|  |  |  |
| --- | --- | --- |
| **PROGRAM** | **TOPIC** | **CONDITION LANGUAGE - ONLY MODIFY THROUGH POLICY DIVISION WITH WLM POLICY APPROVAL** |
| **ALL PROGRAMS as applicable** | **Accounts Receivable (A/R) Financing Documents** (02/24).Use when A/R has been reviewed/approved by the OHP Underwriter during the underwriting stage/firm application review. | **Accounts Receivable (A/R) Financing Documents:** ORCF has reviewed the A/R financing narrative and Intercreditor Agreement submitted with the firm application. The approved A/R financing terms are set forth in the attached “AR Terms Memo.” The provisions set out in Sections 1.7, 2.7(g), and 3.4 of the draft Intercreditor Agreement were found acceptable to ORCF per the attached “AR Terms Memo.” OGC legal review of the documents will be completed prior to closing, and all comments must be addressed to HUD’s satisfaction. Any changes in the A/R financing terms or Intercreditor Agreement prior to closing will require that the lender re-submit to ORCF and the HUD Attorney for final approval prior to closing. The Intercreditor Agreement (ICA) must also comply with Housing Notice 22-03 and Mortgagee Letter 22-10, notice requirements, additional Operator and FHA Lender requirement for Account Receivables availability reduction. |
| **ALL PROGRAMS as applicable** | **Accounts Receivable (A/R) Financing Documents** (05/25).Use when AR has not been approved during the underwriting stage/firm application review. | **Accounts Receivable (A/R) Financing – ORCF Approval Pending:** The final A/R financing narrative, Intercreditor Agreement, and other AR financing documentation and terms must be submitted, reviewed, and approved by ORCF prior to closing. Additionally, OGC legal review of the documents will be completed prior to closing, and all comments must be addressed to HUD’s satisfaction. |
| **Section 223(a)(7) or 223(f)** | **Application Fee Adjustment** | The HUD application fee of $\_\_\_\_\_\_\_\_ that has been paid is insufficient. The required application fee is $\_\_\_\_\_\_\_\_. A copy of the pay.gov receipt for the difference ($\_\_\_\_\_\_\_\_) must be emailed to Mike Lawassani (mike.m.lawassani@hud.gov) and the Closing Coordinator. If HUD does not receive this confirmation by the day prior to closing, HUD will reschedule the closing date. |
| **223(f), ALL PROGRAMS as applicable** | **Archaeological Site, Human Remains, or Cultural Resources of Tribal Interest-Required on all projects completing any ground disturbance or digging (6/19).** Include when project involves ground disturbance, after completing tribal and SHPO consultations. | **Archaeological Site, Human Remains, or Cultural Resources of Tribal or Historic Interest:** If an archaeological site, human remains, or cultural resources of historic or tribal interest are revealed during the project's construction, the project manager must immediately stop work in the area of the discovery and notify HUD within 48 hours. HUD will contact responders to the State Historic Preservation Officer (SHPO), participating tribes and other consulting parties and continue Section 106 consultation. If ground disturbance is to occur after the loan closing, the closing package must contain a certification of this condition from the borrower. |
| **Section 223(f), ALL PROGRAMS as applicable** | **Asbestos Abatement** (10/1/23) Use when specified as a condition of environmental approval. | **Asbestos Abatement:** Abatement of asbestos containing material is required. Asbestos abatement should be completed as a critical repair and the cost of the abatement must be included in the project’s repair costs. Upon completion, provide a qualified asbestos contractor's report confirming that the asbestos abatement is complete. |
| **Section 223(f), ALL PROGRAMS as applicable** | **Asbestos (O & M Plan)**  (6/21/16). Use when specified as a condition of the 4128. | **Asbestos:** Prior to closing, the Borrower must provide a certification stating that:   * The facility has adopted and implemented a property-specific Asbestos Operations and Maintenance plan. * The owner must ensure that all applicable personnel are trained and familiar with the plan. * Asbestos abatement will be done in accordance with EPA requirements for compliance with the National Emission Standard for Asbestos pursuant to 40 CFR part 61, subpart M, especially 40 CFR 61.145, and with OSHA requirements for Worker Protection, pursuant to 29 CFR 1926.1101. All local, state, and federal asbestos abatement and worker protection rules also apply. * All asbestos abatement will be performed by a qualified asbestos abatement contractor. |
| **Section 223(f), Section 223(a)(7), ALL PROGRAMS as applicable** | **Automatic Sprinkler Systems** (4/11/14) Use when CMS website does NOT list facility as Fully Sprinklered (Automatic Sprinkler Systems field is "No" or "Partial") | **NFPA 13 Standard Compliance**: Prior to closing, the project must be listed as fully sprinklered on the CMS website, or provide written documentation from CMS that indicates that the project is fully sprinklered. |
| **Section 223(a)(7)** | **Change in Operator** (5/22/12) | **Change in Operator:** The change in operator request submitted with the Section 232/223(a)(7) application is approved programmatically.  The final legal approval will be given prior to closing. The HUD approved operator is *(insert name of operator here)*. |
| **ALL PROGRAMS as applicable** | **Condominium Declarations** (12/24) | **Condominium Declarations**: Any declaration, restrictive covenants, and similar title document encumbering the project must be reviewed and found acceptable by HUD in its sole discretion prior to endorsement to ensure they are commercially reasonable and otherwise consistent with the assumptions reflected in the firm commitment application exhibits. In particular, and without limitation, (i) such documents must be consistent with the statutory requirement that the insured loan be secured by a first lien, (ii) any charges for common assessments must be commercially reasonable and either (a) consistent with those imposed on similarly situated property owners of the other encumbered tracts or (b) clearly warranted by special circumstances relevant to the Project; and (iii) all other obligations, such as the maintenance responsibilities placed upon the encumbered parcels, must be sufficient to ensure the project enjoys sufficient access, services, and utility infrastructure. In the event there is an identify of interest between the FHA mortgagor or its principals then the declarant/covenant holder may require the encumbrance’s amendment or subordination unless prohibited by law or the interests of unaffiliated third parties. |
| **Section 223(a)(7)** | **Debt Service Escrow** (12/20) | **Debt Service Escrow:** The existing Debt Service Escrow ($X) is required to be transferred from the original loan to this new loan at closing. All of the terms and provisions of the original escrow agreement shall be transferred as well. |
| **ALL PROGRAMS as applicable** | **Debt Service Escrow** (4/23) | **Debt Service Escrow:**  A Debt Service Escrow equal to X months of principal, interest, and Mortgage Insurance Premium payments ($X) is required to be established prior to initial closing. This escrow is not mortgageable and can be funded by cash or an irrevocable letter(s) of credit issued to the lender by a banking institution. The escrow dollar amounts shall be updated prior to closing based on rate lock and any changes in P&I&MIP. Disbursements from the escrow may be authorized upon written approval from the Lender’s Servicer and subsequently OHP after the start of amortization. Uses of this escrow are only for principal, interest, and mortgage insurance premium. Unused portions will be returned to the borrower after the project has maintained an average of the underwritten debt service coverage ratio (DSCR) of X.XX (including MIP) for a consecutive 12-month period after Final Endorsement. OHP will look to the servicer to do the analysis and to provide the back-up financial documentation along with a certification that the project has met the requirements. |
| **ALL PROGRAMS as applicable** | **Delegated Non-Critical Repair Escrow: (3/24)** | **Lender to Administer Non-Critical Repair Escrow:** The Lender [Lender Name] has been approved to administer the noncritical repair escrow. The lender will assume non-critical repair escrow administration in accordance with HUD Handbook 4232.1 Asset Management Chapter 3. For transactions approved under the ORCF Green MIP Program, any change orders of the HUD-approved non-critical repair list that will affect the Energy Professional’s design will need to be reviewed and approved by the Energy Professional and HUD. |
| **ALL PROGRAMS as applicable** | **Electronic Closing Documents (2/01/24)** Use for Firm Commitments issued on or after **March 4, 2024** | **Electronic Closing Documents:** Acceptance of this Commitment includes the Lender’s agreement to submit electronic copies of the fully executed and otherwise collected closing documents to ORCF and the HUD closing attorney in accordance with HUD protocols. Following closing, the lender must upload a complete closing transcript of all closing and recorded documents into the Section 232 HUD Healthcare Portal in the order of the HUD Attorney Checklist. This upload must include a Certification for Post-Closing Submissions signed by the FHA Lender and its legal counsel. A model certification is available at  https://www.hud.gov/sites/dfiles/GC/documents/Certification\_for\_Post\_Closing\_Submissions.pdf.  To the extent the Borrower and/or Lender have delivered documents to HUD in an electronic format and/or signed using digital signature software or other electronic means, consistent with Program Obligations and the FHA Lender Initial Approval Certification, any electronic signatures must conform to meet applicable legal, information technology, and administrative requirements, including the Electronic Signatures in Global and National Commerce Act (the “E-SIGN Act”) as codified at 15 U.S.C. § 7001 et seq; the Uniform Electronic Transactions Act (or similar legislation adopted at the state level as in effect in the project’s jurisdiction); and prevailing industry standards governing the use of electronic records and signatures in the closing of commercial real estate loans. At minimum, the Lender must ensure the security, integrity, and authenticity of all electronic records and signatures submitted for closing are comparable to those meeting the performance standards described in the “Policy on Use of Electronic Signatures” published as Section II A.1.a.i.(A)(4) of the Single Family Housing Policy Handbook 4000.1. Additional instructions on the submission of electronic documents are available on HUD’s website at https://www.hud.gov/program\_offices/general\_counsel/ecr." |
| **Section 223(a)(7)** | **Existing Escrow Account** (9/24) | **Existing Escrow Account**: The existing [Insert Type of Escrow-Mortgage Reserve Fund/Debt Service Reserve Escrow, etc.] ($X) is required to be transferred from the original loan to this new loan at closing. All of the terms and provisions of the original escrow agreement shall be transferred as well. |
| **Section 223(f), ALL PROGRAMS as applicable** | **Flood Insurance** (02/25)Use when any portion of a structure is fully or partially in a Special Flood Hazard Area (SFHA) Zone A or V. (See 232 Handbook, 14.7.H.) | **Flood Insurance:** Prior to closing the Lender must provide proof that the borrower has a commitment for flood insurance effective as of the loan closing in the amount of:   * 100% of replacement cost of Improvements located in an Special Flood Hazard Area (SFHA). The minimum amount required is $**[XXXX]**; and * Business Income coverage for actual loss sustained or a minimum of 12 months plus a 180-day extended period of indemnity (as specified in 232 program guidance) for Improvements located in an SFHA. Business Income coverage is required even if written on a stand-alone basis. The minimum amount of business income coverage required is $**[XXXX]**. * The maximum deductible cannot exceed 5% ($**[XXXX]**) of the replacement cost of the mortgaged property.   Full replacement cost can be achieved by a standalone policy equal to 100% replacement cost; or by securing an NFIP policy along with an Excess Flood or Difference in Condition (“DIC”) insurance to provide the difference up to the full replacement cost of the property, including Business Income and Rental Value coverage. If 100% of the full replacement cost coverage, including any lesser amounts of replacement cost with an Excess Flood or Difference in Condition (“DIC”) insurance, is unavailable or commercially unreasonable (as demonstrated by declination/quotes from three unrelated third-party insurance companies), the Lender must obtain the highest coverage available and commercially reasonable up to the HUD requirement, and in no event may the coverage be less than the amount available through NFIP coverage. The unavailability of commercially reasonable coverage below the HUD- required amount shall be confirmed annually by the Lender and records of this confirmation shall be retained with the Lender’s mortgage file. Acceptance of NFIP coverage does not negate the requirement for business income coverage.  Flood insurance must be in the form of the standard policy issued by either a Member of the National Flood Insurance Program (NFIP) or a private company authorized to participate in the NFIP’s “Write Your Own” program (WYO). |
| **Section 223(f), ALL PROGRAMS as applicable** | **Floodplain** (02/25) Use only after having received and reviewed the owner’s evacuation plan and completing the 8-step process. The condition is a way to confirm that the plan that was submitted will be implemented, and when specified as a condition of environmental approval. | **Floodplain:** Flood Preparedness: The borrower shall certify it has implemented and will observe the flood emergency preparedness plan that was submitted for the project including:   1. Preparation of and participation in an early warning system; 2. An emergency evacuation and relocation plan; 3. Identification of evacuation route(s) out of the 500-year floodplain.   Floodplain Notification: The borrower must certify that all new and renewal leases or resident contracts will contain an acknowledgement signed by residents indicating they have been advised that the property is in a floodplain and that flood insurance is available for their personal property. Notification shall also include the location of ingress and egress routes relative to the FFRMS floodplain, available emergency notification resources, and the property's emergency procedures for residents in the event of flooding. |
| **Section 223(f), ALL PROGRAMS as applicable** | **Floodplain Management** (01/17) Use when the incidental portion exemption from floodplain management applies, and as specified in the conditions of the 4128. | **Protective Covenant-Floodplain**: A protective covenant or comparable restriction must be placed on the property’s continued use to preserve the floodplain. The covenant or comparable restriction must run with the land to provide for permanent preservation of the floodplain area, and must not be dependent on the mortgage instrument. |
| **ALL PROGRAMS, as applicable** | **Frail Elderly (62+) Requirement for Assisted Living Facilities** (7/20) | **Frail Elderly (62+) Requirement for Assisted Living Facilities:** Prior to closing, borrower and operator will each provide certification that no future residents under the age of 62, and who do not meet the definition of frail elderly per Title 42 USC 8011, will be admitted to the facility. |
| **ALL PROGRAMS, as applicable** | **Green MIP Program (3/24)** | **Green MIP Program:** The Borrower has elected to pursue and achieve a Green Building Standard in accordance with the guidelines set forth in Mortgagee Letter 2022-13, qualifying for the reduced annual MIP rate identified above. The Borrower must execute the form HUD-92476-ORCF, Escrow Agreement Noncritical Deferred Repairs and form HUD-92466-ORCF, Healthcare Regulatory Agreement – Borrower; or form HUD-92467-ORCF, Supplemental Healthcare Regulatory Agreement – Borrower, AS APPLICABLE including EXHIBIT C, ADDENDUM TO REGULATORY AGREEMENT – Borrower’s Obligation to Maintain Project’s Energy Performance, and terms must be in compliance with HUD requirements. |
| **ALL PROGRAMS, as applicable** | **Green MIP Rates (3/24)** | **Green MIP Rates:** The proposed application conforms to the guidelines set forth in Mortgagee Letter 2022-13 and qualifies for an upfront and annual Mortgage Insurance Premium of 25 basis points. Prior to closing, ORCF will confirm that the correct Mortgage Insurance Premium is included on any updated 92264a-ORCF forms. |
| **ALL PROGRAMS, as applicable** | **Ground Lease** (8/15/18) | **Ground Lease:** Closing cannot occur unless and until a ground lease is approved by HUD, and HUD will not consider approval of a ground lease unless it contains the HUD Lease-Addendum form, HUD-92070-ORCF. |
| **Section 223(a)(7) REQUIRED when there is an interest rate premium applied to the mortgage.** | **Interest Rate Premium** (7/12/13). | **Interest Rate Premium:** As disclosed to OHP in the Firm Application, an interest rate premium will be generated to defray prepayment penalties associated with the existing mortgage note. No portion of the interest rate premium will go to the borrower or any of its affiliates. Any unused portion of the interest rate premium originally intended to defray prepayment penalties must be deposited into the Reserve for Replacement account for future project needs. A breakdown of the premium used to defray prepayment penalties or deposited in the Reserve for Replacement account must appear on the closing statement. |
| **Section 223 (f) Purchases** | **License Transfer** (10/24) | **Facility License for New Operator:** The license for the facility is currently issued to **[NAME 1]**. An application is pending with the State to approve the new operator, **[NAME 2]**, but such approval may not be received prior to closing. The loan may close with **[NAME 1]** as the license holder and “Operator” under the loan documents on the date of closing. **[NAME 2]** will also execute and deliver all the “Operator” closing documents on the date of closing. A certification shall be executed at closing stating that, immediately upon **[NAME 2]** becoming approved by the State as the new operator of the facility, it shall automatically become the “Operator” of the facility under the loan documents, and **[NAME 1]**. shall automatically terminate as “Operator” under the loan documents at that time. The new license in the name of **[NAME 2]** shall be submitted to HUD Counsel and the assigned ORCF Account Executive within two (2) business days after it is issued. |
| **ALL PROGRAMS, as applicable** | **Limited Guaranty and Security Agreement** (11/20) | **Limited Guaranty and Security Agreement:** In lieu of a master lease, [Insert name of Principal],Principal of Borrowers will execute a Limited Guaranty and Security Agreement in favor of FHA Lender which will be secured by Principal’s interest in Borrowers’ surplus cash prior to initial closing. The projects subject to the Limited Guaranty and Security Agreement will be (project 1, FHA #xxx-xxxxx), (project 2, FHA #xxx-xxxxx), (other projects). |
| **ALL PROGRAMS, as applicable** | **Long-Term Debt Service Reserve** (1-20-15) (4/23) | **Long-Term Debt Service Reserve:**  Borrower shall establish and maintain for the life of the loan a debt service reserve account (“Debt Service Reserve”) equal to XX months of principal, interest, and Mortgage Insurance Premium payments ($XXXXXX). The escrow dollar amounts shall be updated prior to closing based on rate lock and any changes in P&I&MIP. The Debt Service Reserve will be funded by loan proceeds and shall be maintained under the control of the Lender.  Uses of this Debt Service Reserve are only for principal, interest, and mortgage insurance premium.  Disbursements from the Debt Service Reserve shall be authorized only upon written approval from the Lender’s Servicer and ORCF.  If at any time the balance of the Debt Service Reserve is less than the stated amount, Borrower shall make such deposits as necessary to cause the balance to be no less than the stated amount.  The Borrower may make or take no Distribution at any time when the balance of the account is below the required balance.  Uses of this escrow are only for principal, interest, and mortgage insurance premium.  Request for other uses of the Debt Service Reserve will not be approved.   Reference to this Debt Service Reserve shall be included in the Borrower Regulatory Agreement (HUD Form 92466 ORCF) paragraph 14 and any other document deemed necessary by HUD at closing. |
| **ALL PROGRAMS, as applicable** | **Low Income Housing Tax Credit** (12/18) | **LIHTC:** This project has Low Income Housing Tax Credits and qualifies for an annual Mortgage Insurance Premium of 45 basis points. Prior to closing, ORCF staff will confirm that the correct Mortgage Insurance Premium is included on any updated 92264a-ORCF forms. |
| **ALL PROGRAMS, as applicable** | **Management Agreement Addendum** (01/24)  Use for projects that have a management agent and the Management Agreement does not have the Management Agreement Addendum incorporated. | **Management Agreement Addendum:** Prior to closing, the Management Agreement Addendum, Form HUD-92071-ORCF, must be incorporated into the Management Agreement. |
| **ALL PROGRAMS, as applicable** | **Management Fee Subordination** (12/24) | **Management Fee Subordination:** Any amount of Management Fee paid in excess of 5% of Effective Gross Income (EGI) to the Identity Of Interest management agent approved for this transaction, must be subordinated to the lease payment/HUD mortgage payment. No fee amount in excess of 5% of EGI is to be paid unless debt service (P+I+MIP) and any applicable impounds are paid and current. This subordination requirement must be documented in any Management Agreement and in the Operator Regulatory Agreement. |
| **Section 223(a)(7)** | **Marketing Plan** Use when the property’s financial performance has been poor and we want to see a plan for improvement of operations (do not use in situations where the project is performing at a DSCR of above 1.0). | **Marketing Plan**: Prior to closing, the Mortgagor and/or Operator must submit a marketing program which clearly describes how the Mortgagor/Operator will increase the revenue and occupancy levels at the facility. At a minimum the plan must:  a.) Describe the outreach that will be performed and the method of outreach. b.) Provide a description of the tracking and reporting mechanism to measure the success or failure of these marketing efforts. This must contain measurable timelines that can be tracked by the Lender and the Office of Healthcare Programs. The marketing program must be approved by the Account Executive (Asset Management) prior to closing, updated and submitted monthly to the Account Executive, and must include a provision that requires HUD approval prior to the Mortgagor/Operator opting to cease participation in the marketing program. |
| **ALL PROGRAMS - REQUIRED** | **Master Lease** (02/20). Use where a master lease is being executed or amended as part of this transaction. | **Master Lease:** This Firm Commitment shall be subject to a master lease to include the following projects: (LIST PROJECT NAMES AND FHA #). The master lease and subleases must be in form and content acceptable to and approved by the Office of Healthcare Programs prior to closing. The Master Tenant shall be [name]. The master lease and subleases must be in place and fully executed at closing between the master tenant and the subtenants. If there is an existing HUD-approved Master Lease in effect that includes those listed projects, then this project may join that existing Master Lease, and the form of Cross-Default Guaranty of Subtenants previously approved may also be retained and used for this project. Each borrower’s Regulatory Agreement will include a provision requiring that in the event the master lease will terminate prior to the maturity date of the FHA-insured mortgage, the borrower shall enter into a new master lease with another party acceptable to HUD prior to the expiration of the existing master lease.  The remaining master lease-related HUD documents used in this transaction must be those published on June 17, 2019, and as may have since been amended to correct scrivener’s errors.  **[If previous participation for the Master Tenant was not already approved, also include the following sentence] Previous participation for the master tenant must be approved by OHP prior to closing. If the previous participation is a paper submission, the master tenant and any principals of the master tenant must also be registered in the Business Partner Registration System (BPRS).** |
| **Section 223(a)(7)** | **Mortgage Reserve Fund** (12/20) | **Mortgage Reserve Fund:** The existing Mortgage Reserve Fund ($X) is required to be transferred from the original loan to this new loan at closing. All of the terms and provisions of the original escrow agreement shall be transferred as well. |
| **ALL PROGRAMS as applicable** | **New York State Attorney General’s Office Litigation:** | **New York State Attorney General’s Office Litigation:** The subject application cannot close if the New York State Attorney General has an active complaint or petition regarding patient care, fraud, or financial mismanagement that names any individual or entity that has an ownership interest, or exercises control at any level, in the project owner, operator, or management agent. |
| **ALL PROGRAMS as applicable** | **Noise Attenuation (65 db - 70 dB)** (8/17) Use when specified as a condition of environmental approval. | **Noise Attenuation (buildings exposed to day-night average sound level greater than 65 dB but not exceeding 70 dB)**: The project is located in a normally unacceptable noise zone. Prior to initial closing, the architect must certify that the building has been designed to incorporate a minimum of 5 decibels additional sound attenuation, in addition to attenuation provided by buildings as commonly constructed in the area and requiring open windows for ventilation. |
| **ALL PROGRAMS as applicable** | **Noise Attenuation (70 db - 75 dB**) (8/17) Use when specified as a condition of environmental approval. | **Noise Attenuation (buildings exposed to day-night average sound level greater than 70 dB but not exceeding 75 dB)**: The project is located in a normally unacceptable noise zone. Prior to initial closing, the architect must certify that the building has been designed to incorporate a minimum of 10 decibels additional sound attenuation, in addition to attenuation provided by buildings as commonly constructed in the area and requiring open windows for ventilation. |
| **Section 223(f), Section 223(a)** | **Non-Critical Repairs Latent Defects Deposit** (10/18) (3/21) | **Non-Critical Repairs Latent Defects Deposit:**  A Latent Defects Deposit is required when the total cost of the non-critical repairs is equal to or exceeds $1,000,000. The Latent Defects Deposit is calculated at 2.5% of total amount of repairs and is held by the Mortgagee/Servicer to be released to the borrower upon the later of : (i) 15 months from the completion of repair work, or (ii) at such time the latent defects have been corrected to the satisfaction of ORCF. |
| **ALL PROGRAMS, as applicable** | **Operator Regulatory Agreement** (01/24) Use when it is determined that the Management Agent must sign the Operator Regulatory Agreement.  *\*IGT/UPL/QIPP transactions:  If the project participates in an IGT/UPL/QIPP program the “facility operator” must sign the Operator Regulatory Agreement, in addition to the hospital signing an Operator Regulatory Agreement.  Note:  the reference to “Management Agent” in the condition language may need to be adjusted to reflect the term being used in the specific transaction, e.g., “Sub-Operator”, or “Sub-tenant”, “Sub-landlord” etc., as applicable.* | **Operator Regulatory Agreement:** In addition to the Operator, the Management Agent must sign the Operator Regulatory Agreement. |
| **ALL PROGRAMS, as applicable** | **Operator Security Agreement** (12/23) Use when the project participates in an IGT/UPL/QIPP program. | **Operator Security Agreement:**  Any entities signing an Operator Regulatory Agreement in the transaction must also sign an Operator Security Agreement.  These Operator Security Agreements must include language that the proceeds from IGT/UPL transactions that are not considered excluded proceeds (as defined by the transaction specific agreements) are included in the definition of Government Payments and are available for delinquencies and other project operating needs. |
| **ALL PROGRAMS as applicable** | **ORCF Title and Survey Review** (10/18) **REQUIRED** when ORCF Title & Survey review has been completed & deficiencies have been identified.  **For Section 223a7s, only applicable if survey update is required.** | **ORCF Title and Survey Review:**  The attached ORCF Title and Survey Review provides a detailed and specific assessment of the title policy and the survey.  *All comments in the “Action Items to be Addressed” section must be met in the draft closing package.* |
| **ALL PROGRAMS as applicable** | **ORCF Title and Survey Review** (10/18) **REQUIRED** when ORCF Title & Survey review **HAS NOT** been completed prior to issuance of the Firm Commitment. **Section 223a7s, only applicable if survey update is required.** | **ORCF Title and Survey Review:**  The ORCF Title and Survey Review will be completed and sent to you.  The review will provide a detailed and specific assessment of the title policy and the survey.  *All comments in the “Action Items to be Addressed” section must be satisfied prior to closing.* |
| **ALL PROGRAMS as applicable** | **Paycheck Protection Program - Operator** (6/5/20) | **Paycheck Protection Program – Operator:**  The Operator is participating in the Paycheck Protection Program (PPP) created by Section 1102 of the CARES Act. Notification has been acknowledged and approved by HUD as required under the HUD Regulatory Agreement-Borrower and/or Regulatory Agreement-Operator. This acknowledgment and approval does not modify any obligations of the Borrower and/or Operator have under the HUD loan documents, including but not limited to, (i) Borrower’s obligations regarding Distributions and the restrictions to repaying any loans only from Surplus Cash or non-Project funds under the HUD Regulatory Agreement-Borrower and (ii) Operator’s rent/lease payment obligation under the HUD Regulatory Agreement –Operator. HUD expects that the borrower under the PPP Loan will fully comply with the terms and conditions of the PPP and the PPP Loan documents, including those necessary to cause the full principal amount of the PPP Loan to be forgiven upon maturity. If the PPP Loan is not forgiven, the balance of the loan shall be subject to the terms outlined in the HUD Regulatory Agreement – Operator. Prior to closing, the Operator must certify acknowledgement to these requirements. |
| **ALL PROGRAMS as applicable** | **Paycheck Protection Program** (5/27/20) | **Paycheck Protection Program (PPP):** The project is participating in the Paycheck Protection Program (PPP) created by Section 1102 of the CARES Act. Notification has been acknowledged and approved by HUD as required under the HUD Regulatory Agreement-Borrower and/or Regulatory Agreement-Operator. This acknowledgment and approval does not modify any obligations of the Borrower and/or Operator have under the HUD loan documents, including but not limited to, (i) Borrower’s obligations regarding Distributions and the restrictions to repaying any loans only from Surplus Cash or non-Project funds under the HUD Regulatory Agreement-Borrower and (ii) Operator’s rent/lease payment obligation under the HUD Regulatory Agreement –Operator. ORCF expects that the borrower under the PPP Loan will fully comply with the terms and conditions of the PPP and the PPP Loan documents, including those necessary to cause the full principal amount of the PPP Loan to be forgiven upon maturity. If the PPP Loan is not forgiven, the balance of the loan shall be converted to a Surplus Cash Note using form HUD-92223, and all terms must be in compliance with HUD requirements. The payback of any Surplus Cash Note is limited to periods when the project has surplus cash. Funds may not be taken from the operation of this project to repay the surplus cash note unless there is documented surplus cash. Prior to closing, the Borrower must certify acknowledgement to these requirements. |
| **Section 223(a)(7), ALL PROGRAMS as applicable** | **Plan of Correction** (11/5/15) Use for Troubled and Potentially Troubled projects | **Plan of Correction**: *The following language will be added to as a rider to the Operator Regulatory Agreement:*  A Plan of Correction addressing improvement of operations is to be submitted and found acceptable to the OHP Account Executive before closing with follow up reports on progress to be made on a monthly basis until advised otherwise. The Operator and HUD will meet quarterly to discuss this plan and its targets. In addition the Operator shall submit to HUD and Lender, simultaneously, any such report that demonstrates negative Healthcare Facility Working Capital, and a plan to restore positive Healthcare Facility Working Capital. |
| **Section 223(a)(7)** | **Pre-closing Conference Requirement** (7/12/13) Use when a CHOP has been completed in tandem with 223(a)(7). | **Pre-Closing Conference:**A pre-closing conference is required to be scheduled prior to closing to discuss HUD’s requirements.  Please contact the Account Executive who is (fill in A/E’s name who is assigned) at (insert phone number) or (insert email address).  Once scheduled, confirm the date with HUD’s closing coordinator. |
| **Section 223(a)(7)** | **Programmatic Approval of Participants Not Previously Approved by HUD *(3/19/12)*** Use to evidence OHP approval of participants not previously approved when a CHOP or modified CHOP has been done in conjunction with 223(a)(7) financing. | **Programmatic Approval of Participants Not Previously Approved by HUD:**  OHP has programmatically approved of the following participants that have not been previously approved by HUD:  XYZ LLC *(insert name of Mortgagor Entity),* ABC LLC *(insert name of Operator Entity)*, DEF LLC *(insert name of Management Agent)*, Bill Smith *(insert name of Mortgagor/Operator/Management Agent Principal).* |
| **ALL PROGRAMS as applicable** | **Project Improvement/Action Plan** (7/20) | **Project Improvement/Action Plan:**  Prior to closing, an improvement/action plan for the following related projects must be submitted to the ORCF Account Executive (Asset Management); [PROJECT NAME, FHA#, REPEAT AS NEEDED]. The plan must detail how improvements in operations will be achieved, a schedule for regular follow up with the ORCF Account Executive (Asset management), and analysis of quarterly operational financial performance. |
| **ALL PROGRAMS as applicable** | **Quality of Care Debt Service Escrow** (7/23) | **Quality of Care Debt Service Escrow:** A Debt Service Escrow equal to X months of principal, interest, and Mortgage Insurance Premium payments ($X) is required to be established prior to initial closing. The escrow dollar amounts shall be updated prior to closing based on rate lock and any changes in P&I&MIP. This escrow is not mortgageable and can be funded by cash or an irrevocable letter(s) of credit issued to the lender by a banking institution.  Disbursements from the escrow may be authorized upon written approval from the Lender’s Servicer and subsequently OHP after the start of amortization. Uses of this escrow are only for principal, interest, mortgage insurance premium, and any lender required loan escrows (e.g. property taxes). Unused portions will be returned to the borrower after the project has met all the following conditions:   1. Project has maintained an average debt service coverage ratio (DSCR) of 1.45 (including MIP) for a consecutive 12-month period after Final Endorsement, 2. The project is not designated by the Centers for Medicare and Medicaid Services (CMS) as a Special Focus Facility or similar future designation, 3. The project is not designated by CMS as a Special Focus Facility candidate or similar future designation, 4. The property is not currently displaying the consumer alert icon for abuse, neglect, or exploitation issues or similar future designation, and 5. The property currently has a 3 star or higher overall star rating on Medicare.GOV or similar future Medicare.GOV rating. OHP will look to the Lender’s Servicer to do the analysis and to provide the back-up financial documentation, information on the project’s status with CMS, and the Medicare.GOV star rating, along with a certification that the project has met the requirements. |
| **Section 223(f), 241(a), NC/SR As Applicable** | **Quality of Care Risk Management Assessment** (7/20, 8/21).Use when a **one-time** risk assessment is required on 223f, 241a or NC/SR projects. | **Quality of Care Risk Management Assessment:**  Prior to closing the Operator must provide a copy of a signed contract or receipt for a one-time third-party risk control consultant. The consultant must have demonstrated successful experience in risk management for healthcare facilities to conduct a one-time, on-site risk management assessment. The signed contract or receipt must include a list of services to be provided.   1. The one-time on-site Risk Management Assessment contract must include the following:    1. Review of both operational and clinical processes    2. Review of the environment for liability risk exposures    3. Identification of operational and clinical opportunities    4. Making recommendations for improvement of operational and clinical processes    5. Developing a strategy to implement the recommendations. 2. The Borrower will provide a Certification prior to closing:    1. That the Operator acknowledges that the risk management assessment must be conducted and its recommendations timely implemented in order for the Operator to be in compliance with paragraph 7 of the Healthcare Regulatory Agreement—Operator (HUD-92466A-ORCF).    2. That the Operator will take the following actions once the assessment is completed and a written report of findings is provided to the facility:       1. Based on any recommendations and findings made in the final report, the Operator will work with the risk control consultant to revise and strengthen the Operator’s risk management program that the Healthcare Regulatory Agreement—Operator (HUD-92466A-ORCF) requires to be implemented and maintained.       2. That within 14 calendar days of receiving the third-party report, the Operator will provide the following to the HUD Account Executive:          1. An action plan in accordance with Asset Management instructions that addresses follow-up to the third-party report. Such action plan shall call for regular updates until the underlying risk has been mitigated.          2. A copy of the third-party report.          3. A list of the changes that have been implemented in the Operator’s risk management program as a result of such report.          4. A list of any recommendation(s) in the report that have not been implemented, along with (a) a request for HUD approval of the Operator’s decision not to include the recommended action in the required Risk Management Program and (b) the Operator’s detailed rationale for and justification of the Operator’s proposed decision not to implement the particular recommendation(s).    3. That if HUD declines to approve an Operator’s request (above) not to include a particular recommendation, Operator must and will implement the recommendation promptly. |
| **Section 223(a)(7) Projects As Applicable** | **Quality of Care Risk Management Assessment**  (8/21)**.** Use when a **one-time** risk assessment is required on Section 223a7 projects | **Quality of Care Risk Management Assessment:** Prior to closing the Operator must provide a copy of a signed contract or receipt for a one-time third-party risk control consultant. The consultant must have demonstrated successful experience in risk management for healthcare facilities to conduct a one-time, on-site risk management assessment. The signed contract or receipt must include a list of services to be provided.   1. The one-time on-site Risk Management Assessment contract must include the following:    1. Review of both operational and clinical processes    2. Review of the environment for liability risk exposures    3. Identification of operational and clinical opportunities    4. Making recommendations for improvement of operational and clinical processes    5. Developing a strategy to implement the recommendations. 2. The Borrower will provide a Certification prior to closing:    1. That the Operator acknowledges that the risk management assessment must be conducted and its recommendations timely implemented in order for the Operator to be in compliance with paragraph 7 of the Healthcare Regulatory Agreement—Operator (HUD-92466A-ORCF).    2. That the Operator will take the following actions once the assessment is completed and a written report of findings is provided to the facility:       1. Based on any recommendations and findings made in the final report, the Operator will work with the risk control consultant to revise and strengthen the Operator’s risk management program that the Healthcare Regulatory Agreement—Operator (HUD-92466A-ORCF) requires to be implemented and maintained.       2. That within 14 calendar days of receiving the third-party report, the Operator will provide the following to the HUD Account Executive via the HUD Healthcare Portal:          1. An action plan in accordance with Asset Management instructions that addresses follow-up to the third-party report. Such action plan shall call for regular updates until the underlying risk has been mitigated.          2. A copy of the third-party report.          3. A list of the changes that have been implemented in the Operator’s risk management program as a result of such report.          4. A list of any recommendation(s) in the report that have not been implemented, along with (a) a request for HUD approval of the Operator’s decision not to include the recommended action in the required Risk Management Program and (b) the Operator’s detailed rationale for and justification of the Operator’s proposed decision not to implement the particular recommendation(s).    3. That if HUD declines to approve an Operator’s request (above) not to include a particular recommendation, Operator must and will implement the recommendation promptly. 3. Prior to Endorsement, the Borrower must provide evidence that a management conference has been scheduled with the ORCF Account Executive assigned to the project. This call is essential to discuss the one-time risk assessment requirements. The contact information for the Account Executive assigned to this project is below. Name: Insert the New WLM Name Email: Insert the New WLM’s Email Address |
| **ALL PROGRAMS as applicable** | **Quality of Care Risk Management Program** (8/24)Use when an **ongoing** third-party risk management program is required*.* | **Quality of Care Risk Management Program:**  In implementing and maintaining the risk management program required by the Healthcare Regulatory Agreement—Operator (HUD-92466A-ORCF) (paragraph 7 thereof), the Operator must enter into a risk management agreement/program with a third-party entity that addresses the facility’s ongoing quality of care to residents and helps to reduce exposure to Professional Liability Insurance (PLI) claims. The risk management agreement/program must incorporate a real-time incident reporting and tracking system that informs senior management of all incidents with a potential liability to the company. A third-party review of the incidents must be performed by trained professionals and the risk management agreement/program must include provisions for training and follow-up with facility staff as necessary.  Prior to closing,   1. The risk management agreement/program must be reviewed and approved by HUD and include all required items listed above. 2. The agreement/program must be discussed in the management conference with the HUD Account Executive – including any future quality of care related reporting required by HUD. 3. A summary of the third-party risk management program and the timing of the program’s implementation at the subject facility must be provided by the operator to the HUD Account Executive, prior to, or at the management conference, 4. An addendum must be added to the Regulatory Agreement-Operator stating that (a) the risk management program required shall be the agreement/program with the third-party entity, and (b) HUD approval must be obtained prior to amending the risk management plan so to eliminate or otherwise alter the third party’s role.   Prior to closing the lender must provide a certification that within 14 days of closing they will upload an action plan to the HUD Healthcare portal. |
| **ALL PROGRAMS as applicable** | **Quality of Care Risk Management Program** (8/23)Use when a quality care risk assessment was completed **prior** to issuance of a firm commitment*.* | **Quality of Care Risk Management Assessment:**  A quality of care risk assessment was completed prior to issuance of a firm commitment.   1. At the Pre-Closing Management Conference the Operator will provide the following to the HUD Account Executive:    1. An action plan in accordance with Asset Management instructions that addresses follow-up to the third-party report.  Such action plan shall call for regular updates until the underlying risk has been mitigated.    2. A copy of the third-party report.    3. A list of the changes that have been implemented in the Operator’s risk management program as a result of such report.    4. A list of any recommendation(s) in the report that have not been implemented, along with (a) a request for HUD approval of the Operator’s decision not to include the recommended action in the required Risk Management Program and (b) the Operator’s detailed rationale for and justification of the Operator’s proposed decision not to implement the particular recommendation(s).  Note that if HUD declines to approve an Operator’s request (above) not to include a particular recommendation, Operator must and will implement the recommendation promptly. 2. Prior to closing the lender must provide a certification that within 14 days of closing the action plan will be uploaded to the HUD Healthcare portal. |
| **ALL PROGRAMS as applicable** | **Radon (New Construction/Building addition/Substantial rehabilitation)** (10/21) Use when specified as a condition of environmental approval. | **Radon (New Construction/Building addition/Substantial rehabilitation):**   1. Radon resistant construction and post construction testing is required in accordance with Handbook 4232.1, Rev. 1, Section II, Part 7.8.  * The radon testing must be performed by a Radon Professional in accordance with Handbook 4232.1, Rev. 1, Section II, Production, Chapter 7.8.B.2 * All mitigation, including follow-up testing, must be complete and all reports submitted prior to HUD’s Final Inspection.  1. The Mortgagor must provide a certification stating that, if an active radon mitigation system is required:  * Prior to Final Endorsement, the facility will implement an Operations and Maintenance (O&M) plan for an active radon mitigation system. * The property will be operated and maintained consistent with the radon mitigation system O&M plan for the duration of the insured mortgage |
| **ALL PROGRAMS as applicable** | **Radon Mitigation**  (10/23) Use when specified as a condition of environmental approval. | **Radon Mitigation:**  Radon mitigation is required in accordance with Handbook 4232.1, Rev. 1, Section II, Part 7.8. Evidence of completion must include a certificate of completion from the Radon Professional, as required at 7.8.B.8 in Section II of the Handbook. |
| **ALL PROGRAMS as applicable** | **Radon Mitigation System Operations and Maintenance** (8/24) Use when specified as a condition of environmental approval.  (Applicable when mitigation involves the installation of a mitigation system.) | **Radon Mitigation System Operations and Maintenance:** Prior to closing, the Mortgagor must provide a certification stating that:   * Upon installation of the radon mitigation system, the facility will implement an Operations and Maintenance (O&M) plan for the active radon mitigation system. * The borrower will provide a copy of the O&M plan to HUD with the non-critical repair escrow release documents. * The property will be operated and maintained consistent with the radon mitigation system O&M plan for the duration of the insured mortgage. |
| **ALL PROGRAMS as applicable** | **Radon Mitigation System Operations and Maintenance** (10/23)Use when specified as a condition of environmental approval. (Applicable when a radon mitigation system has been installed at the project.) | **Radon Mitigation System Operations and Maintenance:** Prior to closing, the Mortgagor must provide a certification stating that:   * The facility has implemented a site-specific Operations and Maintenance (O&M) plan for the active radon mitigation system. * The property will be operated and maintained consistent with the radon mitigation system O&M plan for the duration of the insured mortgage. |
| **Section 223(a)(7)** | **Repairs** (2/15/12) Use if there is a recent REAC score under 70 where we need evidence of completion of repairs. | **REAC Inspection Repairs**: All deficiencies cited in the REAC Report dated xx/xx/xx are to be evidenced as corrected (invoices/photographs or other such proof) prior to closing. |
| **Section 223 (f) Purchases** | **Seller Note** (9/8/11). | **Seller Note**: The HUD insured mortgage plus the proposed seller financing must not exceed the HUD maximum of 92.5% of the HUD approved fair market value.  The secondary financing must be in the form of a HUD approved Surplus Cash Note. To satisfy this Condition the Lender must show the 92.5% of value calculation and provide a draft surplus cash note to HUD for review and approval. |
| **ALL PROGRAMS as applicable** | **Shared Construction Costs/Repair Costs/Expenses** (8/1/16) | **Shared Construction Costs/Repair Costs/Expenses** (as applicable)**:** (Borrower or Operator, as applicable) and (Owners/Operators of other facilities/buildings, as applicable) must enter into a Cost Sharing Agreement (and/or Shared Use, Operations, Maintenance, Access, Easement Agreement, as applicable). The agreement(s) will include identification of the method of determining (common construction, repair or operating costs, as applicable) for each significant account, whether by allocation and/or direct charges with timecards, invoices, etc. (Construction, repair or operating costs, as applicable) to be described should include such items (as applicable) as construction, repairs, expenses including nursing or other resident care staff, office or administrative staff and space, marketing (salaries, commissions, office space, other expenses), maintenance staff and supplies, kitchen and meals, amenities such as chapels, theaters, barber and/or beauty shops, snow-plowing, and landscaping. |
| **ALL PROGRAMS as applicable** | **Surplus Cash Note** (9/8/11). | **Surplus Cash Note:** There is a loan which is subordinate to the HUD loan in the amount of $XXX. This loan is to be converted to a Surplus Cash Note payable to XXXX. The payback of this note is limited to periods when the project has surplus cash. Funds would not be taken from the operation of this project to repay the surplus cash note unless there is documented surplus cash. Prior to closing, form HUD-92223 - ORCF, Surplus Cash Note, shall be used and terms must be in compliance with HUD requirements. |
| **Section 223 (f) Refinance** | **Swap (Interest Rate Protection Facility) Termination Fees for Section 223(f) Refinance Project*(5/22/12)*** | **Swap (Interest Rate Protection Facility) Termination Fees for Section 223(f) Refinance Project:** This project includes an interest rate swap termination fee in Sources and Uses and the calculation of the maximum insurable mortgage. Such fee shall not exceed 10% of the mortgage nor result in an LTV (based upon $ value) exceeding 80%. |
| **ALL PROGRAMS as applicable** | **Tenant Security Deposits** (7/12/13) | **Tenant Security Deposits:**  The Mortgagor must establish a separate escrow or account, funded in an amount to equal or exceed any resident/tenant security deposit liability.  Mortgagor must provide a copy of the bank statement for this escrow as satisfaction of closing requirements. |
| **Section 223(f) Purchases** | **Title Transfer** *(9/8/11)* | **Property Title Transfer:**  The property title is currently vested in XXXXXX, an entity other than the mortgagor.  In order to comply with HUD requirements, the title must be transferred to the proposed HUD mortgagor, XXXXXX.  The property title must be transferred to the HUD mortgagor prior to closing. |
| **Section 223(f), Section 223(a)(7), ALL PROGRAMS as applicable** | **Underground Storage Tank** (8/19/14)Use when a UST exists, after receiving acceptable test results and after O&M plan for UST has been submitted. | **Underground Storage Tank:** Prior to closing, the Mortgagor must provide a certification stating that the facility has adopted and implemented an Underground Storage Tank Operations and Maintenance plan. The owner must also provide a certification ensuring that all applicable personnel are trained and familiar with the plan. |
| **ALL PROGRAMS as applicable** | **Water Quality (Public Water Supply) (3/17)** Use when specified as a condition of environmental approval. | **Water Quality:** Documentation that the drinking water supply meets the applicable local, state, and federal safe drinking water standards must be provided prior to the loan closing. |
| **ALL PROGRAMS as applicable** | **Well Water Test** (10/23)Use when specified as a condition of environmental approval. | **Well Water Test:** Prior to the loan closing, the facility’s water supply must be tested and must meet the requirements of the health authority with jurisdiction. If there are no local or state water quality standards, then water quality must meet the EPA Primary Drinking Water Standards. |
| **Section 223(f), ALL PROGRAMS as applicable** | **Wetlands Restriction** (10/18) Use when specified as a condition of 4128 approval. | **Wetlands Restriction:** The following statement is to appear in a rider to the Borrower Regulatory Agreement: WETLANDS RESTRICTION. While any mortgage insured by HUD is in effect, Borrower shall not perform construction activities on the Mortgaged Property that impact any area that qualifies as a wetland by the U.S. Army Corps of Engineers 1989 delineation procedures or the U.S. Fish and Wildlife Service "Classification of Wetlands and Deepwater Habitats of the United States" without first obtaining the consent of HUD and any applicable federal, state, or local permits. Please note that this definition includes wetlands that are not defined as jurisdictional under Section 404 of the Clean Water Act and is to be interpreted consistent with 24 CFR Part 55. |
| **ALL PROGRAMS as applicable** | **Zoning Coverage or Law & Ordinance Coverage** (5/17) | **Zoning Coverage or Law & Ordinance Coverage:** Prior to closing, the lender shall provide evidence of Zoning Coverage or Law & Ordinance Coverage acceptable to HUD (Handbook 4232.1, Section II, Chapter 14.5.B). |

|  |  |
| --- | --- |
| **TOPIC** |  |
| **Accounts Receivable Financing (12/17)** | Lender must submit accounts receivable financing documents at or before 70% construction completion. |
| **Affirmative Fair Housing Marketing Plan (Use when AFHMP has not already been approved as part of underwriting)** | The Affirmative Fair Housing Marketing Plan (AFHMP), Form HUD-935.2D-ORCF, must be approved by HUD prior to the start of marketing. |
| **Archaeological Site, Human Remains, or Cultural Resources of Tribal Interest-Required on all projects completing any ground disturbance or digging (6/19). Include when project involves ground disturbance, after completing tribal and SHPO consultations.** | **Archaeological Site, Human Remains, or Cultural Resources of Tribal or Historic Interest:** If an archaeological site, human remains, or cultural resources of historic or tribal interest are revealed during the project's construction, the project manager must immediately stop work in the area of the discovery and notify HUD within 48 hours. HUD will contact responders to the State Historic Preservation Officer (SHPO), participating tribes and other consulting parties and continue Section 106 consultation. If ground disturbance is to occur after the loan closing, the closing package must contain a certification of this condition from the borrower. |
| **Debt Service Escrow - Short Term (less than 2 years, generally 6-12 mos., used to help cover lease-up risk)** | **Debt Service Escrow - Short Term:** A Debt Service Escrow equal to X months of principal, interest, and Mortgage Insurance Premium payments ($X) is required to be established prior to initial closing. This escrow is not mortgageable and can be funded by cash or an irrevocable letter(s) of credit issued to the lender by a banking institution. This Escrow may only be used after the Initial Operating Deficit has been extinguished. Disbursements from the escrow may be authorized upon written approval from the Lender’s Servicer and subsequently OHP after the start of amortization. Uses of this escrow are only for principal, interest, and mortgage insurance premium. Request for other escrows will not be approved. Unused portions will be returned to the borrower after the project has maintained an average of the underwritten debt service coverage ratio (DSCR) of X.XX (including MIP) for a consecutive 12-month period after Final Endorsement. OHP will look to the servicer to do the analysis and to provide the back-up financial documentation along with a certification that the project has met the requirements. |
| **Deferred Submissions (4/1/16)** Lender’s Architectural Reviewer and Cost Analyst’s Statement of Work here: http://portal.hud.gov/hudportal/documents/huddoc?id=LenArCsReSOW.doc | **Deferred Submissions:** Deferred Submission items (see the Lender’s Architectural Reviewer and Cost Analyst’s Statement of Work, Section IV.A.12) and/or any additional changes must be identified by addendum(s), must be reviewed by the underwriter of record and approved by HUD 15 days prior to Initial Closing. The addendum(s) must include a list of drawing numbers and page numbers with a description of the change(s). Addendum(s) must be clearly noted and all drawings and specifications affected must have sheets and pages revised and replaced. Addendum(s) shall have no effect on cost or value. The Architect of record and the Lender’s construction analyst must review the addendum(s) for acceptability. |
| **Deposit Account Control Agreement (DACA)-Required on all projects** | If the Deposit Account Control Agreement (DACA) is not submitted and approved by HUD prior to initial endorsement, this document must submitted for HUD approval when the project reaches 70% construction completion. |
| **Fidelity Bond (Crime/Dishonesty) Insurance-Required on all projects** | The final insurance policy must include Fidelity Insurance  equal to at least two months underwritten potential gross income ($\_\_\_\_\_\_\_\_\_) and must be in place prior to issuance of the Permission to Occupy. |
| **Firm Application - Required on Initial Submission Firm Commitments** | **Final Submission:** The Firm Commitment is subject to HUD review and approval of the Firm Application - Final Submission. The loan amount and other terms and conditions of this commitment may be subject to changes by HUD based on review of the Firm Application - Final Submission exhibits. The loan amount will be re-calculated with all applicable criteria prior to closing. |
| **Firm Application - Required on Initial Submission Firm Commitments** | **General Contractor:** The Firm Commitment is subject to HUD approval of the General Contractor submitted as part of the Firm Application - Final Submission. |
| **Firm Application - Required on Initial Submission Firm Commitments** | **Drawings & Specifications:** The Firm Commitment is subject to submission and HUD approval of the final Drawings and Specifications. If there are material changes to the facility design that effect value, HUD may require the submission and HUD approval of a new appraisal and current value |
| **Firm Application - Required on Initial Submission Firm Commitments** | HUD may require submission of updated third party reports, which will be subject to HUD review and approval, to extend this commitment beyond its original expiration. |
| **Ginnie Mae Review and Approval** (2/25) **– For all 241a projects** | HUD’s issuance of this firm commitment in no way ensures that any mortgage-backed security or REMIC enveloping either the 241(a) loan or the underlying FHA loan complies or will continue to comply with any applicable Ginnie Mae requirements.  The responsibility for assuring such compliance rests with the sponsor of the mortgage-backed security and/or REMICs for which the sponsor may be seeking any Ginnie Mae guaranty. |
| **Licensing (if more specific requirements are identified beyond what is covered under the Legal review, may be State specific)** | State specific. For example, deals in Texas may need to add the following language: "21. Prior to endorsement, evidence of submittal of the Texas DADS pre-construction inspection must be submitted to HUD." |
| **Progress Schedule** | At least 10 calendar days prior to Initial Endorsement an updated Progress Schedule of Work (form HUD-5372) dated within 30 days of Initial Endorsement must be provided. |
| **Professional Liability Insurance-Required on all projects** | Professional Liability Insurance acceptable to HUD as required in Item 13 of this Commitment must be in place prior to issuance of the Permission to Occupy. |
| **Tax Credits (6/18/15)** | **Tax Credit:** 1. This Commitment is subject to, and has been issued upon the reliance of, the receipt of Low Income Housing Tax Credit (Historic Tax Credits or New Market Tax Credits) syndication funds in the amount of $ of which a $ cash investment is required for mortgageable items including land and $ for HUD required escrows (list the HUD escrow types as applicable, e.g. initial operating deficit, working capital, minor movable, and off-site construction, etc.) . The initial installment of funds allocated to mortgageable items must be provided prior to initial closing, with a disbursement agreement that evidences the timely infusion of funds required to pay for all project costs. All documents relating to the tax credit funds, including the Land Use Restriction Agreements, the final statement of sources and uses, and the final Applicant/ Recipient Disclosure/Update Report, must be reviewed and approved by ORCF prior to initial closing.  2. HUD’s review and determination of acceptability and sufficient financial capacity is required for the tax credit investor(s). This investor entity and all principals are subject to Previous Participation clearance requirements, except to the extent limited liability corporate investors may submit an LLCI certification in lieu of other previous participation requirements. HUD approval of the final investor(s) must be accomplished prior to initial closing.   3. The Borrower’s organizational documents must include a provision that prohibits any changes to the organization documents that affect the investor commitment without the written consent of the Lender and HUD. |
| **Title Transfer** | **Title:** Title to the property is currently vested in (insert name here), the principal. Prior to Initial Closing, title must be transferred to the HUD mortgagor. |
| **Updated Construction Budget** | At least 10 calendar days prior to Initial Endorsement an updated construction budget (form HUD-92328-ORCF Contractor’s and/or Mortgagor’s Cost Breakdown Schedule of Values Section 232) dated within 30 days of Initial Endorsement must be submitted for ORCF review and approval. |