for VA loans if the loan is eligible for the guaranty at the time of closing. With the release of VA Circular 26-18-6, CMG will only approve escrow holdbacks for weather related completion escrows on new construction. Escrow holdbacks on existing construction, even if weather related, are not eligible.
- The cost of the repairs must be >$500.
- Retail/Wholesale— approval is required for all repair escrows and eligibility is subject to CMG Renovation Department discretion.

Appraisal/Documentation Requirements

- The appraiser must provide a list of required repairs with the estimated cost and contributory value to make the property meet VA's Minimum Property Requirements (MPR).
- Item #10 on the Notice of Value (NOV) must include the required repairs.
- Completed VA Form 26-1849, Escrow Agreement for Postponed Exterior Onsite Improvements

Waiver of Repairs

- Retail/Wholesale— when the Veteran and Underwriter agree that the required repairs and/or improvements do not impact the properties habitability, safeness, or structural soundness, the veteran may provide CMG with a written statement regarding why the repair(s) are not necessary and asking VA to waive the repair requirement. CMG will submit the waiver request to the applicable local VA Regional Office. If VA establishes that the nonconformity has been fully taken into account by way of depreciation in the VA valuation, the repair requirement may be waived.

Eligible Repairs

- Repairs may include, but are not limited to:
    - Walkways, driveways, and retaining walls
    - Exterior painting
    - Landscaping
    - Garages

Escrow Amount

- Escrowed funds must be equal to 150% of the estimated repair costs.

Evidence of Completion

- The Underwriter/auditor will be responsible for:
  - Confirming the repairs are complete upon receipt of VA Form 26-1839, Compliance Inspection Report
  - Notate in CMG's systems that the funds have been released
  - Retail/Wholesale— authorizing Title Company to release the funds

New Construction:

- The builder, appraiser or a fee inspector must complete Compliance Inspection Report (VA Form 26-1839) upon completion of the required repairs.

Existing Properties

- An appraiser or fee inspector must certify that the repairs are satisfactorily completed, unless the repairs are minor, uncomplicated and do not involve structural issues.
  - A CMG/seller representative may provide written certification that minor uncomplicated repairs have been completed based on the borrower providing a statement that the work has been done to their satisfaction and receipts/invoices evidencing completion are acceptable.
  - Completion of repairs involving defective paint on properties built prior to 1978 must always be certified by a fee appraiser.
- When repairs are completed, the original VA fee appraiser must be notified and provided a copy of the NOV, if one is not available in WebLGY. If the original fee appraiser is unavailable, the applicable VA RLC must be contacted to request assignment of another fee appraiser to complete the inspection.
- The fee appraiser must provide one of the following to certify the satisfactory or unsatisfactory repair inspection findings:
  - Fannie Mae Form 1004D/Freddie Mac Form 442, Appraisal Update and/or Completion Report; or
  - Inspection findings report on the fee appraiser's company form or letterhead.
- The inspection report/certification must include the following:
  - A list of the required repairs per the NOV.
  - Photos of the completed repairs.
  - Certification that the repairs were completed with quality material and in a workmanlike manner.
- The repair inspection report/certification must be completed, signed and uploaded to WebLGY.

Failure to Complete Required Repairs

- Retail/Wholesale – if all or any of the repairs and/or improvements are not satisfactorily completed within 120 days, with the approval of the Dept. of Veteran's Affairs, CMG will enter into a contract with any third party for the completion of the required repairs/improvements.
- Correspondent – loans with incomplete repairs outside the allotted timeframes are subject to repurchase by the seller

Excess or Inadequate Funds

- After completion of the repairs, any unused funds will be refunded to the seller.
- If the escrow account funds are insufficient, CMG will require the Seller to deposit additional funds needed to complete repairs and/or improvements.

J – USDA Loan Requirements

Allowed only as follows:

- The appraisal must be completed "subject to" repairs or alterations.
- Exterior weather-related, or material shortage items

- Retail/Wholesale— approval is required for all repair escrows and eligibility is subject to CMG Renovation Department discretion.

Appraisal Requirements
- The appraiser must provide a list of required repairs with the estimated cost.

Ineligible Repairs
- Interior development
- Items affecting the livability of the dwelling (including roof repairs)
- Repairs greater than 10% of the final loan amount

Escrow Funds
- Escrowed funds must be equal to 110% of the estimated repair costs.
- Funds must be held by title

Evidence of Completion
- Certification of completion is required to verify the work was completed and must:
    - Be completed by the appraiser;
    - State that the improvements were completed in accordance with the requirement and conditions in the original appraisal report;
    - Be accompanied by photographs of the completed improvements; and
    - The individual performing the final inspection of the property must sign the completion report

Failure to Complete Required Repairs
- Retail/Wholesale— if all or any of the repairs and/or improvements are not satisfactorily completed within 150 days, CMG will enter into a contract with any third party for the completion of the required repairs/improvements.
- Correspondent – loans with incomplete repairs outside the allotted timeframes are subject to repurchase by the seller

Excess Funds
- Funds remaining in the escrow account upon completion of the work will be used to reduce the unpaid principal balance of the mortgage

K – Compliance Information

Escrow funds for repair, completion, or renovation that are held by lender (including the bid, reserve and contingency, but not including the fees such as the inspection fee) should be disclosed on Summary of Transaction as follows:

LE (Standard):
Show on “Calculating Cash to Close” Table under “Adjustments and Other Credits” and/or “Seller Credits”
Buyer paid:
- Disclose the full amount on “Adjustments and Other Credits”.

Seller Paid:
- Disclose the full amount on “Adjustments and Other Credits”;
- Disclose the same amount on “Seller Credit”.

Split:
- Disclose the full amount on “Adjustments and Other Credits”;
- Disclose the seller-paid amount on “Seller Credit”.

CD (Standard):
Buyer paid:

- Disclose "Repair Escrow"/"Renovation Cost"* on Section K under "Adjustments".

Seller Paid:

- Disclose "Repair Escrow" on Section K under "Adjustments";
- Disclose "Seller Credit for Repair Escrow" on Section L.

Split:

- Disclose the full amount of "Repair Escrow" on Section K under "Adjustments";
- Disclose the seller-paid portion as "Seller Credit for Repair Escrow on Section L.

LE & CD (Alternative):

- Disclose the amount under "Total Payoffs and Payments".

* "Repair Escrow" is utilized for weather related completion escrows and standard escrow holdback repairs that are approved by the Renovation Department. "Renovation Cost" applies to Retail renovation loans – FHA 203(k) and HomeStyle Renovation.

Z – Recent Updates / 90 Day Lookback

12/27/2018 Added clarification of Compliance disclosure requirements.

4/20/2018 Updated to reflect CMG only permits escrow holdbacks for VA loans if the loan is eligible for the guaranty at the time of closing. With the release of VA Circular 26-18-6, CMG will only approve escrow holdbacks for weather related completion escrows on new construction. Escrow holdbacks on existing construction, even if weather related, will no longer be approved.

4/5/2018 Updated to reflect that CMG's Renovation Department must approve all escrow holdbacks and holdback agreement forms.

10/14 Effective with Case Numbers dated on and after September 30, 2016 HUD REPO with Repair Escrow permits up to $10,000 in repairs. Removed reference to: The escrow funds must be included on line 104 of the HUD-1.