



Construction Loan Disbursements Developer/Contractor Instructions

June 25, 2019



Logistics



- Phones
 - Mute if you're in a noisy location
 - Don't put us on hold – even if you have great music!
- Join the discussion!

Objectives

Completed, lien free collateral

- Consistency
- Transparency
- Compliance
 - Regulations
 - Loan docs
 - Policies and procedures

Expectations

Requirements

Satisfaction
and Savings

Disbursement Process

- Pre-funding requirements (Plans, permits, insurance...)
- Borrower authorizations
- Soft costs (Supporting materials and basis for disbursement)
- Hard costs
 - Contractor pay application/sworn statement
 - Supporting materials?
 - Subcontractor and supplier invoices
 - Conditional/unconditional lien releases
 - Onsite/Offsite stored materials
 - Revised budgets, schedules and plans
 - Change Orders
 - Progress Monitoring
 - Attendance at meetings?
- Basis of disbursements
 - Cost to complete, percent complete or cost in place?

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Discussion

- Borrower/GC invoices and lien releases
 - Presented in an organized way
 - Reconciled vs pay app
- Stored materials not clearly identified in Pay app.
- Distinguishing deposits from stored materials
- Change orders (advance notification)
 - Thresholds?
 - What can the borrower approve?
 - Nature of changes, discretionary vs. true contingency
(better education to borrowers on this)
 - What's the bank's process for reviewing change orders?
- Contingency use
 - When do the chance of unforeseen conditions go down?

Borrower Instructions

- The borrower is responsible to independently evaluate the request, assure the accuracy and completeness of all information provided and reconcile any discrepancies with loan requirements, budgets, schedules etc. Your request for disbursement represents your agreement with and endorsement of all amounts requested. Monitoring and verification conducted by or on behalf of the lender is not intended to assist with or replace your own management of the related risks.
- **Borrowers are encouraged to carefully read and understand the loan agreement.**
 - Pre-disbursement meetings can help, but be sure the team responsible for assembling draw packages for the developer and contractor are in the meeting.

Sometimes the person completing the pay app is not familiar with Excel. Can we suggest an Excel 101 video? Could we use Partner versions of pay apps to demonstrate?

Borrower Instructions

- **Loan Disbursement Request Form**
 - Complete and submit the required form.
 - Be sure to indicate the appropriate loan line item for each amount requested.
 - Verify the amount entered at the request form matches the amount of the contractor's request.
 - Provide a written explanation of any deviations.
 - **Assure conformance with the loan and disbursement agreements.**

Borrower Instructions

- Notify the lender of any material change in improvements, budgets, lease and/or sales agreements.
- Verify continued satisfaction of reps and warrants of the loan agreement
- Reaffirm conformance with phasing, starts ahead of sales and similar constraints imposed as conditions of the loan.
- Provide copies of any liens, claims or other known or potential encumbrances

Pay Application

Supporting Documents

- Contractor's sworn statement
 - Only where required (as directed by title company, agency/participants, counsel)
- Certification all funds will be used for this project...
 - Prior funds disbursed in accordance with requests...
- G702 (or equivalent) executed by
 - Contractor
 - Always required
 - » Will not fund without signature
 - » Inspection report may not be released until all docs are received and signed.
 - Architect
 - Not required unless directly involved, in which case owner may sign
 - » Up front approval may be obtained
 - Owner or CM may sign
 - May require architect to provide cert of completion
- G703 (or equivalent)
 - Subcontractor Invoices (one of the most negotiated topics.)
 - Mixed – Sometimes hard to obtain
 - Payee list at min.
 - Conditional lien releases for current payments
 - Unconditional lien releases for prior payments
 - What constitutes a valid lien waiver from a legal perspective? (Is an amount always required?)

Pay Application

Supporting Documents

- Line item revisions:
 - Show the original and revised budgets
 - Provide subcontracts for lines transferred to and from
 - Attach an explanation of any related changes in the work
 - Reconcile and explain the adequacy of remaining funds in all affected line items.

Pay Application

Supporting Documents

– On-site Stored Materials

- Invoices
- Secure storage
- To be verified during CPM

– Deposits

- Provide contract showing required deposit

– Off-site Stored Materials

- Invoices
- Secure storage
- labelled for the subject property and
- Segregated from other materials at the storage location
- (verification may be required.)

Additional documentation or evaluation may be required.

Pay Application

Supporting Documents

– Current Schedule

- Borrower – Reconcile revisions with any required completion date specified in the loan.
- Contractor – Reconcile revisions with contractually required completion date.

Pay Application

Supporting Documents

- Changes to the work and schedule, attach
 - All executed change orders, related plans and budget reallocations
 - Potential Change Order Log
 - Additional revisions to plans or changes to the work or schedule

Pay Application

Supporting Documents

- Buyout Log
- Permits, inspection records, notices of violation, red tags and other regulatory communications

Additional Instructions

- Use of Contractor's Contingency
 - Reallocate from the Contingency budget to the appropriate construction line item

- Use of Borrower's Contingency
 - Where loan contingency funds are used, reallocate fund from Contingency to the appropriate loan line item and construction budget.

Questions

- Are disbursements for Lump Sum contracts handled differently?

Contact Information



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Next

Questions

- Deposits
- Sworn statements
- Are Lump Sum contracts treated differently?

Contents

- Before Funding
- Submitting the draw
 - Hard costs
 - Soft costs
- Process and approvals

Before Funding

Responsibilities

Lender

- Identify requirements
 - Monitor outstanding
 - Documents
 - Equity contributions
- Evaluate documents and information provided

Borrower

- Comply with requirements
 - Supply documents
 - Fund equity
- Clearly identify deviations and deficiencies

Before Funding

Typical Requirements

- Documents
 - Plans
 - Contracts
 - Permits
 - Insurance
 - Purchase/lease agreements
 - CC&R
 - Lien free endorsement
 - Tax reporting info
 - Updated budget and schedule
 - Others?
- Disbursement Instructions
- Other common requirements?
- Equity Contributions
 - Cash
 - Equivalents
 - Oversight of payments for hard/soft costs?
 - CPM/Observations
 - Proof of payment

During Construction

Soft Costs

- Is there a form to use?
 - Identify the specific loan budget?
- Backup
 - Invoices
 - Proof of payment
 - Others?
- Disbursements not requiring borrower approval
 - Taxes, interest and fees
 - CPM and funds control
 - Title and escrow
- What's the basis for reimbursement?
 - Cost incurred?
 - Percent complete?
- Are approvals required?
- Related constraints?
- Who can request payment?
 - Borrower?
 - Others?

During Construction

Hard Costs

- Borrower request form
 - Who can request payment?
 - Borrower?
 - Contractor?
- Backup
 - Invoices
 - G702/703 required?
 - Contractor and Architect signatures?
 - Proof of payment
 - Conditional lien releases
 - Unconditional lien releases
 - Others?
- What's the basis for reimbursement?
 - Cost incurred?
 - Percent complete?
- Approvals required?
 - (Next slide)
- Related constraints?
- Related documents
 - Updated budget and schedule
 - Approved Change Orders
 - Logs

During Construction

Hard Cost Approvals

Administrative

- Borrower request form?
- Who can request payment?
 - Borrower?
 - Others?
- Authority to approve?
- Related constraints?
 - Phasing
 - Starts ahead of sales
 - Others
- Backup
 - Invoices
 - G702/703 required?
 - Contractor and Architect signatures?
 - Proof of payment
 - Conditional lien releases
 - Unconditional lien releases
 - **Others?**

CPM

- Evaluation of work in place
 - Conformance with agreed improvements
 - Requests are supported by work in place
 - Cost in place
 - Percentage of completion
 - Adequacy of remaining funds
- Related documents
 - Updated budget and schedule
 - Approved Change Orders
 - RFI Logs
 - Test results
 - Permit records

During Construction

- Equity contributions
- Disbursement Instructions
 - Security
 - Funds control
- Documents
 - Plans
 - Contracts
 - Insurance
 - Purchase/lease agreements
 - CC&R
 - Others?
- Other common requirements?
- Use of contingency
- Retention
- Change Orders
- Schedules

Hard Cost Request

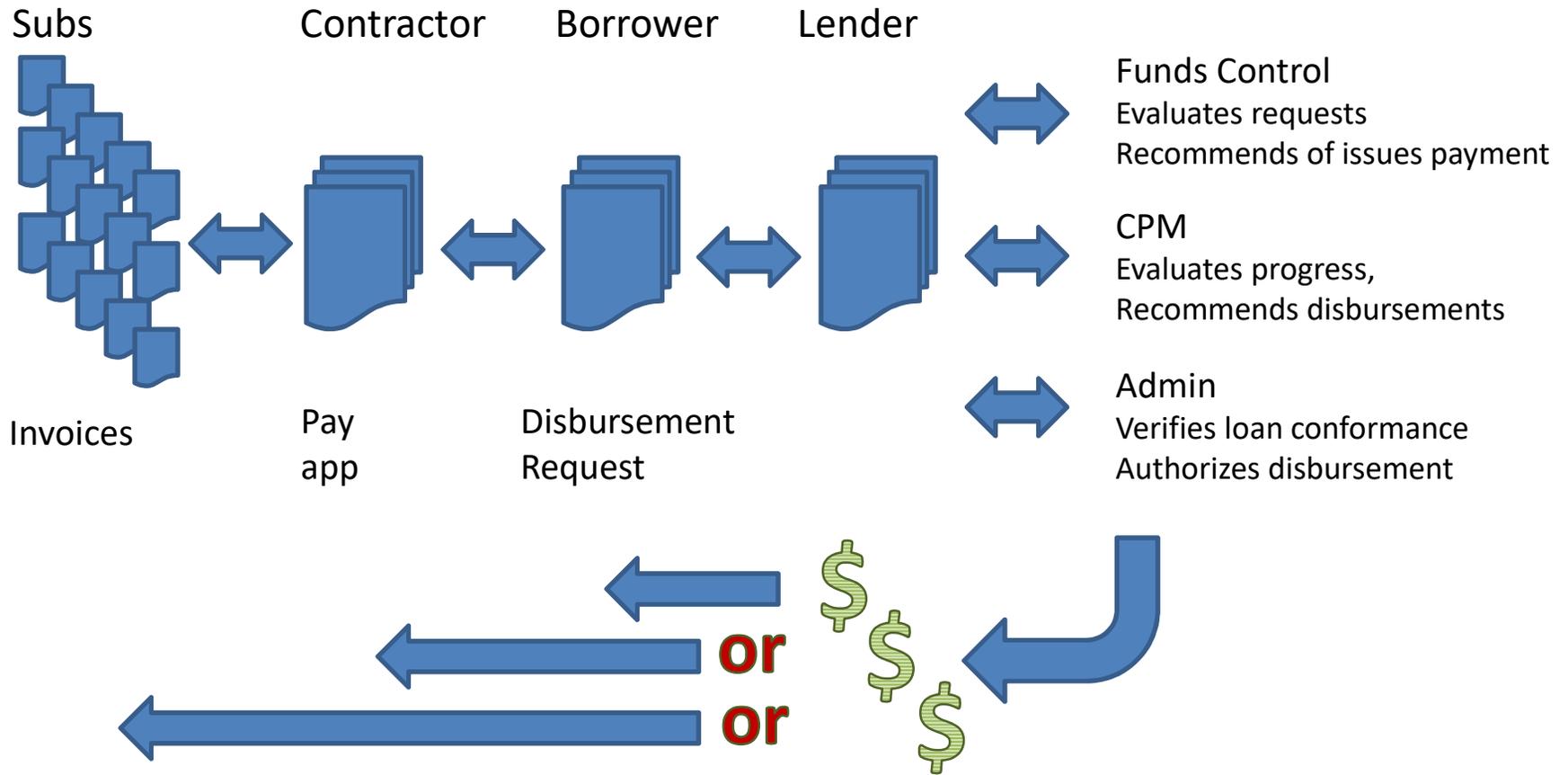
Borrower

- Complete and executed loan disbursement request form
 - Hard cost requests should be from the appropriate line item of the loan
 - Where contingency funds are used, reallocate fund from Contingency to the appropriate loan line item and construction budget.
- G702/703 signed by architect and contractor
- Subcontractor and supplier
 - invoices
- Borrower responsibilities
 - Reaffirm conformance with reps, warrants and loan provisions
 - Independently evaluate and approve all aspects of the request including, without exception:
 - quality and conformance of the work,
 - requested funds,
 - budget allocations,
 - schedules, etc.

Contractor

- Pay Application
 - G702/703 signed by contractor
- Supporting Documentation
 - Contractor's request

Flow Chart



Disbursement Requests ⁽¹⁾

Borrower

- Complete and executed loan disbursement request form
 - Indicate the appropriate loan line item
 - Where loan contingency funds are used, reallocate fund from Contingency to the appropriate loan line item and construction budget.
- Proposed change orders requiring lender approval, if any
- Explanation of revised
 - Improvements
 - Budgets
 - Schedules

Construction Pay Application

- G702/703 or equivalent
 - Executed by architect and contractor
- **Contractor's sworn statement**
- Subcontractor and supplier
 - Invoices
 - Conditional lien Releases
 - Unconditional lien releases