

CHAPTER 9. LOAN SETTLEMENT

9-1. INTRODUCTION. All loans must be settled using the procedures detailed in this Chapter. Many of the procedures dealt with in this Chapter are also dealt with in the Cash Management Notice, and LPA's must be familiar with both issuances before undertaking settlement. Loans can not be settled until a copy of the loan application has been returned from Regional Accounting Division, (RAD) or after written notice from the Cash Management contractor has been received indicating that funds have been obligated. Once a settlement date is established, a Project Set-Up Form (HUD Form 40023) should be sent to HUD's Cash Management Contractor (see Cash Management Notice for details).

Loan settlement must take place within sixty (60) days of the date the RAD records the obligation, or the obligation must be cancelled, unless the following exception is granted: the Director of Community Planning and Development in the HUD Field Office may grant up to a sixty (60) day extension for circumstances beyond the control of the LPA and the borrower. For loans other than three percent (3%) loans, the interest rate must be adjusted in accordance with Paragraph 2-3-b of this Handbook and the loan must be re-underwritten with the new interest rate in accordance with Chapter 7.

Prior to loan settlement, but not until after receipt of the Project Set-Up Form by the Cash Management Contractor, an LPA may process drawdowns to pay eligible settlement costs provided that the aggregate amount of the needed funds does not exceed one thousand (\$1,000.00) dollars per loan, plus approved refinancing costs. Funds within this category must be scheduled to arrive at the LPA's designated bank just prior to loan settlement. Disbursements of loan funds, however, must not take place until the settlement documents detailed in Paragraph 9-3 have been recorded and any Truth-in-Lending cancellation period has expired. (See Cash Management Notice for drawdown procedures.)

Settlements must be conducted by a qualified party. This can be a private title company, an attorney, or a qualified LPA staff member. The individual conducting settlement is responsible to HUD to assure the validity and priority of HUD's lien in accordance with the approved loan application, and compliance with all other settlement-related requirements in this Handbook and in other applicable laws and regulations. In addition, all loan documents will be reviewed after settlement by HUD, and further disbursements will not be authorized unless these documents are correct.

9-2. PREPARATION AND EXECUTION OF SETTLEMENT DOCUMENTS. Loan settlement documents should be prepared and execute in the following manner:

- a. The Promissory Note. The note is the legal instrument which establishes the basic legal and financial obligations of the borrower with respect to repayment of the loan, including the

principal amount, interest rate, term, and monthly payments required. At settlement, each borrower (including each party with an ownership interest in the property) must execute HUD's standard form promissory note in order to evidence the borrower's personal obligation to repay the loan. See Exhibit 9-1 for a sample standard Promissory Note and Instructions. The printed version of this form may be obtained from the Rehabilitation Management Specialist in the HUD Field Office or from the Section 312 Master Servicer, when available.

- (1) Provisions of the Note. The standard form Section 312 Promissory Note is accompanied by an instruction sheet. All applicable blanks of the standard form note must be completed in accordance with the instructions before execution by the borrower. Extreme care should be taken to ensure that the dates and figures used are accurately inserted into the documents, and a member of the LPA staff other than the Approving Official should reconcile the interest rate on the Loan Set-Up Form (see Cash Management Notice) with the interest rate on the note. Deviations from the approved forms or the instructions are not authorized unless HUD's Field Counsel provides written approval of the deviation prior to settlement. The note must be signed by all parties having an ownership interest in the property, and by all co-makers and guarantors, if any. (See Paragraph 7-5-a-(2)-(d) of this Handbook for additional requirements concerning co-makers.)
- (2) Amortization Effective Date
 - (a) Setting an AED Date. By the time settlement takes place, the anticipates construction period must be known, and the AED must be included in the promissory note in accordance with the instructions in the Cash Management Notice. The AED is the first day of the month following the proposed completion of construction. It should be no less than 90 days from settlement if the loan is less than \$100,000 and no less than 120 days if the loan is \$100,000 or greater. The AED must not be more than twenty-four months from the date of settlement under any circumstances. See Paragraph 7-3-b-(1) for additional information on determining the construction period.
 - (b) Changing an AED Date. Once an AED is established at settlement and entered onto the Promissory Note, the date may not be changed without the written approval of the Office of Urban Rehabilitation in HUD Headquarters. Extensions may only be granted by HUD if the Government's security interest in the property would be threatened by

not granting the extension, and, in general, the extension must not be for more than sixty (60) days. If the extension is granted, the LPA must ensure that there are sufficient funds to cover the additional construction interest that will accrue as a result of the extension. HUD has the right to foreclose on the property if payments do not start as scheduled (or, with HUD approval, as modified). (See Paragraph 7-3-b-(3) for additional information on calculating accrued construction interest, and the Cash Management Notice for further details.)

- b. The Security Instrument. The security instrument must be the standard form of mortgage or deed of trust approved by HUD Field Counsel for use in the particular state. Although there are technical legal differences between them, both forms of security provide the lender (HUD) with an interest in, or a claim to, the mortgaged property as security for the loan. If the borrower defaults in loan payment requirements or in other obligations under the mortgage or deed of trust, HUD is authorized to foreclose on the loan and force the sale of the property in order to recover the outstanding loan balance and other expenses permitted by the instrument and law. A Guideform Security Instrument is attached as Exhibit 9-2. (This form is for the use of HUD Field Office Counsel in preparing state standard forms, and is not designed to be used as is.)

- (1) Provisions of the Security Instrument. All Section 312 Loans must be secured by a lien upon the property to be rehabilitated, evidenced by an approved security instrument executed by each borrower (including each party with an ownership interest in the property) in the form prescribed by HUD for use in the jurisdiction. Approved security instruments for a state may be obtained from the Rehabilitation Management Specialist in the HUD Field Office responsible for that state or from the Section 312 Master Servicer. All blanks of the security instrument must be accurately completed and the risk premium rider incorporated prior to the borrower's execution. Deviations from the approved form are not authorized without the written approval of the HUD Field Counsel obtained prior to loan settlement.

c. Rent Regulatory Agreement

- (1) Applicability. The requirements of this Paragraph 9-2-c apply to all investor-owners of multifamily properties, as well as to the following properties with five or more dwelling units after rehabilitation: mixed-use, single-room occupancy, and congregate housing properties. They do not apply to non-residential properties, except as included in a covered mixed-use property. When they do apply, these requirements apply for five years after the completion of rehabilitation under the Section 312

Program, whether or not the property is transferred. HUD is not authorized to waive the Rent Regulatory Agreement requirement. The requirements of this Paragraph 9-2-c are subject to 24 CFR 510.105(e) and (f) concerning Rent Regulatory Agreements.

- (2) **Maximum Allowable Rents.** The total monthly rent charged to tenants in properties covered under this Section cannot exceed an amount which includes: (i) the estimated annual operating expense and taxes after rehabilitation; (ii) the annual principal and interest payments on pre-existing mortgage debt, if the original term of that debt was 10 years or more; (iii) the annual principal and interest payments on the Section 312 Loan; (iv) the annual principal and interest payments on other rehabilitation financing, if the term of that debt is 10 years or more; and (v) an amount which would give the owner a reasonable return on investment as determined by HUD, which cannot exceed a twenty percent (20%) return on equity. See Exhibit 9-3 for a Rent Regulatory Agreement Computation Worksheet to determine equity, return on equity, and maximum allowable rents. The maximum rent cannot be increased for a period of five years after the completion of rehabilitation under the Section 312 Program, except to cover periodic, documented increases in operating costs.
- (3) **Rent Increases.** For properties covered under this Section, borrowers may increase monthly rents only to cover increases in operating costs, including property taxes, insurance, utilities, and other reasonable costs. Such increases and their justifications must be included in the borrower's file and maintained for seven years after the completion of rehabilitation so that HUD may inspect the files. The borrower must notify the LPA and all tenants in tenancy of any rent increases during the five-year period above the initial allowed monthly rent.
- (4) **Tenant Notice.** Tenants of the property must be provided with information in writing by the borrower regarding the provisions in this Paragraph 9-2-c.
- (5) **Signatories.** The provisions of this Paragraph 9-2-c must be included in a Rent Regulatory Agreement (see Exhibit 9-4), and the Rent Regulatory Agreement must be executed by the borrower and the HUD Field Office Manager or his or her designee. If the HUD Field Office Manager wishes to designate another official for this purpose, the Rehabilitation Management Specialist or the Director of Community Planning and Development in the HUD Field Office are recommended designees.
- (6) **Recording the Rent Regulatory Agreement.** The Rent Regulatory Agreement must be recorded with the mortgage or deed of trust, which must specifically incorporate the Rent Regulatory

Agreement by reference, for any property which is subject to this requirement.

d. Truth-in-Lending and Real Estate Settlement Procedures

- (1) Truth-in-Lending Disclosure Statements Guidelines for calculating Truth-in-Lending Disclosures are included as Exhibit 9-5. The Truth-in-Lending Act requires that two copies of the Truth-in-Lending Disclosure Statement (see Exhibit 9-6) be prepared for the borrower by the LPA's settlement agent for all Section 312 Loans to owner-occupants of one-to-four unit properties. The LPA must include the "Amount Financed Itemization" if the borrower requests it (see Exhibit 9-7 for a Guideform). If applicable, one copy of the Disclosure Statement must be given to the borrower at loan settlement, before he or she executes the promissory note, mortgage or deed of trust. The other copy of the Disclosure Statement must be receipted by the borrower and submitted to the Master Servicer by the LPA.
- (2) Right to Cancel. The law provides that certain Section 312 borrowers may cancel the entire loan transaction if this cancellation takes place before midnight of the third business day after execution of the note and mortgage.
 - (a) This right to cancellation applies if the loan is on an owner-occupied property which contains from one- to four-dwelling units.
 - (b) If all of the above requirements are met, the following procedures must be followed:
 - 1 The settlement agent must inform each borrower who is entitled to cancel the loan transaction of his or her rights in accordance with this Paragraph, and must provide such borrowers with a written Notice of Right to Cancel;
 - 2 The required format of the notice is shown in the Notice of Right to Cancel (see Exhibit 9-8 for a Guideform). The text must consist of the exact language (with blanks completed to show the Project number, loan settlement date, deadline for cancellation, and the LPA's name and mailing address). The size of the text must not be less than 12-point type.
 - 3 The settlement agent must give each borrower two properly completed copies of the Notice at loan settlement before the note and mortgage are

executed. A third copy of the Notice must be signed and dated by every affected borrower as evidence of his or her

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receipt of the Notice. The LPA must retain the receipted copies in the loan file.

- 4 To compute the running of the three-day cancellation period for entry on the Notice, treat the date of loan settlement as Day Zero, and the next business day as Day 1, and so forth. The right of cancellation expires on midnight of Day 3. A business day is any calendar day except Sunday and a legal, Federal holiday (pursuant to 5 USC 6103 (a)), including the following holidays: New Year's Day, Martin Luther King's Birthday, Washington's Birthday, Independence Day, Labor Day, Columbus Day, Veteran's Day, Thanksgiving Day, and Christmas Day.
- 5 No Disbursements. Until the cancellation period has expired, the LPA must not disburse any loan funds or supplementary financing on the borrower's account. The settlement agent must, however, promptly record the mortgage and whatever other instruments are necessary to protect the loan security without waiting for the 3 day period to expire.
- 6 The borrower may exercise the right of cancellation by giving written notice within the cancellation period. One means, but not the only means, of giving notice is to sign and date the appropriate space on a copy of the Notice of Right to Cancel provided at settlement, and return it to the LPA. If there is more than one borrower with the right to cancel a particular loan, any one borrower may cancel the entire transaction. In order to be effective, the borrower's notice must be given in writing within the three-day cancellation period, calculated in accordance with paragraph 9-2-d-(2)-(b)-3 above. However, the notice is considered "given" when it is mailed or filed for transmission by telegraph, or, if sent by other means, when it is received. It is, therefore, quite possible that the LPA will not receive the notice until sometime after the notice has taken effect and the transaction has been cancelled. For this reason, the settlement agent, at settlement, should inform the borrower that it would be helpful if he or she telephoned the appropriate LPA employee if he or she decides within the cancellation period to cancel the transaction.
- 7 Upon receiving a borrower's timely notice of

cancellation under Truth-in-Lending procedures, the LPA must:

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- a Cancel the loan by submitting to the HUD Field Office Rehabilitation Management Specialist (RMS) an original and four copies of a completed HUD-6230-C, Notice of Cancellation (see Exhibit 9-9), along with the following phrase typed into Block F: "Borrower's signature on appropriate Notice of Cancellation, as required under Truth-in-Lending Act." This must be accomplished promptly. The HUD Field Office RMS will then forward the HUD-6230-C, Notice of Cancellation, and copies to the Regional Accounting Division so that the RAD can de-obligate the loan and notify the Cash Management Contractor. In order to allow HUD to release all liens promptly, the LPA must also submit the Recorded Mortgage (original, if available; facsimile copy if not) with a copy of the HUD-6230-C, Notice of Cancellation, which has been submitted to HUD, to the Master Servicer, with a request that it promptly release the lien, cancel the note, and take any other actions necessary to release the borrower from the transaction.
- b Refund any fees paid by borrower, including any application fee paid by the borrower with his or her own funds, in accordance with the requirements of the Truth-in-Lending Act (15 U.S.C. 1601, et seq.) and 12 CFR Part 226 (Regulation Z). (See Paragraph 2-4-a of this Handbook for additional information on the Application Fee.)
- c Notify contractor(s) and any other parties to which funds are due, that Section 312 funds will not be available to pay for any rehabilitation work or charges related to the loan application.
- d These procedures apply only to cancellations in accordance with Truth-in-Lending requirements in accordance with this Paragraph 9-2-d. See Paragraph 9-7 for requirements concerning other cancellations.
- e. Insurance, Taxes, Special Assessments and Expense Escrow Accounts. The LPA's settlement agent must ensure that required insurance policies such as fire, flood, and extended coverage are adequate and in force and that all taxes, special assessments and ground rents are paid to date of loan settlement for all borrowers. Unless a senior lien holder is collecting sufficient

escrows to pay such expenses, provision must also be made for payment or escrow of these items which become due, or which accrue, during construction up until the AED.

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These expenses may be paid with Section 312 Loan proceeds only if the borrower qualifies for a three percent (3%) Section 312 Loan and if the other requirements of Paragraphs 3-1-a-(2) and 3-2-g are met. Otherwise, these expenses must be paid by the borrower or with other funds obtained from the locality or other sources and verified by the LPA.

Escrow for taxes and insurance is required for all loans which exceed \$10,000; for loans under \$10,000 the requirement does not apply unless the LPA determines that the Government's security interest in the property will be endangered. The LPA's settlement agent must review and ensure the following:

(1) Insurance

- (a) Level of Coverage. Hazard and flood insurance policies must cover existing secured debt, if any, plus the amount of the Section 312 Loan. In the event that the existing hazard and flood insurance policies do not extend through the beginning of amortization, the LPA must monitor the renewal of coverage, or the borrower can extend the policies to that date. The premiums for hazard and flood insurance coverage that come due during construction or that accrue between loan settlement and the AED must be included in the Section 312 Loan as an eligible loan cost if the borrower qualifies for a three percent (3%) Section 312 Loan and cannot pay for these items on his/her own. In addition, Section 312 funds may be used to reimburse a borrower at or after loan settlement for an initial hazard and flood insurance premium, paid just prior to loan settlement if the borrower qualifies for a three percent (3%) Section 312 Loan. (See Paragraphs 3-1-a-(2) and 3-2-g for additional information on using Section 312 funds for these items.) All properties secured by Section 312 mortgages or deeds of trust must be insured. If the properties are vacant and are not readily insurable, they must be covered by a builder's risk policy or the LPA must obtain coverage. (See Paragraph 12-4 for additional requirements concerning flood insurance.)
- (b) Loss Payee Clause. All insurance policies must include a loss payee clause designating HUD, c/o HUD's Master Servicer, as beneficiary.
- (c) Required Documentation. A copy of the insurance policy is sufficient to support the insurance requirement,

together with evidence of premium payment.

- (2) Taxes. Taxes, special assessments and ground rents must be current or be brought current at settlement. For borrowers who

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qualify for a three percent (3%) Section 312 loan, Section 312 funds must be used to pay for real estate taxes coming due during construction or that accrue between loan settlement and the AED, if the borrower cannot pay for these items on their own. (See Paragraph 3-1-a-(2) for additional information on using Section 312 funds for these items.) The LPA should document that the taxes are current by obtaining a paid tax receipt or most recently paid tax bill showing no payment due. Any discrepancies between tax receipts and information on the title report(s) must be reconciled.

- (3) Payments When Loan in Subordinate Position. Where the Section 312 Loan is not in first position, the settlement agent must determine whether the first lien holder escrows funds to pay for taxes and insurance. If so, the settlement agent must verify at settlement that the insurance policy was increased, where possible, to cover the Section 312 Loan. The first lien holder must be requested, in a manner which is consistent with local practice, to inform HUD when the first lien is paid off so that HUD can establish an escrow expense account for the Section 312 Loan at that time. If the first lien holder does not escrow funds for real estate taxes or insurance, then the amount for the accrual of monthly escrow payments for hazard and flood insurance and taxes covering the period between the last paid bill and the beginning of servicing must be paid, either from loan proceeds (if eligible pursuant to Paragraphs 3-1-a-(2) or 3-2-g) or the borrowers' funds, and must be forwarded to the Master Servicer immediately after settlement. The Master Servicer will collect monthly payments beginning on the AED which include escrow payments and will then become responsible for the payment of these items. Until the AED, the LPA is responsible for ensuring that all taxes and insurance bills are paid. For loans under \$10,000, no escrow for taxes, hazard and flood insurance is required, whether or not there is a superior lien holder escrowing.
- f. Application Fee. The \$200 or \$300 application fee, detailed in Paragraph 2-4-a of this Handbook, must be collected in either of the following two ways:
- (1) The application fee may be paid at loan settlement with the borrower's own funds or with other funds available to the LPA; OR
 - (2) The application fee may be paid out of loan funds, in which

case the borrower will mark the appropriate check-off on the loan application, which must be submitted to the Master Servicer with the first transmittal package under the Cash Management System. If the application fee is paid with loan funds through this check-off, payment will be arranged between the Master Servicer

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and the Cash Management. Contractor, and construction interest will be charged to the borrower from the date of settlement. (See Paragraph 2-4-a of this Handbook for information on refunding application fees, Paragraph 3-1-a-(4) on using Section 312 funds to pay for the application fee, and the Cash Management Notice for additional details on collecting the fee.)

- g. Refinancing. The settlement agent must ensure that any refinancing is accomplished according to the correct legal procedure for the jurisdiction.
- (1) Pay-Off Statement(s). For each mortgage to be paid off, the settlement agent must secure an updated mortgagee's statement of payoff requirements that specifies precise amounts as of the settlement date, or a later date designated by the LPA that will allow sufficient time for receipt of the mortgage pay-off check, where the check will be mailed.
 - (2) Refinancing Policies and Procedures. See Paragraph 3-3 for refinancing policies and procedures.
 - (3) Real Estate Settlement Procedures Act. The Real Estate Settlement Procedures Act of 1974 (RESPA) (12 U.S.C. 2601), as amended, and regulations (24 CFR Part 3500) require that for the refinancing of an installment land sales contract for title acquisition, the lender (HUD) must provide the borrower with a Special Information Booklet and a good faith estimate of the amount or range for each charge for specific settlement services that the borrower is likely to incur in connection with the settlement. The good faith estimate must be developed and presented on a form in accordance with 24 CFR 3500.7-3500-8. Both the booklet and the estimate must be provided within 3 days of receipt of a written loan application. The Uniform Settlement Statement (Form HUD-1, Exhibit 9-10) must be used at settlement and an opportunity to inspect the statement one business day prior to settlement must be afforded the borrower upon request.
 - (a) Applicability. RESPA requirements pertain only to Section 312 Loans where refinancing of a land sales contract is involved.
 - (b) Special Information Booklets. A Special Information

Booklet on RESPA Requirements, HUD-433 NVACP(5), is available from the HUD Field Office, or the HUD Central Publications Office, 451 - 7th Street, S.W., Washington, D.C. 20410. It contains all documents required, along with comprehensive instructions for completing the documents and otherwise complying with the provisions of the Real Estate Settlement Procedures Act of 1974.

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9-3. COMPLETING LOAN SETTLEMENT. The LPA's settlement agent must complete the settlement as described below:

- a. Repayment Schedules Advise borrower of the loan repayment schedule, including escrow accounts, the name and address of the HUD Master Servicer, and the date the first loan payment is due (see Paragraph 9-2-a-(2)).
- b. Truth-in-Lending. For loans to owner-occupants of one-to-four unit properties, see Paragraph 9-2-d for Truth-in-Lending requirements.
- c. Promissory Note and Security Instrument. Obtain the borrower's signature (including the signature of each party with an ownership interest in the property) on the promissory note and security instrument.
- d. Rent Regulatory Agreement. When required under Paragraph 9-2-c-(1) of this Handbook, a Rent Regulatory Agreement in the form set forth in Exhibit 9-4 to this Handbook and meeting other applicable requirements (see e.g., Paragraph 9-2-c) must be executed by the borrower(s) at loan settlement. Since HUD regulations require the Agreement to be executed by the HUD Field Office Manager, or his/her designee, and also require the Agreement to be recorded, the LPA must either prepare the Rent Regulatory Agreement and mail it to the Field Office for execution and for return to the LPA prior to settlement, or the LPA must obtain the HUD Field Office's authorized signature after settlement but prior to recordation (and prior to the beginning of rehabilitation). The former is the recommended procedure in the usual case, since the latter tends to delay the beginning of rehabilitation at an awkward time, when the borrower and/or contractor should be ready and waiting to proceed.
- e. Rehabilitation Loan Agreement. At the settlement of each loan, the borrower(s) must execute a Rehabilitation Loan Agreement in the form set forth in Exhibit 9-11, properly completed by the LPA. HUD does not require that the Rehabilitation Loan Agreement be recorded, unless Field Counsel has so required as part of HUD's procedures to protect against mechanic's and materialmen's liens in the particular jurisdiction (see Paragraph 10-6-c of this Handbook). The Rehabilitation Loan Agreement must be executed by an authorized HUD Field Official (the Rehabilitation

Management Specialist or authorized higher level official), and this may be done prior to or after loan settlement, although prior to settlement is recommended (as in the case of the Rent Regulatory Agreement).

f. Rehabilitation Construction Contract or Self-Help Agreement.

- (1) The settlement agent must assure that a Rehabilitation Construction Contract meeting the requirements of Paragraph

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6-6-c, or a Self-Help Agreement meeting the requirements of Paragraph 6-7-c or d of this Handbook, or a combination thereof if specifically approved by the LPA, as applicable, have been executed by the parties thereto either before or at loan settlement. These Contract(s) and Agreement(s) must cover all work to be performed on the property under the approved Section 312 loan application (whether such work is actually financed by the Section 312 loan or with supplemental financing).

- (2) While execution of these Contract(s) or Agreement(s) may not be delayed past the completion of loan settlement, the Contract(s) or Agreement(s) must be drafted so that no contractor is permitted to begin work, and materials are not delivered to the property, until the Section 312 loan security instrument is recorded and, in the event that a Truth-in-Lending rescission period applies to the loan, until such rescission period has run. (See Paragraph 6-8-e, 9-2-d, and 9-4-b of this Handbook for additional information on Truth-in-Lending procedures and requirements for recording documents.) (See Paragraphs 6-8-e and 10-2 concerning the timing of the commencement of work and the alternative ways the LPA may provide notice to any contractor and the borrower that construction work may begin.)

- g. Involvement of LPA Counsel. If the LPA's Counsel does not handle the settlement as the LPA's settlement agent, the agent must have the LPA's Counsel participate as necessary to assure the legal enforceability of the loan documents, and the priority of the lien of the loan security instrument in accordance with the approved loan application. LPA's counsel, in this context, includes any qualified private attorney retained by the LPA as well as qualified staff counsel to the LPA or locality. A written Opinion of LPA Counsel must be signed for each loan to ensure that all the documents are legally enforceable as executed and that title evidence is adequate to protect the interests of the Government. This Opinion must be reissued for all documents that are modified after the original Opinion is issued. This Opinion of Counsel must be submitted to the Master Servicer prior to any construction funds being drawn down under the Cash Management System.

- h. Insurance Policies and Real Estate Tax Payments. Confirm that any

items previously requested have been provided. (See Paragraph 9-2-e of this Handbook for required documents.)

i. Supplemental Financing

- (1) Providing Supplemental Financing at Settlement. If the cost of rehabilitation work exceeds the amount of the approved loan, supplemental financing must be supplied by the borrower or another lender or grantor. Supplemental financing from the borrower must be placed at settlement in an escrow account

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controlled by the LPA. Supplemental financing being supplied by another lender or grantor must be set aside for the rehabilitation through a legal binding commitment provided at loan settlement. If these supplemental funds are needed to complete any portion of approved rehabilitation work but are not available at settlement according to these requirements, the loan approval must be cancelled by the LPA. Supplemental financing must be used prior to the use of Section 312 funds, or in equal proportions to the Section 312 disbursements. (See Paragraph 7-5-d-(3) of this Handbook for requirements concerning acceptable forms of supplemental financing.)

- (2) Section 312 Lien Position. Please refer to Paragraph 2-8 of this Handbook for requirements regarding HUD's lien position.

9-4. POST SETTLEMENT. Following the completion of loan settlement, the settlement agent must:

- a. Immediately record the loan documents requiring recordation, including the promissory note, the security instrument, the Rent Regulatory Agreement (if applicable) and, if required under Paragraph 9-3-f, the Rehabilitation Loan Agreement. These documents must also be recorded immediately for loans to owner-occupants of single-family properties for which the right of rescission under Truth-in-Lending applies. If there is likely to be any delay in the return of the recorded documents, the settlement agent must obtain proof of recordation, such as a recorder's receipt that the documents have been submitted for recordation. Prompt recording is necessary to ensure their legal enforceability and the approved priority of the Section 312 Loan lien position. For loans to owner-occupants of single-family properties, if a loan is cancelled pursuant to Truth-in-Lending cancellation procedures in Paragraph 9-2-d of this Handbook, the LPA must take the necessary steps to release the borrower from the transaction, as described in Paragraph 9-2-d-(2)-(b)-7.
- b. Advise the LPA that settlement is complete, all necessary documents have been recorded, and that the contractor may be authorized to begin work, after the expiration of any

Truth-in-Lending Cancellation period.

c. Distributing Copies of Legal Documents.

- (1) Transmittal to Master Servicer. The original of the following documents, with all executing parties' original signatures, must be forwarded to the Master Servicer with the Post Settlement Transmittal (see Guideform in Attachment E of the Cash Management Notice): Promissory Note, Mortgage or Deed of Trust, Rent Regulatory Agreement (if applicable), and Rehabilitation

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Loan Agreement including a copy of the executed Rehabilitation Construction Contract or Self-Help Agreement as Exhibit A. The documents forwarded immediately after settlement may be copies if the ones with original signatures have not yet been returned by the local recording office. However, the ones with original signatures must be forwarded to the Master Servicer as they are available. See the Cash Management Notice for additional information on the Post Settlement Transmittal to the Master Servicer, including additional documents to be transmitted.

- (2) Copies to Others. For all the documents listed in Paragraph 9-4-c-(1), except for the Rehabilitation Construction Contract or Self-Help Agreement, one copy must be transmitted to the borrower, and the LPA must retain one copy for informational purposes. Regarding the Rehabilitation Construction Contract or Self-Help Agreement, the original should be distributed as determined by the parties thereto; however, HUD recommends that the LPA transmit a copy to the borrower and the contractor (where applicable), and that the LPA keep one copy for informational purposes.

9-5. TRANSMITTAL OF APPLICATION FEE. Once settlement has taken place, the application fee (if paid by the borrower in cash at settlement) must be submitted to HUD's Master Servicer before any construction funds can be drawn down under the Cash Management System. If the application fee is paid in cash by the borrower at settlement, this must be sent immediately, notwithstanding any delay which may occur in submitting the other documents. If the application fee is being paid with loan proceeds through a check-off on the loan application, its payment will be handled by the Cash Management Contractor and the Master Servicer. (See the Cash Management Notice for additional details on transmitting the application fee.)

9-6. RELEASE OF FUNDS. Once the settlement transmittal has been received by HUD's Master Servicer, the LPA may begin to make draw downs under the Cash Management System. See Chapter 10 of this Handbook and the Cash Management Notice for further information.

- 9-7. LOAN CANCELLATION. In order to cancel an approved Section 312 Loan, the LPA must submit to the HUD Field Office an original and four copies of the HUD Notice of Cancellation (HUD Form 6230-C, Exhibit 9-9). If no loan proceeds have been drawn down and no settlement has occurred, no further action is required. If loan proceeds have been drawn down, but no settlement has taken place (i.e., there is no executed promissory note and mortgage), a check for the proceeds must accompany the HUD Notice of Cancellation. If settlement has taken place, but no funds have been drawn down, the LPA must submit a copy of the HUD Notice of Cancellation

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to the Master Servicer along with a request that the note be cancelled and the mortgage released. If funds have been drawn down and settlement has taken place, no cancellation is allowed, except for cancellations of loans to owner-occupants of single-family properties if done in accordance with the Truth-in-Lending requirements detailed in Paragraph 9-2-d of this Handbook. The outstanding balance of the loan must be paid off in accordance with Paragraph 9-10 of this Handbook and the procedures for payoff outlined in the Cash Management Notice.

The application fee is not refundable if the Section 312 Loan is cancelled after settlement takes place, except for loans to owner-occupants of single-family properties cancelled in accordance with Truth-in-Lending requirements detailed in Paragraph 9-2-d of this Handbook.

Once the HUD Field Office receives the HUD Notice of Cancellation and copies, it must submit them to the Regional Accounting Division in order for the RAD to record the deobligation and notify the Cash Management Contractor that the loan has been cancelled, and if appropriate, that any funds drawn down from the Cash Management Contractor have been received.

- 9-8. FUNDS WHICH ARE DEOBLIGATED. Funds which are deobligated in the same Fiscal Year as the obligation may be used again by the HUD Regional Office in that Fiscal Year. If deobligation occurs in a Fiscal Year different from the Fiscal Year of the original obligation, the funds are recaptured by the HUD Headquarters Office of Finance & Accounting for future disposition.
- 9-9. INCREASED LOAN AMOUNT. In very rare instances it may be necessary to increase an already approved loan by cancelling the old loan and initiating a new one if loan limits so permit. Specific approval from the HUD Headquarters Office of Urban Rehabilitation is required prior to taking such action. If such approval is obtained, instructions will be given by HUD Headquarters at that time regarding the procedures to be followed.
- 9-10. LOAN PAYOFF. If the borrower wishes to pay off the loan before the AED, and if the loan has been settled and funds have been drawn down under the Cash Management System, the LPA must follow procedures

outlined in the Cash Management Notice.

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