

9.1 Introduction

A. After the Firm Commitment is issued, the closing of a Section 232 project is a collaborative effort primarily among the ORCF Closing Coordinator (hereinafter referred to as the “Closer”), the HUD Closing Attorney (hereinafter referred to as the “HUD Attorney”), the Lender’s Attorney, and the Lender. This Chapter focuses mostly on the closing roles and requirements of the Closer and the Lender. In addition to the requirements set forth in this Chapter, more detailed requirements for the Lender’s Attorney and HUD Attorney are distributed by the HUD Office of General Counsel. The contents within this Chapter are not intended to be and must not be interpreted as legal guidance.

B. Lender’s Responsibilities. Lenders are strongly encouraged to engage and be represented by competent legal counsel throughout the loan application and closing document preparation and submission process. Lenders should not rely on personnel other than their legal counsel, and legal support staff under the careful oversight of legal counsel, in preparing and submitting closing documents. It is HUD’s experience that Lenders that rely on personnel other than those with proper legal training and experience often submit incomplete closing documents with numerous errors. This practice unnecessarily consumes HUD staff time and greatly increases the chances for disruptive and delayed closings, which ultimately becomes more expensive to the parties. At the HUD Closing Attorney’s discretion and in accordance with professional responsibility standards, the HUD Closing Attorney may decline to communicate with anyone other than the Lender’s attorney with respect to the transaction.

9.2 The ORCF Closer

ORCF utilizes a Closer for all of its closings. A Closer will be assigned to a project after the Firm Commitment has been issued. The Closer serves as the main point of contact for ORCF and will work closely with all of the parties to ensure that ORCF program and administrative requirements are satisfied prior to closing. The Closer’s responsibilities include, but are not limited to, the following:

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A. Draft Closing Documents.

1. Upon assignment, the Closer will send an introductory email to the Lender and the Lender’s Attorney with directions on the delivery of the draft closing documents to the Closer. If the closing documents are incomplete or substantially incorrect, the project may be marked inactive, removed from the Closer’s assignments, and placed back in the closing queue. Once a complete/acceptable closing package is received and verified, the project will be marked as active and reassigned to a Closer as availability allows.
2. The appropriate closing checklist must be placed in front, on top of the closing package. (Closing document checklists are referenced in Appendix 9.1.) Documents must be tabbed according to the corresponding number on the checklist. All documents must be submitted in one hard copy package. The closing package must also contain evidence that all Special Conditions have been satisfied.
3. HUD anticipates that the documents in every submission are the final drafts of documents that all parties to the transaction have agreed upon prior to submission. If documents need additional review by the parties or by third parties, then the submission must be held until all issues can be resolved and final draft versions of documents can be submitted for HUD review.
4. The closing package must include both a clean copy of each document and a redline of the document against the HUD form where applicable. If a document is being resubmitted in response to HUD comments, that second submission must include both a clean copy of the document and a redline against the earlier submission. All proposed changes must be approved by both the Closer and HUD Attorney.
5. The Closer will review the draft closing documents to ensure that all programmatic requirements are met, all Special Conditions have been satisfied, and any repairs have been acceptably completed with adequate evidence. The Closer will notify the Lender, the Lender’s Attorney, and the HUD Attorney of any deficiencies. The HUD Attorney will perform a similar, but legal, review and will notify the Closer and Lender’s Attorney of any deficiencies. All deficiencies must be cured prior to establishing a closing date. Failure to cure deficiencies will lead to a canceled or delayed closing.
6. Piece-meal deficiency responses will not be accepted. Instead, responses to deficiencies must be submitted together in one e-mail or package with a written explanation. The written explanation must clearly identify which documents are attached and what changes have been made.

B. Amendments to the Firm Commitment. Requests to amend the Firm Commitment must be submitted to the Closer on Lender letterhead; the request must list the proposed

83 amendments and attach the proper documentation. The Closer will review and, if
84 appropriate, prepare, execute, and distribute the amendment.

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- 86 **C. Completion of Repairs.** If required by the Firm Commitment, the Closer will ensure that
87 repairs are completed. The Closer will review evidence of completion, including supporting
88 photographs and invoices, and the Borrower’s Certification—Completion of Critical Repairs
89 (Form HUD-91118-ORCF). For non-critical or Borrower elected repairs, the Closer will
90 review the Escrow Agreement for Non-critical, Deferred Repairs (Form HUD-92476-ORCF)
91 and list of repairs to be completed. For non-critical or Borrower elected repairs completed
92 prior to closing, the Closer will review evidence of completion (photographs and invoices)
93 and the Borrower’s Certification-Full or Partial Completion of Non-Critical Repairs (Form
94 HUD-92117-ORCF). If any remaining repair items are not completed, the Closer will review
95 and approve a request for amendment to the Firm Commitment with a revised list of repairs.
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- 97 **D. Survey and Title.** If necessary, the Closer will coordinate resolution of any issues related to
98 the title and ALTA survey. ORCF expects covenants that run contrary to the Fair Housing
99 Act or other civil rights laws to be removed. To avoid delays in closing, the parties should
100 discern early whether such covenants exist and, if so, immediately commence necessary
101 actions to remove them. Initiating this effort obviously involves having a title search
102 conducted early in the application process. In the event that, despite such timely and ardent
103 effort, the parties are not able to timely obtain removal of the covenant, then, in order to
104 avoid a closing delay, ORCF would expect those efforts to be clearly documented and would
105 expect documents to be executed affirmatively acknowledging the unenforceability of such
106 provisions and repudiating them.
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- 108 **E. Management Conference Call.** If applicable, the Closer will ensure that a conference call
109 between the ORCF servicing Account Executive for the project and the Borrower occurs
110 prior to closing.
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- 112 **F. Closing Statements and Cost Certifications.** The Closer will review and examine all
113 closing statements and, if applicable, cost certifications (e.g., the Borrower’s Certificate of
114 Actual Cost (Form HUD-2205A-ORCF). The Closer will review all supporting documents
115 such as the payoff letters and invoices.
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- 117 **G. Execution of ORCF Closing Documents.** Once all program and legal requirements are
118 met, the Closer will work with the Lender’s Attorney, the Lender, and the HUD Attorney to
119 ensure that HUD signatory closing documents are signed by the appropriate ORCF
120 Authorized Agent in advance of the closing. Documents must not be sent for ORCF’s
121 signature without prior, express approval from the Closer.
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- 123 **H. Closing Date.** The Closer will work with the HUD Attorney and the other parties to help
124 determine a closing date. A closing date may be canceled or delayed if program or legal
125 requirements are not fully satisfied.
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127 I. **Checks.** The Closer will confirm the correct amount of the Mortgage Insurance Premium
128 (MIP) due at closing and, if applicable, the Inspection Fee, and/or an additional Application
129 Fee. See Section 9.5 below for more information on required fees and refunds.
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9.3

The Lender

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133 The following are key responsibilities of the Lender in the closing process. In addition, it is the
134 Lender's duty to keep the Closer informed of any special circumstances related to the closing.
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136 A. **Execution of Firm Commitment.** The Lender ~~must~~ should execute and have the Borrower
137 execute the Firm Commitment within 10 business days of receiving the Firm Commitment.
138 Acceptance of Firm Commitments executed beyond 10 business days is subject to ORCF
139 approval.
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141 B. **Amendments to the Firm Commitment.** Material changes to a transaction may require
142 amendments to the Firm Commitment. Any material adverse conditions or changes to any
143 facts or circumstances that would make any information submitted, or which should have
144 been submitted, with the application for mortgage insurance (including without limitation
145 any such information relating financial statements, rent rolls, reports, investigations or other
146 credit risks) incomplete or inaccurate must be disclosed to ORCF. ORCF considers such
147 information to determine whether whether an amendment to the Firm Commitment is
148 required and/or whether the deal may proceed. No part of the Firm Commitment may be
149 amended without the prior approval of ORCF. To amend the Firm Commitment, the Lender
150 must submit a written request on letterhead to the Closer setting forth the specific changes
151 requested. This request must include documentation to support the requested change(s).
152 When possible, all requested changes to a Firm Commitment must be combined into one
153 request in order to minimize the number of amendments.
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155 1. **Extensions.** Firm Commitments may be extended for periods of time depending on
156 project type; however, processing and underwriting conclusions must be current at the
157 time of any extension. For 223(f) projects, the Closer may extend the Firm
158 Commitment for one 60-day period. For 223(a)(7) projects, the Closer may extend
159 the Firm Commitment for one 90-day period. For new construction projects, the
160 Closer may extend the Firm Commitment in 30-day increments. Extension requests
161 beyond these periods require review and approval by the assigned project ORCF
162 Workload Manager. The Lender's request to amend the Firm Commitment must
163 provide a justification acceptable to HUD that the extension of the Firm Commitment
164 is warranted and necessary in order to accomplish closing by the end of the extension
165 period. Requests for extension must include the following statement (if true): "*The*
166 *requested delay is not likely to change significantly the underwriting data on which*
167 *the commitment was based or to undermine the feasibility of the project due to a*
168 *change in the market, inflation, or other factors affecting cost.*" If, at the expiration
169 of the extension period, the closing fails to occur, HUD reserves the right to consider

170 the application withdrawn. In that case, the application must be updated and
171 submitted as a new application in order to receive further consideration.

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- 173 2. **Interest Rate Changes.** ORCF suggests that the interest rate not be locked without
174 confirmation that the closing is moving forward. Locking the interest rate prior to
175 such confirmation will be at the Lender and Borrower's own risk. HUD will not
176 close a transaction without all program and legal requirements being fully satisfied
177 solely to accommodate a security delivery or obligation deadline. Once the interest
178 rate has been locked, a request to amend the Firm Commitment must be submitted.
179 Such a request must include a revised, signed Maximum Insurable Loan Calculation
180 (Form HUD-92264A-ORCF).

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182 **C. Satisfaction of Special Conditions.** Evidence of satisfaction of all Special Conditions listed
183 in the Firm Commitment must be provided prior to closing and must be submitted with the
184 draft closing document package. The Closer will provide a Special Conditions Matrix to
185 keep track of the status and documentation related to each Special Condition. ~~The Firm~~
186 ~~Commitment does not need to be amended to evidence satisfaction of the Special~~
187 ~~Condition(s).~~

188 1. Deferred Submission items (see the Lender's Architectural Reviewer and Cost Analyst's
189 Statement of Work, Section IV.A.12) and/or any additional changes must be identified by
190 addendum(s), must be reviewed by the underwriter of record and approved by HUD 15
191 days prior to Initial Closing.

192 ~~1-2.~~ The addendum(s) must include a list of drawing numbers and page numbers with
193 a description of the change(s). Addendum(s) must be clearly noted and all drawings and
194 specifications affected must have sheets and pages revised and replaced. Addendum(s)
195 shall have no effect on cost or value. The Architect of record and the Lender's
196 construction analyst must review the addendum(s) for acceptability.

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199 **C.D. Evidence of Completion of Repairs.**

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- 201 1. **Critical Repairs:** All critical repairs must be completed prior to closing. Evidence of
202 completion includes a signed and dated Borrower's Certification – Completion of
203 Critical Repairs along with clear, supporting photographs and invoices. Other items
204 may be requested by the Closer as needed in order to verify that all repairs have been
205 completed.
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- 207 2. **Non-Critical or Borrower Elected Repairs:** Completion of non-critical repairs prior to
208 closing is encouraged. If the non-critical/Borrower elected repairs are not completed
209 by closing, they must be completed within 12 months of closing. An Escrow
210 Agreement for Non-critical, Deferred Repairs must be established, which includes the
211 list of repairs.
212 If all, or a portion of, the non-critical/Borrower elected repairs have been completed
213 prior to closing, the Lender must submit a signed Borrower's Certification-Full or
214 Partial Completion of Non-Critical Repairs. As with critical repairs, clear, supporting

215 photographs and invoices demonstrating proof of completion must be attached. For
216 the remaining repair items, a request to amend the Firm Commitment must be
217 submitted with an attached, revised list of repairs. See above for more information on
218 amendments.

- 219 3. See Production, Chapter 10.16 for more information on repairs.

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221 **D.E. Evidence of Insurance.** Prior to closing, evidence must be provided showing that the
222 project has all required fidelity, property, and professional liability insurance coverages. The
223 insurance coverages must be current and in conformance with all ORCF requirements. If a
224 policy will expire within one month of closing, proof of renewal will be required. See
225 Production, Chapter 14, Insurance Requirements, for details on insurance coverage.

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227 **E.F. Closing Statements and Cost Certifications.**

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229 1. Closing statements, sometimes referred to as settlement statements, are required for
230 all closings. The final version of the closing statement must be signed by both the
231 Lender and the Borrower and presented prior to closing. At a minimum, the
232 statements must include the following: amounts to be paid to satisfy Borrower's
233 obligations for existing indebtedness; repairs, if any; financing fees; HUD fees; legal
234 expenses; title and recording costs; third party costs; interest rate premium payments,
235 if any; bond premium payments; other allowable costs; and any Lender-required
236 escrows for taxes, insurance or other items. The statement must also include any cash
237 contribution by the Borrower. For Section 223(a)(7) projects, the closing statement
238 must be supported by current payoff letter(s) and invoices. The closing statement
239 must show the transfer amount of the Reserve Fund for Replacement and any
240 additional initial deposit amount, if required. Also for Section 223(a)(7) projects, the
241 Closer will compare the amount of the transfer of the current replacement reserves on
242 the Closing Statement to the amount in the Lender Narrative. If the amount has
243 decreased by \$20,000 or 20%, the Lender will be asked to recalculate the necessary
244 reserve for replacement deposits. The Lender must provide a letter certifying that the
245 Lender has recalculated the necessary reserver for replacement deposits, considered
246 any changes to the current reserve for replacement since the time of the original firm
247 application, and, that based upon that review, the Lender has notified the Closer of
248 any necessary increases to the initial deposit to the reserve for replacement account or
249 monthly deposit. The ORCF Underwriter must approve any changes to the reserve
250 for replacement requirements. For changes to Reserve amounts, a revised Reserve for
251 Replacement Funding Schedule may be required. Note: security extension fees are
252 not an allowable mortgageable cost.

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254 2. If a Borrower's Certificate of Actual Cost (also known as a "Cost Certification") is
255 required, it must include the supporting documents such as current payoff letter(s)
256 and invoices. The Cost Certification must be signed by the Borrower and will be
257 reviewed and approved by ORCF. See Production, Chapter 11.15 for more
258 information.

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260 **F.G. Fees.** The Lender must ensure that all fees due at closing are properly prepared and
261 delivered at closing. Any missing or incorrect fee may result in a delayed closing. See
262 Section 9.5 on Fees Due.

264 **G.H. Lender and Lender's Attorney.** The Lender must at all times work closely with its
265 attorney to ensure all closing requirements are met in a timely manner.
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267 **H.I. Lender's Certificate/Request for Endorsement.** The Lender will be required to
268 execute either a Lender's Certificate or a Request for Endorsement, which include several
269 certifications. It is the Lender's responsibility to perform any necessary due diligence to
270 allow the Lender to make such certifications accurately.
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9.4

General Closing Logistics

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- 274 **A. Type of Closing.** ORCF closings may take place with all parties present, a “table closing,”
275 or remotely, a “by mail closing.” There may also be a “skeleton closing,” wherein only one
276 or some of the parties attend. Although “by mail” or “skeleton” closings are encouraged, the
277 HUD Attorney will make the final determination on the type of closing to conduct and will
278 provide the Lender and Lender's Attorney appropriate instructions. By mail closings are
279 conducted at the discretion of the HUD Attorney and may be limited in circumstances where
280 incomplete or substantially incorrect documents are received or certain circumstances
281 demonstrate the need to have a table closing. Under no circumstances should the endorsed
282 note be provided to the FHA Lender.
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- 284 **B. Date of Closing.** The closing date will be set by the HUD Attorney after consultation with
285 the Closer. The closing date will only be set once all programmatic and legal requirements
286 have been fully satisfied. The closing may be cancelled if documents are not satisfactory or
287 if any programmatic or legal requirement is not met.
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- 289 **C. Documents to be signed by ORCF.** The documents to be signed by ORCF, such as the
290 Healthcare Facility Note (Form HUD-94001-ORCF), the Healthcare Regulatory Agreement
291 – Borrower (Form HUD-92466-ORCF), and any other documents required in the transaction,
292 will be signed by ORCF in advance of the closing. Once the Closer has approved the
293 documents for signature, the Closer will coordinate ORCF's execution of the documents.
294 The Lender and Lender's Attorney must ensure that the documents have been properly
295 prepared and are received by ORCF in sufficient time for execution and shipment. The
296 documents must be in final form before sending them for ORCF signature, and the
297 documents must be the exact versions approved by all parties, including HUD. ORCF will
298 execute a maximum of four copies of the documents; however, to cut down on administrative
299 time two copies are strongly encouraged.
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- 301 **D. Recording Documents.** Documents may be recorded in advance of the closing with prior
302 approval from the HUD Attorney.

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- E. **Closing Day.** The HUD Attorney will lead a “table” or “skeleton” closing. If closing “by mail,” the Lender’s Attorney, Lender, Owner, Borrower, Borrower’s Attorney, Operator, Operator’s Attorney, and other related parties must be readily available by telephone should any question or problem arise. All documents must be satisfactory to HUD, be in complete and final form, and be the exact same versions as previously submitted and approved. All HUD requirements must be satisfied. At the conclusion of the closing, the HUD Attorney will deliver the endorsed Healthcare Facility Note to the Lender’s Attorney either in person or by mail.
- F. **Closing Document Copies.** After closing, the Lender’s Attorney must provide a compact disk, or a Zip file, containing scanned copies of the documents accepted by the HUD Attorney at the closing. The Closer will provide the details on where to send the disk or file.

9.5

Fees Due and Refunds

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- A. **Mortgage Insurance Premium (MIP).** A first year MIP fee is due at closing. The amount of the fee is listed in the Federal Register, published annually on or about July 1, and varies per type of program under which the loan is insured and will be set forth in the Firm Commitment.
- B. **Inspection Fee.** The Inspection Fee varies by program. See Production, Chapter 2, General Program Requirements, under each program section for specific amounts and formulas.
- C. **Additional Application Fee.** If the mortgage amount has increased since the initial submission of the Application or the issuance of the Firm Commitment, an additional application fee will be required, which will be set forth in the Firm Commitment Amendment.
- D. **HUD Application Fee and HUD Inspection Fee Refunds.** If the mortgage amount has decreased since the initial submission of the Application or the issuance of the Firm Commitment, the Lender may request a refund of the application fee after closing. For all Section 223(a)(7) projects, the Lender may request a refund of 50% of the application fee after the project closes. If the lender has been approved for delegated administration of the non-critical repair escrow, the lender may request a refund of the HUD inspection fee paid at closing on Section 232, pursuant to Section 223(f), transactions. Requests for refunds must be sent to OHPrefunds@hud.gov and must include the project name and FHA number in the subject line with the Request of Overpayment of Firm Application Fee (Form HUD-91112-ORCF) attached. Refunds are sent via electronic transfer.

9.6

Closing Section 232/223(a)(7) and Section 232/223(f) Loans

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345 There are several types of Section 232 pursuant to Section 223(a)(7) loans, which are refinances
346 of existing FHA loans such as new construction, substantial rehabilitation, 223(f) and 241(a).
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348 A loan insured under Section 232 pursuant to Section 223(f) is the refinance or purchase of a
349 residential care facility project, which may or may not be currently FHA-insured.
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351 The Closer checklists and to the HUD Attorney checklists which set forth the documents
352 required to close these loans are identified in Appendix 9.1. When sending the draft closing
353 documents for HUD review, place the appropriate checklist on top of the closing package;
354 additionally, please tab and organize the corresponding documents to match the checklist.
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356 The closings of these two types of loans are similar. A few key differences are:
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- 358 1. No repair Inspection Fee is required for loans processed under Section 223(a)(7).
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- 360 2. A cost certification, the Borrower's Certificate of Actual Cost, is required for all Section
361 223(f) loans. This document is only required for Section 223(a)(7) projects that have
362 repairs but did not submit a PCNA. See Production, Chapter 11.15 for full details on cost
363 certifications. All cost certifications will be reviewed and approved by ORCF.
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- 365 3. A closing statement is required for all Section 223(a)(7) and Section 223(f) loans;
366 however, for Section 223(f) loans, supporting documentation does not have to be attached
367 to the closing statement if it is provided with the Borrower's Certificate of Actual Cost.
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- 369 4. Total Lender's Fees are limited to 2.0% of the mortgage amount for a Section 223(a)(7)
370 loan; they are limited to 3.5% for a Section 223(f) loan. Fees may be up to 5.5% for bond
371 transactions.
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- 373 5. The repair escrow coverage for a Section 223(a)(7) loan is 10% of estimated costs; the
374 coverage is 20% for a Section 223(f) loan.
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- 376 6. Prior to the closing of a Section 223(f) loan, a conference call between the Borrower and
377 the servicing ORCF Account Executive must be scheduled. This is not required when the
378 loan is insured under Section 223(a)(7).
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9.7

Closing New Construction, Substantial Rehabilitation, Section 241(a), and Blended Rate Loans

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382 Loans insured under Section 232 for New Construction or Substantial Rehabilitation are for the
383 complete construction of a project or for substantial repairs or improvements to an existing
384 project.

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386 A loan insured under Section 241(a) is a supplemental loan to an existing loan insured by FHA
387 to allow for an addition or improvements to a project.

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389 A loan insured under Section 232 for a Blended Rate is to allow a project to do an addition;
390 however, the loan is based on a blend of Section 232 new construction and Section 223(f) loan-
391 to-value ratios. See Production, Chapter 2, General Program Requirements, and Production,
392 Chapter 3, Loan Sizing, for more details on this type of loan.

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394 For the above loans, the closings are either Insured Advances or Insurance Upon Completion. If
395 the loan is for Insured Advances, there are two closings: an initial closing prior to the start of
396 work and a final closing after the completion of the work. If the loan is for Insurance Upon
397 Completion, there is only one closing. Because of the complexities of these types of closings,
398 the following sections provide more closing information.

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9.8

Initial Closings: Required Forms and Documentation

401
402 In addition to the documents listed below, see Appendix 9.1 for the reference to the checklist of
403 documents required to close these types of loans. Note: there is only one checklist for both the
404 Closer and the HUD Attorney.

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406 A. **Construction Contract** (Form HUD-92442-ORCF). These contracts may be either Lump
407 Sum or Cost Plus. See Production, Chapter 11.13.A for more information on these contract
408 requirements.

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410 1. Attach the Contractor's and/or Owner's Cost Breakdown (Form HUD-2328) as
411 Exhibit A to the contract. This form must be approved and signed by ORCF with the
412 Firm Commitment.

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414 2. Attach the Supplementary Conditions of the Contract for Construction (Form HUD-
415 92554-ORCF). The Davis Bacon Wage Determination must be included in the
416 specifications. The Closer will confirm with HUD's Office of Labor **Standards and**
417 **Enforcement Relations** that the Davis Bacon Wage Determination is current as of the
418 date of endorsement. The Lender must certify that the most current and applicable

wage decision has been incorporated in the Construction Contract and Specifications prior to closing. See Appendix 4.1, Labor Standards and Enforcement Relations Protocol for information on coordinating with Labor Standards and Enforcement Relations.

3. Attach the Incentive Payment Addendum (Form HUD-92443), if the Borrower and contractor have agreed to such a payment, and there is no Identity-of-Interest between the Borrower and contractor.

B. Owner-Architect Agreement (AIA Document B108). The Agreement must include the HUD Amendment to the B108 (Form HUD-92408-ORCF), which contains a section for disclosing parties in an identity-of-interest relationship with the Architect. If there are no such parties, then the form should indicate “none.” See Production, Chapter 4.2, Exhibit C, for additional information. This form must be reviewed and accepted at the Firm Commitment stage.

C. Assurance of Completion. Documentation and HUD review will vary depending on the type of assurance of completion provided. Except for letters of credit, the HUD Attorney must review each type of Assurance of Completion, including the form of bonds where used.

1. Letters of Credit. These may be used instead of cash for all assurances of completion and escrows required at initial and final closing, or during construction, except for up-front cash escrows.
 - a. Acceptance of a letter of credit is at the Lender's discretion. However, the letter of credit must always be:
 - i. Unconditional and irrevocable;
 - ii. Issued by a banking institution; and
 - iii. Valid and collectible.
 - b. The Lender may not be the issuer of any letter of credit without prior written consent of ORCF.
 - c. HUD will neither look at the letter of credit nor render an opinion as to its enforceability or acceptability; letters of credit are accepted at the Lender's sole discretion.
2. Assurance of Completion for On-Site Improvements. The Lender or Borrower may impose higher requirements, but must require one of the following as a minimum:
 - a. Surety Bonds. The Payment Bond (Form HUD-92452A-ORCF) must be used for payment bonds and the Performance Bond-Dual Oblige (Form HUD-92452-ORCF) must be used performance bonds. Each bond must equal 100% of the ORCF estimate of the total for all improvements (Line 53, Contractor's and/or Owner's Cost Breakdown). The following requirements must also be satisfied:
 - i. The surety must be on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1;
 - ii. The bonds must not exceed limits listed in Circular 570;

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- iii. GNMA may also be named as an obligor if GNMA securities are being used;
 - iv. An original power of attorney from the surety company to its agent must be attached to each bond and dated the same day as the bond; and
 - v. Corporate surety bonds are required for Assurance of Completion of on-site improvements where payment for components stored offsite has been approved.
- b. Completion Assurance Agreement (Form HUD-92450-ORCF). This agreement must be secured by a cash deposit (or unconditional, irrevocable letter of credit) for the appropriate percentage of the ORCF estimate of construction or rehabilitation cost, as described below:
- i. For small and walk- up projects, ORCF requires a deposit of 15% of the HUD estimate of construction or rehabilitation cost for projects where the structure contains no elevator, or the structure is three stories or less and contains an elevator;
 - ii. For large and elevator projects, ORCF requires a deposit of 25% of the HUD estimate of construction or rehabilitation cost for projects where the structure includes an elevator, or the structure is four or more stories.
3. Assurance of Completion for Off-Site Improvements. See Lender’s Certificate (Form HUD-92434-ORCF) for requirements. To assure the completion of work which may not be financed with mortgage proceeds, one of the following is required:
- a. A Public Body Agreement acceptable to HUD from the controlling jurisdiction giving assurance for installation of utilities, streets or other facilities without cost to the Borrower. The Borrower’s attorney’s opinion as to whether the agreement is binding on the public body and succeeding administrations is required;
 - b. A cash escrow using an Escrow Agreement for Offsite Facilities, deposited with the Lender, a trustee or an escrow agent acceptable to HUD, or an unconditional, irrevocable letter of credit. The amount must equal or exceed ORCF’s estimate of the cost of offsite facilities; or
 - c. Where additional assurance is deemed necessary by ORCF, one of the following will be required:
 - i. Offsite Bond – Dual Oblige (Form HUD-92479-ORCF), or
 - ii. A letter of credit.
- D. **Building Loan Agreement** (Form HUD-92241-ORCF). This document sets out the responsibilities, conditions, and operating terms between the Lender and the Borrower, including the basis under which insured advances may be made during the construction period.

- 508 E. **Lender's Certificate** (Form HUD-92434-ORCF). All required escrows, deposits, fees,
509 and other amounts must be properly reflected in the Lender's Certificate as well as
510 information concerning other bond obligations, extension fee agreements, and permanent
511 loan commitments. Where permissible prepayment lockout and/or penalty provisions are
512 included in the Healthcare Facility Note, this form may include conditions under which
513 HUD may consider an override of such provisions. An addendum to the Lender's
514 Certificate may be used to clarify certain expenses.
515
- 516 F. **Agreement and Certification** (Form HUD-93305-ORCF). This obligates the Borrower
517 to certify its actual costs of project construction or rehabilitation costs, and to disclose
518 any identity of interest among project participants. It also obligates the Borrower to
519 agree to a reduction of the mortgage amount in certain instances.
520
- 521 G. **Application for Insurance of Advance Mortgage Proceeds** (Form HUD-92403). An
522 initial draw of loan proceeds may be made on the day of initial closing upon recordation
523 of the Security Instrument, evidence it constitutes a first lien on the property, and HUD's
524 delivery of the endorsed Note. This form must be submitted to ORCF for review and
525 approval prior to closing. Supporting documentation including invoices, receipts, or
526 cancelled checks organized with tabs and a summary sheet for each line item, must also
527 be submitted with the draw. A final, fully executed copy of this form must be submitted
528 no later than three (3) days prior to initial closing. See Production, Chapter 10,
529 Construction Period, Appendix 10.2, Instructions for Approval, for additional details.
530
- 531 H. **Escrow Agreement for Operating Deficits** (Form HUD-92476B-ORCF). Any
532 operating deficit escrow requirements prescribed in the Firm Commitment may be in the
533 form of cash, and/or one or more unconditional and irrevocable letters of credit issued to
534 the Lender by a banking institution.
535
- 536 I. **Escrow Agreement for Working Capital** (Form HUD-92412-ORCF). When the Firm
537 Commitment requires a working capital deposit, the Borrower must deposit with the
538 Lender a cash escrow or one or more unconditional and irrevocable letter(s) of credit at
539 initial closing. See Production, Chapter 10.15.C.
540
- 541 J. **Minor Movable Equipment Escrow Agreement** (Form HUD-9443-ORCF). When the
542 Firm Commitment requires an escrow for minor moveable equipment, the Borrower must
543 deposit with the Lender a cash escrow or one or more unconditional and irrevocable letters
544 of credit at initial closing.
545
- 546 K. **Other Escrows.** Other escrows may be required by the Firm Commitment. Examples
547 include an Off-Site Escrow or a Demolition and Asbestos Removal Escrow.
548
- 549 L. **Fee Payment from Cash Available to Borrower.**
550
- 551 1. Fees Paid at Initial Closing. Excess mortgage proceeds may be used to pay
552 construction costs, permanent loan discounts, and other fees recognized by HUD

- 553 under paragraph 19 of the Lender’s Certificate.
554
- 555 2. For New Construction, excess mortgage proceeds may also be allocated to the
556 following items:
- 557 a. ORCF’s estimate of the “as-is” value of land or the actual latest arms’ length
558 purchase price, whichever is less. The latest arm’s length purchase price may
559 include the following connected costs:
 - 560 i. Legal fees associated with acquisition of land, zoning, examination of
561 title on the purchase, or defense of title after the purchase;
 - 562 ii. Prepaid special assessments;
 - 563 iii. Interest on bridge loans to purchase property after the date of
564 submission of the initial application for mortgage insurance;
 - 565 iv. Taxes;
 - 566 v. Cost of improvements made to the project site by the Borrower;
 - 567 vi. Cash escrow to cover offsite construction cost;
 - 568 vii. Cost of any demolition reflected in the fair market value of the land
569 (note that payment is approved as demolition progresses);
 - 570 viii. Construction and/or permanent loan discounts required to be paid at
571 initial closing; and
 - 572 ix. Interest shortfall escrow, working capital deposit, initial operating
573 deposit, non-realty items, and any permanent loan discounts not
574 required to be paid at initial closing.
 - 575 b. The remaining balance may be used to fund approved change orders or be
576 held until final closing.
- 577
- 578 3. For rehabilitation of existing construction, excess mortgage proceeds may also be
579 allocated to ORCF’s estimate of the “as-is” value of land or the Borrower’s
580 acquisition cost/existing indebtedness, whichever is less, and items (a)(1) through (6)
581 above.
582
- 583 4. Restricted Excess Mortgage Proceeds. Restricted excess mortgage proceeds are those
584 excess mortgage proceeds determined not to be available to the Borrower during
585 construction.
 - 586 a. These funds cannot be used to satisfy escrow requirements and must be held
587 until final closing; and
 - 588 b. These funds must be identified in an unused column of the Financial Record
589 of Mortgage Loan Transaction (Form HUD-92451) as restricted funds.
590
- 591 5. Fees Paid After Initial Closing. Excess mortgage proceeds may be used to fund
592 permanent loan discounts, including those for unitary loans, and construction and
593 permanent loan extension fees for payment after initial closing to the extent
594 recognized by ORCF under paragraphs 19(b), (c) and (d) of the Lender’s Certificate.
595 In these instances, loan documents approved by ORCF must provide for the payment
596 of such fees after initial closing, subject to the following:

- 597 a. The Lender is required to escrow sufficient funds on the Borrower's behalf to
598 cover fees approved in the Lender's Certificate, paragraphs 9(b), for payment
599 after initial closing;
- 600 b. The Borrower is required to furnish a written agreement to ORCF that any
601 disbursements from the escrow accounts must require ORCF written approval;
- 602 c. A letter of credit will not be accepted at initial closing for any of the amounts
603 to be satisfied from excess mortgage proceeds; and
- 604 d. Such escrowed excess mortgage proceeds may be released when earned.
605
- 606 **M. Permits, Approvals and Plans.** All building and other permits, governmental approvals,
607 and plans required to construct or to rehabilitate the Project improvements must be
608 provided for ORCF review and approval prior to initial closing. Approvals and permits
609 must be unconditional and consistent with the ORCF-approved plans and specifications.
610
- 611 **N. License.** Evidence must be provided at the initial closing that the application process for
612 the facility license has begun, and upon completion of the project, as proposed, a license
613 will be issued. The evidence must be confirmation from the appropriate governing
614 authority.
615
- 616 **O. Easements and Use Agreements.** All easements and joint use agreements must be
617 approved by ORCF and the HUD Attorney.
618
- 619 **P. Additional Agreements.** Any additional agreements that affect the property or financing
620 of the project must be disclosed to ORCF, including, but not limited to, construction
621 agreements; indemnifications, guarantees, and hold harmless agreements; and any other
622 document or information that would require reprocessing of the Firm Commitment,
623 increase Borrower's cash requirements, or increase the General Contractor's bond
624 requirement.
625
- 626 **Q. Accounts Receivable Financing.** If there is to be accounts receivable financing on new
627 construction projects, final draft versions of the documents will be due at 70%
628 completion. In no event should Accounts Receivable documents be executed without
629 prior HUD consent.
630
- 631 **R. Deposit Account Control Agreement (DACA) and Deposit Account Instruction
632 Service Agreements (DAISA).** ORCF requires that all project Owners and/or Operators
633 maintain appropriate agreements, approved by HUD, perfecting a security interest in
634 project accounts.
635
636

9.9

Preconstruction Conference

637
638 A Preconstruction Conference is required prior to the start of construction. The Preconstruction
639 Conference must be scheduled within one week of initial closing. The Lender is responsible for

640 arranging and facilitating the Preconstruction Conference. The signing of the Plans and
641 Specifications generally occurs at the Preconstruction Conference. The signing may also be
642 conducted at Closing. See Production, Chapter 10, Construction Period, for more information.
643
644

9.10

Low Income Housing Tax Credits

645
646 A. For more information, see Production, Chapter 12, LIHTC and Other Tax Credit Program
647 Guidance.

648 Specific to loans involving tax credits, the initial closing documents must include:

- 649 1. A final detailed Sources and Uses statement of total development costs,
650 reflecting any revisions to hard and soft costs as reflected on the Firm Commitment's
651 Maximum Insurable Loan Calculation. If any funding sources have changed, a
652 revised Applicant/Recipient Disclosure/Update Report is also required.
653
- 654 2. All documents must include conflict language giving the HUD documents supremacy
655 over other documents. Documents may not include indemnification provisions,
656 except as otherwise permitted by outstanding HUD guidance.
657
658

659
660 B. Tax Credit Equity Contribution:

- 661 1. The required initial equity investment will be reflected in the Firm Commitment as a
662 Special Condition; the initial installment must be expended on the initial requisition at
663 initial closing.
664
- 665 2. Application for Insurance of Advance Mortgage Proceeds. Approval of costs to be
666 funded will be based on those approved in the Firm Commitment, or, if applicable,
667 approved amended Sources and Uses Statement.
668
- 669 3. After the first installment of LIHTC Equity is distributed at initial closing, the
670 subsequent contributions must be made at a time and in a manner during construction
671 to ensure that the underwriting requirements in the Firm Commitment are maintained
672 and met for actual costs.
673

674
675 C. Tax Credit Equity Bridge Loans:

- 676 1. Tax credit equity syndicators or investors (with or without an Identity of Interest with
677 the Section 232 Lender) may make equity bridge loans to LIHTC, Historic, or New
678 Markets Tax Credit projects during the construction or substantial rehabilitation
679 period before the property's placed-in-service date. The bridge loan may be
680 evidenced by a promissory note from the Borrower and may be secured by a pledge
681 of the tax credits or of the limited partnership interest but may not be secured by a
682

683 lien on the real estate. After the placed-in-service date, the bridge loan must be
684 released and retired by the pay-in of the investor's equity.

685
686 2. An equity bridge loan is a means of securing the Borrower's cash contribution that is
687 required to complete construction before the LIHTC are available to be claimed by
688 the equity investor. The placed-in-service date is the date when the newly
689 constructed or rehabilitated property has been completed and its units have been
690 occupied by income qualified tenants. This is also when the LIHTC are officially
691 able to be claimed by the equity investor, and is evidenced by issuance of Low-
692 Income Housing Credit Allocation and Certification (IRS Form 8609). The placed-
693 in-service date will typically be after Final Closing of the mortgage. However, at
694 Final Closing, all funds needed to meet the Borrower's cash contribution must be in
695 the transaction so the sources and uses will balance and the LIHTC investors will pay
696 in the equity to retire the equity bridge loan at the later placed-in-service date.

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9.11 Final Closings: Required Forms and Documentation

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700 Once construction has been completed and the certification of costs has been approved by
701 ORCF, the loan must proceed to final closing. ORCF will issue a Maximum Insurable Mortgage
702 Letter providing the final mortgage determination. Once the letter is issued, immediate
703 preparation for final closing must begin. Final closing documents are to be submitted within 30
704 days of the date of the Maximum Insurable Mortgage Letter. See Production, Chapter 11, Cost
705 Certification, for complete information on cost certifications.

706
707 See Appendix 9.1 for the references to the checklist of required documents for a final closing.
708 Note: there is only one checklist for both the Closer and the HUD Attorney.

709
710 A. **Deposit Account Control Agreement (DACA) and Deposit Account Instructions Service**
711 **Agreement (DAISA).** For all Insurance of Advances projects where the DACA and/or the
712 DAISA were not approved by HUD prior to initial closing, the final and executed DACA
713 and/or the DAISA must be submitted to the Closer and the HUD Attorney when the project
714 reaches 70% construction completion. The final and executed documents must be approved
715 prior to HUD's approval of the Permission to Occupy.

716
717 B. **Title Evidence at Final Endorsement.**
718 Prior to final endorsement, the Lender must provide HUD with a new title policy, or, if
719 approved by the HUD Attorney, a title endorsement covering the following matters:

- 720
721 1. Showing what, if any, matters have gone one record since the initial closing;
722
723 2. Changing the effective date of the title policy to the day of final closing;

724

- 725 3. If a Modification Agreement or Supplemental Mortgage and Consolidation
726 Agreement are used, insuring that the mortgage, as modified, or as supplemented and
727 consolidated, remains in a first lien position. Should the title insurance company be
728 unable to provide such endorsement, or should the endorsement show any lien
729 intervening between the recordation of the original insured mortgage and the
730 Supplemental Mortgage, ORCF will not endorse the mortgage for insurance at the
731 increased amount;
- 732
- 733 4. Deleting the pending disbursements clause; and
- 734
- 735 5. Increasing title coverage if the mortgage amount increased.
- 736
- 737 6. ORCF will examine any exception to title, not shown in the title evidence accepted at
738 initial closing, to determine whether or not it affects the value and/or marketability of
739 the project. Any exception which affects the value and/or marketability of the project
740 as determined by ORCF must be removed from the title policy or its effect insured
741 against by the appropriate endorsement to the title policy;
- 742

743 C. **Labor Standards and EnforcementRelations Clearance.** The Office of Labor Standards and
744 Enforcement ~~Relations~~ must confirm that all Davis Bacon requirement have been
745 satisfied. The Closer will request clearance for closing from the Office of Labor Standards
746 and Enforcement ~~Relations~~. If there are outstanding Davis Bacon violations, the Labor
747 Standards and Enforcement ~~Relations~~ Specialist will inform the General Contractor, the
748 Closer, and the ORCF Construction Manager that deposits to the U. S. Treasury must be
749 established as a condition of closing to ensure payment of wages. Final closing cannot
750 proceed until the violations have been cleared. The Office of Labor Standards and
751 Enforcement ~~Relations~~ will provide approval to proceed to final closing. See Appendix 4.1,
752 Labor Standards and Enforcement ~~Relations~~ Protocol, for more information.

753

754 **D. Incomplete On-site Facilities.**

755

- 756 1. Conditions for Approval. It is desirable that all on-site construction be 100%
757 complete before approval of a final advance of mortgage proceeds. However, there
758 may be circumstances where it is necessary that approval of a final advance be given
759 before 100% completion of on-site construction.
 - 760 a. Approval of a final advance where minor items of on-site construction are
761 incomplete will be given only in cases in which funds are placed in escrow to
762 assure completion of such minor items, as provided in the Certificate of
763 Mortgage Insurance in the Application for Insurance of Advance Mortgage
764 Proceeds, and in the footnote on Request for Final Endorsement (Form HUD-
765 92023-ORCF).
 - 766 b. Approval of a final advance of mortgage proceeds will be given only in those
767 cases in which:
 - 768 i. The aggregate estimated cost of completing the items does not exceed
769 2% of the principal amount of the mortgage.

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- ii. Funds must be placed in escrow for the completion of minor items when immediate completion is inadvisable or impossible, due to weather or other conditions beyond control.
2. Escrow for Completion. With respect to all incomplete items, the amount held in escrow for completion must be at least 1.5 times the estimated cost of completion. The amount of any escrow must be sufficient to assure an incentive to complete the work, taking into consideration a possible rise in cost. Such escrow will be held by the Lender in accordance with the terms of the Escrow Agreement for Incomplete Construction (Form HUD-92456-ORCF), and ORCF will ascertain that the items to be completed are properly identified by attachment to the Application for Insurance of Advance of Mortgage Proceeds. See Production, Chapter 10.8.I for additional information.

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785 **E. Incomplete Off-site Facilities.**

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1. Approval of a final advance of mortgage proceeds will be given only in those cases in which: All off-site utilities such as sewer, water, electrical, and gas facilities are installed and connected, and the buildings are served by safe and adequate all-weather facilities, either permanent or temporary, for the ingress and egress of pedestrian and vehicular traffic, including fire apparatus, and all other construction requirements have been acceptably accomplished or acceptably assured.
2. Completion of Off-Site Utilities. Until all off-site facilities are completely installed and connected, as applicable, and the required ingress and egress is provided, HUD will not process a request for the final advance. In such cases:
 - a. Any Application for Insurance of Advance of Mortgage Proceeds submitted for processing will not be treated as approval of a final advance, nor will the submission of Request for Final Endorsement. Instead, the Application for Insurance of Advance of Mortgage Proceeds may be treated as an ordinary application for advance of mortgage proceeds and may be approved in an amount which, when added to previous advances of mortgage proceeds, will equal 90% of the total advances to which the Borrower will be entitled at 100% completion.
 - b. Following 100% completion of all off-site facilities, ORCF will require submission of a new Application for Insurance of Advance of Mortgage Proceeds for approval of the final advance and subsequent submission of an updated Request for Final Endorsement.

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810 **F. Security and Start of Amortization.**

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1. Non-Realty Items. All non-realty items must be covered by the mortgage lien or security agreement, or both, whether or not paid for with mortgage proceeds, so long as such items are reasonably necessary to operate the project for the Approved Use. Any items not secured at initial Closing must be secured at final closing.
2. Start of Amortization. Whether construction has been completed or not, amortization must start on the date specified in the Note, unless a deferment has been recommended by the Lender and approved in advance by ORCF. Any request for deferment of amortization will be reviewed by the Closer, ORCF Account Executive, and the HUD Attorney.

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822 **G. Mortgage Amount.**

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1. Decrease in Mortgage Amount.
 - a. Modification Agreement. If there is a mortgage decrease based upon HUD's final mortgage determination, a draft Modification Agreement must be submitted prior to final closing. The Modification Agreement must amend the Security Instrument and set forth the new mortgage amount. HUD will endorse the HealthCare Facility Note for the decreased mortgage amount.

- 830 i. The following provision must be included in the Modification
831 Agreement: Nothing in this Agreement shall waive, compromise,
832 impair or prejudice any right HUD may have to seek judicial recourse
833 of any breach of that certain Regulatory Agreement executed by the
834 parties hereto, recorded on even date with the Security Instrument,
835 which breach may have occurred prior to or may occur subsequent to
836 the date of this Agreement. In the event that HUD initiates an action
837 for breach of said Regulatory Agreement and recovers funds, either on
838 HUD's own behalf or on behalf of the Project or the Borrower, those
839 funds may be applied, at the discretion of HUD, to payment of the
840 delinquent amounts due under the HealthCare Facility Note or the
841 Security Instrument or as a partial prepayment of the Healthcare
842 Facility Note.
- 843 ii. Prior to final endorsement, the Modification Agreement must be
844 properly executed and recorded in the real property records of the
845 county in which the project is located.
- 846 b. The Healthcare Facility Note may be modified, with an allonge, to set forth
847 the decreased mortgage amount and the new amortization schedule. Any such
848 modifications are subject to HUD approval.
- 849 c. HUD must approve appropriate title evidence related to the modification(s), as
850 set forth above.
- 851
- 852 2. Increase in Mortgage Amount. If ORCF approves an increase in the mortgage
853 amount, the following documents must be submitted to HUD for approval prior to
854 final endorsement:
- 855 a. Supplemental HealthCare Facility Note.
- 856 i. The Lender must prepare a Supplemental HealthCare Facility Note
857 acceptable to HUD, entitled "Supplemental HealthCare Facility Note."
858 ii. This document must contain a cross-default provision with the original
859 HealthCare Facility Note.
- 860 iii. The principal amount of the Supplemental HealthCare Note must be
861 for the amount of the increase to the mortgage, not for the new total
862 mortgage amount.
- 863 iv. The amount of the payments to principal must be sufficient to amortize
864 the increase amount over the mortgage term.
- 865 b. Supplemental Security Instrument.
- 866 i. The Lender must prepare a Security Instrument acceptable to HUD,
867 entitled "Supplemental Security Instrument."
868 ii. This document must contain a cross-default provision with the original
869 Security Instrument.
- 870 iii. The Supplemental Security Instrument must encumber the entire
871 project and must secure repayment of the Supplemental HealthCare
872 Facility Note.
- 873 c. Modification and Consolidation Agreement.
874 The Lender must prepare a Modification and Consolidation Agreement,

875 acceptable to HUD, to be recorded in the real property records in the property
876 jurisdiction. Such documents must evidence the following:

- 877 i. The original Healthcare Facility Note and the Supplemental Healthcare
878 Facility Note will be deemed one indebtedness; and
- 879 ii. The original Security Instrument and the Supplemental Security
880 Instrument will be deemed one indebtedness.
- 881 iii. The original Security Instrument shall be modified to provide for
882 cross-default with the Supplemental Security Instrument.
- 883 iv. The original Healthcare Facility Note shall be modified to provide for
884 cross-default with the Supplemental Healthcare Facility Note.
- 885 d. Borrower's Attorney's Opinion. The Borrower's Attorney must give an
886 opinion, in a format approved by HUD, with respect to the documents
887 evidencing the increased mortgage amount.
- 888 e. Title evidence approved by HUD.

889
890 **H. Application for Insurance of Advance of Mortgage Proceeds.** For the contractor's
891 remaining retainage and any outstanding costs to be paid at final closing, the Borrower and
892 Lender must execute this form. The form must be accompanied by a completed Contractor's
893 Requisition (Form HUD-92448), signed by the contractor and the architect.

- 894
895 1. If no items of on-site construction are incomplete, enter "None" in the space provided
896 for the amount of the escrow deposit on the form.
- 897
898 2. If items of on-site construction are incomplete and an escrow deposit is required,
899 attach an itemized list of incomplete items and enter the amount of the escrow deposit
900 required.
- 901
902 3. The Closer will determine if:
903 a. any items of on-site construction are incomplete;
904 b. any off-site facilities are incomplete;
905 c. any revisions are required in connection with hazard insurance; and if
906 d. the necessary non-realty items have been submitted.
- 907
908 4. The Closer will obtain ORCF approval signatures on the Application for Insurance of
909 Advance of Mortgage Proceeds and the Contractor's Requisition. Electronic copies
910 will be forwarded to the HUD Attorney and the Lender.

911
912
913 **I. As Built Survey.** The final as-built survey must be dated within 120 days of closing. The
914 term "dated" means the surveyor's certification must show that the survey was made "on the
915 ground" within 120 days prior to closing. The survey accompanying this request must show
916 the exact location of all buildings, water, sewer, gas and electric mains, and all easements for
917 such existing utilities. The survey must be prepared, signed and sealed by a licensed
918 surveyor and must include a certification in the format set out in the Survey Instructions and
919 Owner's Certification.

- 920
921 J. **Permits, Licenses and Approvals.** All building and other permits, licenses, and
922 governmental approvals required to own and operate the project must be provided for HUD
923 review and approval including, but not limited to, the Certificate of Occupancy and the
924 Certificate of Need.
925
926 K. **Lender Letter of Loan Status.** The Lender must submit a letter, dated the day of final
927 closing, stating that the loan is current. This may be combined with the Current Payment
928 Letter.
929
930 L. **Request for Final Endorsement.** An updated and fully executed Request for Final
931 Endorsement must be submitted and reflect any material change made from the time of cost
932 certification.
933
934 M. **Insurances.** Proof of acceptable insurances for professional liability, property, and fidelity
935 must be provided.
936
937 N. **Request for Release of Escrows.** To release any escrow for a change order, minor
938 moveables, or working capital, submit a Request for Approval Advance of Escrow Funds
939 (Form HUD-92464-ORCF).
940
941 O. **License.** The facility license must be current with the correct number of beds/units approved
942 in the underwriting.
943
944 P. **Current Payment Letter.** The Lender must provide evidence that all impound payments,
945 such as for debt service, Reserve for Replacements, and taxes and insurances, are current.
946
947 Q. **Secondary Financing.** If any secondary financing sources are utilized, the source and
948 amount will be verified against what was approved in the approved cost certification.
949
950 R. **Lease.** The operating lease must be executed and meet all ORCF lease requirements. The
951 Lender must also demonstrate that the amount of the lease payment conforms to ORCF's
952 requirements.
953
954

9.12

Insurance Upon Completion – New Construction, Substantial Rehabilitation, Blended Rate and Section 241(a)

955
956 Section 232 New Construction, Substantial Rehabilitation, Blended Rate and 241(a) projects that
957 are Insurance Upon Completion only have a final closing, which is addressed in Section 9.11
958 above.
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9.13

Closing Section 223(d) Operating Loss Loans and Section 232(i) Fire Safety Equipment Loan Insurance Programs

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963 A loan insured under Section 223(d) is an Operating Loss Loan provided to a project owner with
964 a current FHA-insured loan. To be eligible, a project must have experienced operating losses
965 incurred during the first two years after project completion, or any other 2-year period within the
966 first 10 years after completion. A credit subsidy is required for this type of loan. After the
967 acceptance of the Firm Commitment, ORCF will request HUD obligate a credit subsidy. If HUD
968 so obligates, the Firm Commitment will be extended 60 days after the date of obligation.

969
970 Section 232(i) sets forth the requirements for the Fire Safety Equipment Loan Insurance
971 Program. This type of loan insurance is provided for nursing homes, skilled nursing facilities
972 and intermediate care facilities to purchase and install fire safety equipment, primarily fire
973 sprinkler systems. Qualified loans must be secured by a lien that may be superior or inferior to
974 other liens.

975
976 For both these types of loans, see Production, Chapter 2, Eligible Section 232 Mortgage
977 Insurance Programs, and Chapter 3, Loan Sizing, for more details. Consult with the Closer for
978 closing document requirements.