**Section 232 HUD Attorney Closing Punchlist – Refinance or Acquisition**

**Use of Punchlist** This legal punchlist applies to 232/223(f), 232/223(f)/223(a)(7) and 232/223(a)(7) transactions and is intended to be a tool to assist HUD counsel in their review. The punchlist lists documents in the same order as the 232 Refinance Closing Checklist.

**Completion of HUD Forms**

* **Completeness:** Lender’s counsel is responsible for completing and filling-in all HUD Forms accurately and correctly. HUD Counsel will review for accuracy and completeness.
* **Comparison Copies:** For each HUD form, Lender’s counsel must provide a comparison copy (redline) against the blank HUD form document.
* **Changes.** No deviations from the form documents are allowed, unless specifically approved by HUD and documented in the Request for Endorsement.
* **HUD ORCF Address**: Secretary of Housing and Urban Development, Office of Residential Care Facilities, 451 7th Street SW, Washington, DC 20410
* **Section of the Act:** Ensure that the Section of the Act is referenced correctly in all documents. Use:
* “Section 232 pursuant to Section 223(a)(7)” (for a refinance of a new construction or substantial rehab loan that is already insured by HUD), or
* “Section 232 pursuant to Section 223(f) pursuant to Section 223(a)(7)” (for a refinance of an existing project currently insured by HUD under Section 232 pursuant to Section 223(f)), or
* “Section 232 pursuant to Section 223(f)” (for a refinance of an existing project that is not already HUD-insured or that is applying under Section 223(f) because it does not meet the criteria for Section 223(a)(7)), as appropriate.

**Closing Documents to be Signed by HUD**

Anticipate at least a three (3) day turn-around/delivery period to get documents executed by ORCF and returned to title. Best practice is for Lender to request HUD signatures and HUD Counsel consent to sign seven (7) calendar days prior to closing. Lender may also need to provide a notary for HUD’s authorized agent. The ORCF Closer will send Lender/Lender’s Counsel an email with detailed instructions for delivering the documents to the designated signatory. Lender’s counsel must not send documents to HUD for ORCF execution until instructed to do so by the ORCF Closer.

**Post-Closing Instructions**

1. After the closing transaction is complete, HUD counsel is to respond to a “clear to close” email from ORCF Closer to confirm the transaction is closed.
2. For in-person closings, HUD counsel must scan and email the Note to ORCF within 24 hours of closing because the post-closing HUD Form 290 is time-sensitive.
3. For electronic closings, HUD counsel must authorize ORCF to release the paper Note to the FHA Lender as the final step of the closing.
4. FHA Lender is responsible for uploading the complete closing docket to the [232 Portal](https://www.hud.gov/sites/dfiles/Housing/documents/userguidepdf.pdf).

**Responsibility for Review** This legal punchlist includes all the documents collected at closing that will become the Closing Docket. Some documents are reviewed by both the HUD closing attorney and the ORCF Closer. OGC will review all listed documents unless otherwise noted on the punchlist (such as 52-60). ORCF reviews the documents denoted with “Φ” symbol.

**Guidance**

Supporting guidance can be found at:

* 24 CFR §§ 200 and 232
* [Healthcare Mortgage Insurance Program Handbook (4232.1)](https://www.hud.gov/program_offices/administration/hudclips/handbooks/hsgh/42321)
* [Lean Email Blast Archives](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/mail_blast_index)
* [232 FAQs](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/knowledgebase)
* [ORCF Production SharePoint](https://hudgov.sharepoint.com/sites/IHCF/DEVL/default.aspx) [internal]
* [ORCF Asset Management SharePoint](https://hudgov.sharepoint.com/sites/IHCF/232%20Program/SiteAssets/ORCF%20Asset%20Management.aspx) [internal]
* [232 Document Reform Implementation](https://hudgov.sharepoint.com/sites/OGC/OGC/healthcaredocsfaqs2/Lists/Links/AllItems.aspx) [internal]
* [HUD Wiki](https://hudgov.sharepoint.com/sites/OGC/OGC/HUDapedia/Wiki%20Pages/Home.aspx) [internal]

For jurisdiction-specific guidance, consult your supervisor. For novel questions, consult your Region’s Lean Coordinator.

When citing prior closings for justification of deviation to policy, Lender’s counsel must provide project information, the name of the HUD closing attorney, and why the project-specific details are so similar as to warrant a similar outcome. The precedent of other closings may be informative, but not binding to your closing.

**QUICK REFERENCE CHART**

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| **Project Name:**  **Project Address:**  **FHA Number:**  **Section of the Act:**    **Licensed Beds/Units:**  **Underwritten Beds/Units:**  **Mortgage Amount: $**  **Interest Rate:**  **P & I: $**  **Maturity Date:**  **R4R Monthly: $**  **R4R Initial Deposit: $**  **R4R Transfer Amount (223a7): $**  **Prior FHA Number (223a7):**  **PCNA Date:**  **Firm Commitment Date:**  **Inspection Fee: $**  **MIP: $**  **Exam Fee: $**  **Critical Repairs: $**  **Non-Critical Repairs: $**  **Non-Critical Repairs Contingency: $**  **Total Escrow: $** | **Borrower:**  **Borrower State of Organization:**  **Operator:**  **Operator State of Organization:**  **Borrower’s Attorney:**  **Master Tenant:**  **MT State of Organization:**  **Lender:**  **Lender’s Attorney:**  **AR Lender:**  **AR Lender’s Attorney:**  **Management Agent:**  **Title Company:**  **Surveyor:**  **Survey date/No:**  **Lease Date:**  **Minimum Lease Payment:**  **License Information:**  **Part 38 Party(ies):**  **Special Conditions:** |

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| ***ADMINISTRATIVE DOCUMENTS*** | |
| 1 Φ | [**Contact Sheet (HUD-90024-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/90024_orcf.docx)  Confirm names of all parties, including the ORCF Closer and HUD attorney, are listed for the benefit of post-closing questions. |
| 2 Φ | **HUD Firm Commitment, Amendments & Assignments** |
| 3 | **ORCF Approvals and HUD-2-ORCF Waivers, Correspondence with HUD** Internal: Completed waivers are available on the internal [LEAN SharePoint site](https://hudgov.sharepoint.com/sites/IHCF/DEVL/Pages/Waivers.aspx) or the [232 Healthcare Portal](https://www.hud232portal.com/); or can be requested from the ORCF Closer.  Review Pre-firm correspondence, if provided by the ORCF Closer, including ORCF approvals of known litigation, proposed master leases or AR financing structures. |
| 4 | **Lender Narrative (HUD-9001-ORCF or HUD-9002-ORCF)**   * Useful as an overview of the transaction. |
| 5 | **Portfolio Acceptance Letter**  (Applicable only to midsize and large portfolios as defined Handbook 4232.1, Section II, Ch. 17.4)  Discuss with lead HUD counsel for the portfolio and/or previously assigned HUD counsel and/or ORCF staff regarding any special considerations related to the portfolio, including but not limited to, any master leases, cross-default guaranties, deposit control agreements, AR financing, and special conditions included in the Portfolio Acceptance Letter.  HUD counsel may request Lender’s Counsel submit redlines against documents previously approved for other closed projects in the same (or related) portfolio. |
| ***ACCOUNTS RECEIVABLE (AR) DOCUMENTS*** | |
| 6 Φ | **AR Documents** (Applicable only if transaction involves AR financing)   * Additional guidance available on [Accounts Receivable Punch List](https://hudgov.sharepoint.com/:w:/r/sites/IHCF/DEVL/ap/UW/AR-Punchlist.docx?d=w2ef25b96c0af4e25bbea9e9f6830bb6c&csf=1&web=1&e=TOLO2H).   For new AR lines, review the AR loan documents for material discrepancies with AR Terms Memo, and AR Lender Narrative. ORCF is responsible for the technical, underwriting, and programmatic (i.e., business risk) issues review.  For existing AR lines, if any changes impact other insured projects, notify the ORCF Closer to coordinate Account Executive (AE) approval. Current ORCF Account Executive facility assignments are posted on the [ORCF Loan Servicing website](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/loan_servicing)  FHA lender must provide copies of all AR loan documents listed on the ICA Schedules or referenced in the AR loan agreement.  The Borrower must not pledge or waive collateral to secure an AR loan to Borrower or Operator (e.g. landlord collateral waiver).See Handbook 4232.1, Section II, Ch. 15.4.D. (regarding AR Loan Guarantees and Equity Pledges).  Pledges of ownership interest, assignment of management agents, etc., must require HUD’s written approval before transfer. See id. Sample language is available on the [232 Document Reform Implementation SharePoint](https://hudgov.sharepoint.com/sites/OGC/OGC/healthcaredocsfaqs2/Sample%20Joinders/Forms/AllItems.aspx?InitialTabId=Ribbon%2ELibrary&VisibilityContext=WSSListAndLibrary&OR=Teams%2DHL&CT=1653066320921&params=eyJBcHBOYW1lIjoiVGVhbXMtRGVza3RvcCIsIkFwcFZlcnNpb24iOiIyNy8yMjA0MDExMTQxMyJ9).  Guarantees by principals must provide that the guarantor agrees to waive any subrogation or reimbursement rights until the FHA-insured loan is paid in full. See id. |
| 7 Φ | [**Intercreditor Agreement (ICA) (HUD-92322-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92322-orcf.pdf)  *(Applicable only if transaction involves AR financing)*   * The ICA is the primary document for legal review in the AR documents. * If there are multiple projects on the same AR Line, a separate ICA is required for each project. * Do not permit any changes to the ICA except those explicitly approved in the AR Terms Memo (i.e., modifications to Sections 1.7, 2.7(g), 2.7(h), and 3.4). * If the Master Tenant is in the flow of funds (*see* Cash Flow Chart in Tab 44), the Master Tenant must be a signatory to the ICA.   All blanks and bracketed language in the ICA must be completed accurately:  Section 1.5: Name the AR Loan Agreement and make appropriate selections regarding operators of other facilities and Borrower Representative;  Section 1.7: List any HUD-approved additions to the definition of AR Loan Obligations;  Section 1.8: Insert appropriate defined term for Availability;  Section 1.19: List approved AR loan amount per the AR Terms Memo.  Section 2.7(g): Complete applicable sections and delete inapplicable sections. *See* Handbook 4232.1, Section II, Ch.15.4.B for examples.  Section 4.7: Insert additional language if the AR loan is syndicated or participated and additional assurances are needed. *See* Handbook 4232.1, Section II, Ch.15.3.G. Sample Language previously approved by ORCF:  “AR Lender represents and warrants that (i) it has the authority to execute this Agreement and to bind all lenders who are parties from time to time under the AR Loan Agreement; (ii) AR Lender shall be the sole party under the AR Loan Agreement entitled to enforce this Agreement and any rights in the AR Lender Priority Collateral and/or FHA Lender Priority Collateral; and (iii) FHA Lender and HUD shall be entitled to rely on any consent, amendment or other document signed by AR Lender.”  Schedule 1: Must list all AR loan documents and must not list the ICA  Schedule 2: Must list all HUD loan documents and must not list the ICA  Schedule 3: Must list the other facilities, if any.  Exhibit B must list all approved cross-defaults of the AR loan. Exhibit B must be materially consistent with the AR Terms Memo.  **Borrower Representative requirements (if applicable)**  (*See* Handbook 4232.1, Section II, Chapter 16)  If a party other than the Operator is named on or has an interest in an account (*e.g.*, Borrower Representative), that party must execute such joinders, security agreements, DACAs, or other documents to bind that party’s interest.  If there is a Borrower Representative, all documents evidencing the relationship between Borrower Representative (in its capacity as such) and the Operators must be submitted for HUD’s consideration and review.  Documentation must establish that the Borrower Representative is making draws as agent for the Operators and is not borrowing funds in its own capacity and then re-lending such funds to the Operators.  A Borrower Representative certification that discloses the named entity on the accounts managed or controlled by the Borrower Representative is required. There is no HUD form certification.  If the Borrower Representative is not one of the Operators, HUD requires the same types of searches required for Operators (*e.g.*, UCC, litigation, tax lien).  NOTE: The **Cash Flow Chart,** which is Exhibit C-1 to the Operator Security Agreement (HUD-92323-ORCF) and item #44 of this punchlist, must be consistent with the AR transaction documents, including identifying the AR Lender, FHA Lender (and Borrower Representative, if applicable), and show the interaction of funds from other projects where a line has multiple FHA projects. |
| 8 | **Deposit Account Control Agreement(s) (DACA)**  The DACA (also referred to as a control agreement, account control agreement or lockbox agreement) is the agreement in which the Operator grants the Lender control over the distribution of funds in the account typically to ensure payment of the lender’s loan.  There must be at least one DACA for each 232 loan, even if there is no AR Financing, and there may be DACAs on multiple accounts (often used to accommodate AR financing or multiple upstream accounts).  The DACA must be either a “springing”/ future notification type DACA that is triggered only upon default or an “immediate control” DACA. *See* Handbook 4232.1, Section II, Ch.16.6.B.1.  The DACA and DAISA must be consistent with the Cash Flow Chart (item #44 of this punchlist) and AR documents. There is no HUD form for the DACA.  The DACA and DAISA may be combined into one document, but the agreement must meet all requirements for both the DACA and DAISA.  HUD’s DACA requirements are in Handbook 4232.1, Section II, Chapter 16.  ***List the Parties*.** Parties will generally be the Depository Bank, FHA Lender, the Operator, and the AR Lender (if there is AR financing). The FHA Lender must be the only secured party, unless there is AR Financing, in which case the FHA Lender and the AR Lender must be secured parties. Note that the AR Lender may also be the Depository Bank. HUD must not be a party to a DACA. *See* Handbook 4232.1, Section II, Ch.16.6.C.1.  ***Notification of Security Interest.*** The DACA must provide the FHA Lender a security interest in the account and all items to be deposited therein and any associated lockboxes. *See* Handbook 4232.1, Section II, Ch. 16.6.C.2  ***No Other DACAs.*** The DACA must state that the account is not subject to any other control agreements and nor will any agreements be placed on the account (unless approved by HUD). *See* Handbook 4232.1, Section II, Ch. 16.6.C.3  ***Account Identification***. The DACA must identify the account number(s) covered by the DACA. The account number(s) must match the Cash Flow Chart (item #44 of this punchlist). *See* Handbook 4232.1, Section II, Chapter 16, Chapter 16.6.C.4  ***UCC Control Language*.** The DACA must require the Depository Bank’s compliance with FHA Lender’s instructions as to the disposition of funds without further consent of the account holder (“UCC control language”) immediately (for immediate control DACAs) or upon receiving a Control Notice (for springing DACAs). *See* Handbook 4232.1, Section II, Ch. 16.6.C.5  ***Implementing Control Notice*.**  The DACA must describe the method for sending the Control Notice, which must be an expeditious means (e.g., personal delivery) and identify when it is deemed given or received. *See* Handbook 4232.1, Section II, Ch. 16.6.C.7.a.  The DACA must require implementation of the Control Notice no later than 3 business days after receipt of the Notice. See Handbook 4232.1, Section II, Ch. 16.6.C.7.b.  The DACA must require that after the Control Notice is received, the Depository Bank will disregard further instructions from the account holder, block the account holder’s access to the account (except for the purpose of making and accepting deposits) and rely solely on instructions from the Secured Party giving the Control Notice. *See* Handbook 4232.1, Section II, Ch. 16.6.C.7  ***Set-Off, Recoupment, Bank Liens and Security Interests.***  The Depository Bank must limit any rights of set-off, recoupment, banker’s lien, or contractual security interest in the Deposit Account and Account Collateral, except for usual, customary and reasonable fees, and returned items. *See* Handbook 4232.1, Section II, Ch.16.6.C.8.  Bank fees should be limited to usual, customary and reasonable fees in the normal course of business of the bank. *See* Handbook 4232.1, Section II, Ch. 16.8.A.5.  ***Termination.***  The Depository Bank must give notice to FHA Lender prior to voluntarily terminating the DACA. *See* Handbook 4232.1, Section II, Ch.16.6.C.9.  The Operator should only be able to terminate the DACA by a joint instruction with the Secured Party(ies). *See* Handbook 4232.1, Section II, Ch.16.6.C.9.  If the DACA is terminated by the account holder or depository bank, the DACA should direct the bank to direct the funds in the account upon termination to an account designated by the Secured Party(ies). *See* Handbook 4232.1, Section II, Ch.16.6.C.9.  ***Foreign Accounts***. The DACA must not cover multi-currency accounts or an account held outside the U.S. *See* Handbook 4232.1, Section II, Ch. 16.1.C.  ***Access***. The Depository Bank must provide FHA Lender (upon request) access to daily activity in the account and copies of periodic statements delivered to the account holder. *See* Handbook 4232.1, Section II, Ch. 16.8.A.1.  ***Minimum Balance***. If there is a minimum account balance requirement, it must be approved by ORCF. *See* Handbook 4232.1, Section II, Ch.16.8.A.3.  ***Venue***. The DACA must permit venue in a federal district court. *See* Handbook 4232.1, Section II, Chapter 16, Chapter 16.8.A.7.  ***Assignment***. The DACA must permit assignment of the DACA by the FHA Lender, and must not be materially inconsistent with, or unduly burden, HUD’s assignment of claims procedures (e.g., cannot require HUD to execute an assumption). *See* Handbook 4232.1, Section II, Ch.16.8.A.8.  ***Conflicts***. In the event of a conflict between the DACA and the bank’s deposit agreement(s), the terms of the DACA must control. *See* Handbook 4232.1, Section II, Ch. 16.8.A.4.  **Additional DACA requirements when there is AR financing:**  ***1st Lien/2nd Lien DACA*.** If a First Lien DACA and Second Lien DACA are used, the First Lien DACA must refer to and permit the Second Lien DACA (and vice versa). *See* Handbook 4232.1, Section II, Ch. 16.6.C.3. Additionally, the First Lien DACA’s termination provisions must be consistent with the "change in control” and termination provisions of the Intercreditor Agreement (see Sections 2.3 and 2.9). *See* Handbook 4232.1, Section II, Ch.16.6.C.6.  ***Control Notice*.** If both AR Lender and FHA Lender are parties to the same DACA, it must clearly set forth when the depository bank is obligated to follow FHA Lender’s instructions (as opposed to the AR Lender) and must be consistent with the “change in control” and termination of DACA provisions in the Intercreditor Agreement (see Sections 2.3 and 2.9). *See* Handbook 4232.1, Section II, Ch.16.6.C.6.  ***AR Lender as Depository Bank*.** If Depository Bank is also the AR Lender, the Depository Bank’s right to set off must be limited to the obligations secured by the AR loan/security agreement, provided any such setoff must be subject to the Intercreditor Agreement. *See* Handbook 4232.1, Section II, Ch. 16.6.C.8.  ***Termination.***  Termination by AR Lender must not terminate FHA Lender’s interest under the DACA (or if a First Lien/Second Lien DACA are used, the Second Lien DACA); nor result in disposition of funds out of the account. *See* Handbook 4232.1, Section II, Ch 16.6.C.9.c.  If the depository bank is the AR Lender and the AR loan documents require the Operator to maintain its accounts at that bank, and if the depository bank terminates the DACA for reasons other than breach thereof, the Operator must be able to move its accounts to another bank notwithstanding restrictions in the AR loan documents. *See* Handbook 4232.1, Section II, Ch. 16.8.A.2.  ***Conflict with ICA***. If there is a conflict between the DACA and the ICA, then the ICA must control.  NOTE: If a Tenant Rent Account (an account established solely for the purpose of funding lease costs) is used, it may be appropriate to use an immediate control DACA in favor of FHA Lender on the Tenant Rent Account. Likewise, if there is a Master Lease and lease payments are being made from a Master Tenant Account, it may be appropriate to use an immediate control DACA in favor of FHA Lender on such Master Tenant account. *See* Handbook 4232.1, Section II, Ch 16.5.A. |
| 9 | **Deposit Account Instructions and Services Agreement (DAISA)**  *(Applicable only if there are government receivables (i.e., Medicare/Medicaid))*  Due to CMS regulations, at least one DAISA is required if there are government receivables (i.e., Medicare/Medicaid), even if there is no AR Financing. There is no HUD form for the DAISA. HUD’s DAISA requirements are in Handbook 4232.1, Section II, Chapter 16:  ***List the Parties.*** Parties will generally be the Depository Bank, FHA Lender, Operator, and the AR Lender (if there is AR financing). HUD must not be a party to the DAISA. *See* Handbook 4232.1, Section II, Ch. 16.7.A.1.  ***Security Interest***. The DAISA should include a provision notifying the depository bank that the FHA Lender has a security interest in the account and all items to be deposited therein See Handbook 4232.1, Section II, Ch. 16.7.A.2.  ***No Other Agreements.*** The DAISA should include representations to the effect that the account is not subject to any other control agreements and none will be placed on the account (unless approved as part of the HUD transaction). *See* Handbook 4232.1, Section II, Ch. 16.7.A.3.  ***Account Identification.*** The DAISA must identify the account number(s) covered by the DAISA. The account number(s) must match the Cash Flow Chart (item #44 of the punchlist). *See* Handbook 4232.1, Section II, Ch. 16.7.A.4.  ***Sweep Instructions*.** The account holder must instruct the depository bank to initiate a funds transfer (“daily sweep”) of available funds each business day into an identified account (typically, this must be the DACA account, unless HUD has approved a direct sweep into an AR Lender account). *See* Handbook 4232.1, Section II, Chapter 16, Chapter 16.7.A.5. Due to CMS regulations, the DAISA cannot contain UCC control language (provisions allowing lenders to give control notices or rights to direct disbursements or give instructions). *See* Handbook 4232.1, Section II, Ch. 16.7.A.5.a.  ***No Withdrawals.*** The account holder should also instruct the bank not to permit account holder to make withdrawals from the account. *See* Handbook 4232.1, Section II, Ch. 16.7.A.5.  ***Rights of Set-Off.*** Depository bank must agree to limit any rights of set-off, recoupment, banker’s lien, or contractual security interest in the account and be limited to items and fees related to the DAISA account. *See* Handbook 4232.1, Section II, Ch. 16.7.A.6. Bank fees should be limited to usual, customary and reasonable fees in the normal course of business. *See* Handbook 4232.1, Section II, Ch. 16.8.A.5.  ***Termination Notice***. Depository bank must give notice to FHA Lender prior to its voluntary termination of the DAISA. A notice period of at least 30 days is expected. *See* Handbook 4232.1, Section II, Ch. 16.7.A.7.b. The Operator should be able to terminate the DAISA to comply with governmental healthcare program restrictions. *See* Handbook 4232.1, Section II, Ch. 16.7.A.5.b.  ***Access***. Depository bank must agree to provide FHA Lender (upon request) access to daily activity in the account and copies of periodic statements delivered to the account holder. *See* Handbook 4232.1, Section II, Ch. 16.8.A.1.  ***Minimum Balance***. A minimum account balance requirement must be brought to the attention of ORCF for review and approval. *See* Handbook 4232.1, Section II, Ch. 16.8.A.3.  ***Venue***. Must permit venue in a federal district court. *See* Handbook 4232.1, Section II, Ch. 16.8.A.7  ***Conflicts***. In the event of a conflict between the DAISA and the bank’s deposit agreement(s), the terms of the DACA and DAISA must control. *See* Handbook 4232.1, Section II, Ch. 16.8.A.4.    ***Indemnification***. Indemnification obligations should be limited to the operator, (and, if required by the depository bank, a guarantor). *See* Handbook 4232.1, Section II, Ch. 16.8.A.6.  **Additional DAISA requirements when there is AR Financing:**  ***Set-off****.* AR Lender must waive its right to set off its loan against the DAISA account to the extent required by applicable law or governmental healthcare insurance program rules. See Handbook 4232.1, Section II, Ch.16.7.A.6.  ***AR Lender as Depository Bank***. When AR Lender is the depository bank, the DAISA should refer to the AR Lender in its capacity as depository bank where appropriate. *See* Handbook 4232.1, Section II, Ch. 16.7.A.7.d.  ***Conflict with ICA***. If there is a conflict between the DAISA and the ICA, then the ICA must control. |
| ***MASTER LEASE AND OPERATING LEASE DOCUMENTS*** | |
| 10 | **Master Lease**  *(Applicable only if there is a Master Lease)*  **A.** [**Master Tenant Estoppel Certificate (HUD-92339-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92339_orcf.docx)  A separate Master Lease Estoppel Certificate is required for each project that is part of the Master Lease Portfolio.  Exhibit A: List exceptions or state “none.” If exceptions are noted, HUD counsel should carefully review these items, and discuss with ORCF  Exhibit B: Master Lease and all addenda and amendments must be attached  **B. Master Lease and Master Lease Addendum**  There is no HUD form for the Master Lease. In most cases, one Master Lease will be used in duplicate for all projects in the Master Lease Portfolio. *See* Handbook 4232.1, Section II, Chapter 13 for guidance on Master Leasesand LEAN Blast 10/25/17 amending Section 13.6 of this Chapter.  The term must be at least as long as the mortgage with the longest remaining term. *See* Handbook 4232.1, Section II, Chapter 13.5.  Must include correct legal descriptions for each participating facility.  Must incorporate by reference the HUD-required **Master Lease Addendum** **(HUD-92211-ORCF**).  [**HUD Master Lease Addendum (HUD-92211-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92211_orcf.docx)  Schedule 1 must include for each facility: name of landlord, name of facility, address of facility (including county and state), operator name, type of facility, and number of licensed units/beds. The project list will be included as a special condition to the Firm Commitment. The ORCF Closer can provide additional information from the Portal.  Schedule 2 must include for each facility: name of facility, name of landlord, principal loan amount, and rent attributable to facility. The project list will be included as a special condition to the Firm Commitment. The ORCF Closer can provide additional information.  **C. Joinder to Existing Master Lease (if applicable)**  Joinders are needed for situations where a project is being added to an existing Master Lease. HUD does not have a form Joinder. Sample joinders are available on [OGC’s 232 Document Reform Implementation SharePoint](https://hudgov.sharepoint.com/sites/OGC/OGC/healthcaredocsfaqs2/Sample%20Joinders/Forms/AllItems.aspx?InitialTabId=Ribbon.Library&VisibilityContext=WSSListAndLibrary). Joinders must:  Identify the Master Lease.  Identify original landlords and incoming landlord(s).  Add correct legal description(s) for the incoming project(s).  Include FHA project names and numbers of existing and incoming project(s).  Amend Master Lease Term to accommodate later maturity date of incoming project mortgage(s).  Include base rent allocation per facility and total rent.  Be signed by all landlords (existing and incoming) and Master Tenant.  Include an updated Schedule 1 (replacing the existing Schedule 1 of HUD Master Lease Addendum) containing the following information for each existing and incoming facility: name of landlord, name of facility, address of facility (including county and state), operator name, type of facility, and number of licensed units/beds. The ORCF Closer can provide this information.  Include an updated Schedule 2 (replacing the existing Schedule 2 of HUD Master Lease Addendum) containing at least the following information for each existing and incoming facility: name of facility, name of landlord, principal loan amount, and rent attributable to facility. The ORCF Closer can provide this information.  The existing Master Lease, including the HUD Master Lease Addendum and all other amendments or joinders must also be included in the closing docket.  **D. Removal from Existing Master Lease (if applicable)**  If Project was previously part of a Master Lease and is being removed from it as part of this transaction, the previous Master Lease must be amended to reflect its removal and the correct composition of the Master Lease portfolio. See [Prepayment and Requests for Insurance Termination Checklist](https://www.hud.gov/sites/dfiles/Housing/documents/Prepay_9807_Checklist.docx) for more guidance. |
| 11 | [**Cross-Default Guaranty of Subtenants (HUD-92331-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92331-orcf.pdf)  *(Applicable only if there is a Master Lease)*  In most cases, one Cross-Default Guaranty of Subtenants will be used in duplicate for all projects in the Master Lease Portfolio. *See* Handbook 4232.1, Section II, Chapter 13.3.B.  Confirm Operator names in Guarantors’ signature block.  Schedule A: check for correct name of Operator, facility, and facility address.  Schedule B: check for correct name of Landlord, facility, and facility address.  Schedule C: check for correct Notice Addresses of Guarantor (Operator), Facility Landlord (Borrower), and HUD ORCF Address.  **Joinder to existing Cross-Default Guaranty of Subtenants (if applicable)**  Joinders are needed when a project is being0 added to an existing Master Lease. There is not a HUD form Joinder. Sample joinders are available on [OGC’s 232 Document Reform Implementation SharePoint](https://hudgov.sharepoint.com/sites/OGC/OGC/healthcaredocsfaqs2/Sample%20Joinders/Forms/AllItems.aspx?InitialTabId=Ribbon.Library&VisibilityContext=WSSListAndLibrary). Joinder must:  Identify original operators and projects and incoming operator(s) and project(s) by name and FHA number.  Include consent to joinder signed by all parties (existing Operators and incoming Operators).  Include an updated Schedule A replacing the existing Schedule A and including names of Operators, facilities, and facility addresses for each existing and incoming facility.  Include an updated Schedule B replacing the existing Schedule B and including names of Landlords, facilities, and facility addresses for each existing and incoming facility.  The existing Cross-Default Guaranty of Subtenants, including all amendments or joinders must also be included in the closing docket.  **Amendment to existing Cross-Default Guaranty of Subtenants (if applicable)**  If Project was previously part of a Master Lease and is being removed from it as part of this transaction, the previous Cross-Default Guaranty of Subtenants must be amended to reflect its removal and the correct composition of the Master Lease portfolio. *See* [Prepayment and Requests for Insurance Termination Checklist](https://www.hud.gov/sites/dfiles/Housing/documents/Prepay_9807_Checklist.docx) for more guidance. |
| 12 | **Operating Lease**  *(Applicable only if there is an operating lease)*  **A.** [**Operator Lease Estoppel Certificate (HUD-91117-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/91117_orcf.docx)  If the Operator is leasing the property from the Master Tenant, change “Borrower” to “Master Tenant.”  Exhibit A: List exceptions or state “none.” If exceptions are noted, HUD counsel should carefully review these items and discuss with ORCF.  Exhibit B: Confirm the Operator Lease and all addenda and amendments are attached to the Estoppel Certificate.  **B. Operator Lease**  NOTE: There is no HUD form for the Operator Lease.  Confirm the lease term is at least 5 years. *See* Handbook 4232.1, Section II, Chapter 8.6.  Confirm the lease specifies the responsibilities of Borrower and Operator, including payment of real estate taxes; maintenance of the building(s); capital improvements; replacement of equipment; property insurance; and fidelity bond/employee dishonesty coverage. *See* Handbook 4232.1, Section II, Chapter 8.6.  If there is a master lease, under each sublease, the operator must be obligated to pay to the master tenant a minimum of base rent plus reserves and escrows owed to Borrower on the FHA-insured loan. *See* Handbook 4232.1, Section II, Chapter 13.3.B.  Notify ORCF of any “lease payment escalator” clause (a clause which periodically increases the lease payment) as they present an operational risk factor to ORCF. (Lean Blast 2/26/20)  If the Operating lease is being entered into at closing, confirm the lease incorporates by reference the HUD Operator Lease Addendum. *See* Handbook 4232.1, Section II, Chapter 8.6.  **C**. [**Operator Lease Addendum (HUD-91116-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/91116_orcf.docx)  Confirm the Addendum is attached |
| ***ORGANIZATIONAL DOCUMENTS*** | |
| 13 | **Borrower’s Organizational Documents**  **State-Certified Formation Document and Governing Document:**  The Borrower must be a single asset entity and must be a GP, LP, LLC, Corporation, Non-Profit Corporation, or Trust (Borrower cannot be a natural person or tenants-in-common). S*ee* Handbook 4232.1, Section II, Chapter 6.  For trusts, the Trust Agreement and/or the Certification or Affidavit of Trust should be provided, as applicable under state law.  The Borrower’s existence must be perpetual or, at minimum, exceed the FHA loan term.  **Full Force and Effect Certificate**:  A cover certificate, dated the day of the closing, signed by the secretary or other appropriate officer or designee of Borrower indicating that Borrower’s organizational documents (listed below) are true and correct copies and have not been amended, modified, rescinded, or revoked and remain in full force and effect, as attached.  Includes the following statement required by 24 CFR 200.62, such as: “This certificate has been made, presented, and delivered for the purpose of influencing an official action of the FHA, and of the Commissioner, and may be relied upon by the Commissioner as a true statement of the facts contained therein.”  **Certificate of Incumbency:** Certificate (which may be included in the Full Force and Effect Certificate), dated the day of closing, showing the name and title of Borrower’s officers and Controlling Participants.  **Resolution/Written Consent**: Evidence that the FHA loan transaction is authorized, and that Borrower has authority to execute the loan documents, signed by necessary parties pursuant to Borrower’s organizational documents.  **Qualification to do Business**: Evidence of Borrower’s qualification to do business in the state where the project is located if Borrower is not organized in that state.  **Certificate of Good Standing**: Certificate of Continued Existence/Good Standing dated within 30 days of closing from organizational jurisdiction and property jurisdiction (if different). Must be issued by a government entity with authority for certifying corporate existence (e.g., the Secretary of State’s Office).  HUD Provisions: The Borrower’s organizational documents (either formation or governing documents) must include the following provisions, which may automatically terminate when the loan is no longer insured or held by HUD: Notwithstanding any clause or provision in [identify both the formation document(s) and the governing document(s)] to the contrary and so long as the United States Department of Housing and Urban Development (“HUD”) or a successor or assign of HUD is the insurer or holder of a loan to [Borrower] (the “HUD Loan”), the following provisions shall prevail: DEFINITIONS. The following terms as used herein shall have the following meanings:“HUD Loan Documents” shall mean (i) the Regulatory Agreement (as defined below), (ii) the note executed by [Borrower] in connection with the HUD Loan and (iii) the security instrument and any other security agreements executed by [Borrower] in connection with the HUD Loan.“Regulatory Agreement” shall mean that certain Healthcare Regulatory Agreement – Borrower by and between HUD and [Borrower], and, if applicable, that certain Healthcare Regulatory Agreement – Operator by and between HUD and [Operator], in connection with the HUD Loan.“Project” shall mean that certain [skilled nursing facility/intermediate care facility/board and care home/assisted living facility] located at \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, and commonly known as \_\_\_\_\_\_\_\_\_\_.CONFLICTS WITH THE HUD LOAN DOCUMENTS. If any of the provisions of [Borrower’s] [name of organizing document], [this Agreement] or any other organizational document conflicts with the provisions of any of the HUD Loan Documents, the provisions of the HUD Loan Documents shall control.RESTRICTIONS ON AMENDMENTS. No provision required by HUD to be inserted in [this Agreement] or any other organizational document of [Borrower] may be amended without the prior written approval of HUD. No provision of [this Agreement] or any other organizational document of [Borrower] that results in any of the following will have any force or effect without the prior written approval of HUD:Any amendment that shortens the term of [Borrower’s] existence;Any amendment that triggers application of HUD’s previous participation certification requirements (as set forth in Form HUD-2530, Previous Participation Certification, and/or 24 CFR 200.210, et seq.);Any amendment that in any way affects the HUD Loan Documents;Any amendment that would authorize any member, partner, owner, officer, manager, director, and/or any other person, other than one previously approved by HUD, to bind [Borrower] for all matters concerning the Project that require the consent or approval of HUD;Any change that is subject to HUD’s Transfer of Physical Assets/Change of Participant requirements described in Program Obligations, as that term is defined in the HUD Loan Documents; orAny change in any guarantor of any obligation to HUD (including those obligations arising from violations of the Regulatory Agreement).Any changes to any organizational document of [Borrower] that affects the [tax credit investor commitment] without the written consent of both [FHA-insured Lender] and HUD. [For tax credit transactions only. See Handbook 4232.1, Section II, Chapter 12.3.A.3.]HUD LOAN AUTHORIZATION. [Borrower] is authorized to execute (i) the HUD Loan Documents in order to secure the HUD Loan and (ii) such other documents as may be required by HUD in connection with the HUD Loan.INCOMING MEMBERS, PARTNERS AND OWNERS. Any incoming [member, partner and/or owner] of [Borrower] must as a condition of receiving an interest in [Borrower] agree to be bound by the HUD Loan Documents and all other documents required in connection with the HUD Loan to the same extent and on the same terms as the other respective members, partners and/or owners.DISSOLUTION AND CONVERSION. [Borrower] shall not be voluntarily dissolved or converted into another form of entity without the prior written approval of HUD. Upon any dissolution of [Borrower], no right or title to possession and control of the Project, and no right to collect the rents from the Project, shall pass to any individual or entity that is not bound by the Regulatory Agreement in a manner satisfactory to HUD.LIABILITY OF KEY PRINCIPALS. The key principals of [Borrower] identified in Section 38 of the Regulatory Agreement are liable in their individual capacities to HUD as set forth in the Regulatory Agreement.OFFICIAL REPRESENTATIVE. [Borrower] has authorized [name of authorized individual] as its official representative for all matters concerning the Project that require the consent or approval of HUD. The signature of this representative shall bind [Borrower] in all such matters. [Borrower] may from time to time authorize a new official representative to perform this function, but within three (3) business days of doing so, will provide HUD with written notification of the name, address and telephone number of such new official representative. When an individual other than the individual identified above as the official representative has full or partial authority to manage the Project, [Borrower] shall promptly provide HUD with the name of that individual and the nature of that individual’s management authority.BUSINESS OF [BORROWER]. The business and purpose of [Borrower] shall consist solely of (a) acquiring, owning, operating and maintaining the Project, (b) executing, delivering and performing its obligations under the HUD Loan Documents, and (c) any lawful activities permitted under the law of the state in which [Borrower] is organized that are incidental to the foregoing or necessary or convenient to accomplish the foregoing. [Borrower] shall not engage in any other business or activity. The Project shall be the sole asset of [Borrower], and [Borrower] shall not own any other real estate other than that associated with the Project.10. INDEMNIFICATION. Any obligation of [Borrower] to provide indemnification herein or in any other organizational documents of [Borrower] shall be limited to (i) coverage afforded under any liability insurance carried by [Borrower], and (ii) available “surplus cash” of [Borrower] as defined in the Regulatory Agreement. Until funds from a permitted source for payment of indemnification are available for payment, the Mortgagor entity shall not (a) pay funds to any members, partners, owners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, managers, partners, officers and directors. **For owner-operated projects (when Borrower is also the Operator):** In addition to the above provisions, the definition of HUD Loan Documents must also include the Operator documents and a provision must be added regarding distributions (*see* punchlist item #17).  NOTE: Using the label “Authorized Party” (or similar) in the signature block to identify a signer does not negate the requirement to provide entity documents. For example, if the Borrower is manager-managed by an entity, the organizational documents for that entity must be provided.  NOTE: HUD counsel should confirm all proper consents have been obtained and has discretion to request additional organizational documents for entities not in Borrower’s (or Master Tenant or Operator) signature block if necessary to confirm signatory authority. |
| 14 | **Organizational Documents for Each Entity in Borrower’s Signature Block**  *(Applicable if an entity is required to act on behalf of Borrower instead of a natural person)*  See comments above in Item 13 of this punchlist regarding the Full Force and Effect Certificate; Certificate of Incumbency, Filed Formation Documents; Resolutions; Authority to do Business; and Good Standing Certificate. The purpose of this review is to confirm the entity is validly formed and authorized to sign. No HUD-specific language is required in this entity’s organizational documents. |
| 15 | **Master Tenant’s Organizational Documents**  *(Applicable only if there is a Master Lease)*  NOTE: The purpose of this review is to confirm the entity is validly formed and authorized to sign. No HUD-specific language is required in this entity’s organizational documents.  See comments above in Item 13 regarding the Full Force and Effect Certificate; Certificate of Incumbency, Filed Formation Documents; Resolutions; Authority to do Business; and Good Standing Certificate. The purpose of this review is to confirm the entity is validly formed and authorized to sign. No HUD-specific language is required in this entity’s organizational documents. |
| 16 | **Organizational Documents for Each Entity in Master Tenant’s Signature Block**  *(Applicable if an entity is required to act on behalf of the Master Tenant instead of a natural person)*  See comments above in Item 14. |
| 17 | **Operator’s Organizational Documents**  See comments above in Item 13 regarding the Full Force and Effect Certificate; Certificate of Incumbency, Filed Formation Documents; Resolutions; Good Standing Certificate; and Authority to do Business.  **HUD Provisions:** The Operator organizational documents must include the following HUD-required provisions:  Notwithstanding any clause or provision in [this Agreement] to the contrary and so long as the United States Department of Housing and Urban Development (“HUD”) or a successor or assign of HUD is the insurer or holder of a loan secured by [name of facility] (the “HUD Loan”), the following provisions shall prevail:  The following terms as used herein shall have the following meanings: “HUD Loan Documents” shall mean (i) the Healthcare Regulatory Agreement - Operator, (ii) the Operator Security Agreement executed by [Operator] in connection with the HUD Loan and (iii) the Assignment of Rents and Leases executed by [Operator] in connection with the HUD Loan. “Project” shall mean that certain [skilled nursing facility/intermediate care facility/board and care home/assisted living facility] located in \_\_\_\_\_\_\_\_\_\_, \_\_\_\_\_\_\_\_\_\_, and commonly known as \_\_\_\_\_\_\_\_\_\_.  The business and purpose of [Operator] shall consist solely of (a) operating and maintaining the Project, (b) executing, delivering and performing its obligations under the HUD Loan Documents, and (c) any lawful activities permitted under the law of the state in which [Operator] is organized that are incidental to the foregoing or necessary or convenient to accomplish the foregoing. [Operator] shall not engage in any other business or activity.  [Operator] shall comply with all applicable Program Obligations, as that term is defined in the HUD Loan Documents, including those related to distributions.  **When Borrower is the Operator**: add the Operator documents to the definition of “HUD Loan Documents” and the following sentence: “Borrower shall comply with all applicable Program Obligations, including those related to Borrower and Operator distributions.” |
| 18 | **Organizational Documents for Each Entity in Operator’s Signature Block**  *(Applicable if an entity is required to act on behalf of the Operator instead of a natural person)*  See comments above in Item 14. |
| ***MISCELLANEOUS DOCUMENTS*** | |
| 19 | **Surplus Cash Note** [**(HUD-92223-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92223_orcf.docx)**,** **Residual Receipts Note (Non-Profit Borrowers)** [**(HUD-91710-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/91710_orcf.docx)**, other secondary financing documents, and/or encumbrance documents (Use Agreements, Regulatory Agreements, etc.)**  *(Applicable only if there is secondary financing)*  NOTE: Debt payments on public or private secondary financing, including interest, must be limited to no more than 75 percent of available Surplus Cash or Residual Receipts*.* *See* Handbook 4232.1, Section II, Chapter 3, Section 3.15.  Confirm financing terms match the Firm Commitment.  Unsecured secondary financing must use the Surplus Cash Note (HUD-92223-ORCF) or Residual Receipts Note (HUD-91710-ORCF) (for non-profit Borrowers). The form must not be altered in any manner.  Secondary financing may be secured by a subordinate lien against the project subject to certain conditions and ORCF approval in the Firm Commitment. *See* Handbook 4232.1, Section II, Chapter 3, Section 3.15 for additional guidance on Secondary Financing, including mezzanine debt. Secured secondary financing must use the Subordination Agreement (HUD-92420-ORCF) (*See* Item #48).  NOTE: For **tax-exempt bond financing**, bond counsel must submit a legal opinion and HUD counsel must review the bond documents to ensure compliance with certain HUD requirements. *See* Handbook 4232.1, Section II, Chapter 3, Section 3.14.B.1. Use or rent restrictions are subject to the requirements in Handbook 4232.1, Section II, Chapter 3, Section 3.14.F.2.  NOTE: For projects involving **tax credits**, see Handbook 4232.1, Section II, Chapter 9, Section 9.10.A.2, and Chapter 12, Sections 12.2.A.6 and 12.3.B.4 for the required language for tax credit documents. |
| 20 Φ | **Facility License(s) & Administrator License(s)**  All projects must be licensed to provide the care services by the state, the municipality or the political subdivision in which the project is located. *See* 24 CFR 232.2. (Some states may not have a facility license requirement for Board and Care Facilities or Independent Living units. *See* Handbook 4232.1, Section II, Chapter 2, Section 2.2.D (board and care) and Section 2.5.F (independent living/unlicensed units)).  The license and level of care must be consistent with the definitions in the §232 statute (12 USC 1715w). SeeHandbook 4232.1, Section II, Chapter 2.2 for the eligible facility types.  Facility License requirements are in Handbook 4232.1, Section II, Chapter 8.2.  Confirm license is unexpired. If license is to expire within one (1) month of closing, request sufficient evidence of renewal. If the license does not include an expiration date, request evidence that the most recent renewal fees have been paid, or other comparable evidence of renewal.  Confirm Project’s name and location is accurately identified.  Confirm the number of authorized beds and/or units is equal to or exceeds the number of underwritten beds/units.  Confirm the Operator is the party licensed to operate the facility.  Board & Care facilities only: Section 232 of the National Housing Act requires each state to regulate Board & Care facilities pursuant to Section 1616e of the Social Security Act (Keys Amendment). Approved facility types by state are at <https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/underwriting/223f>  **Administrator’s License:** If the project is a Skilled Nursing Facility, Lender must also provide a copy of the Administrator’s License.*See* Handbook 4232.1, Section II, Chapter 8.8.J. |
| 21 | **Management Agreement and** [**Management Agreement Addendum (HUD-92071-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92071_orcf.docx) *(Applicable only if there is a management agent)*  If there is a management agent, a written contract is required. *See* Handbook 4232.1, Section II, Chapter 8.5 for information about distinguishing third-party consultants from management agents.  A management agreement must include the HUD Management Agreement Addendum (HUD-92071-ORCF).  Notify ORCF if less than five years remain in the term. *See* Handbook 4232.1, Section II, Chapter 8.7.A.4.  In the Management Certification (HUD-9839-ORCF), management fees should be spelled out, and statements such as “See Management Agreement” are not acceptable. It is not appropriate to copy and paste pages from the Management Agreement into the management certification to provide the detail. (Lean Blast 12/30/14)  If the Lender Narrative states there is no management agent, but other documents indicate the existence of such an entity (e.g., a subordination agreement to the AR Lender) review the agreement to determine if it is a consultant or management agent agreement in substance. If necessary, make a recommendation to ORCF regarding the status of the consultant or management agent. See Handbook 4232.1, Section II, Chapter 8.5, and Healthcare Regulatory Agreement – Operator (HUD-92466A-ORCF) paragraphs 6 and 13. |
| 22 Φ | **[Escrow Agreement for Non-Critical Deferred Repairs (HUD-92476-ORCF)](https://www.hud.gov/sites/dfiles/OCHCO/documents/92476_orcf.docx)**  *(Applicable only if there are non-critical repairs)*  Confirm repairs, repair estimate and additional deposit percentage match the Firm Commitment.  Exhibit B: Confirm the letter of credit is attached if applicable. HUD counsel does not review or provide comments on the letter of credit.  If the Lender is approved for delegation of non-critical repair escrow administration (per the Firm Commitment), confirm the appropriate language in Paragraph 5 is selected.  NOTE: No Inspection Fee is due at closing if administration of NCRE is delegated to Lender.  Other Escrow Agreements (*if required in the Firm Commitment*):  Debt Service Escrow ([HUD-92476C-ORCF](https://www.hud.gov/sites/dfiles/OCHCO/documents/92476C_orcf.docx))  Escrow Agreement for Operating Deficits ([HUD-92476B-ORCF](https://www.hud.gov/sites/dfiles/OCHCO/documents/92476B_orcf.docx))  Other: |
| 23 | **Survey (and if using existing survey, [Survey Instructions and Borrower’s Certification (HUD-91111-ORCF), form updated in 2022](https://www.hud.gov/sites/dfiles/OCHCO/documents/91111_orcf.docx)**  Confirm last “on the ground” site inspection was conducted within 120 days of closing, unless ORCF has determined that a pre-existing survey is permitted (*see* form HUD-91111-ORCF).  Confirm legal description is consistent with Title Policy and Firm Commitment.  Confirm the location of all buildings, utilities, and easements are shown.  Confirm title policy endorsements for access, location, same as survey, tax parcel, contiguity and affirmative coverage endorsements are correctly incorporated.  Raise any visible survey risks with ORCF.  **New/Updated Survey:** If a new/updated survey is required:  Confirm survey complies with the technical instructions and standards of performance in HUD-91111-ORCF.  Confirm the entire insured parcel, including offsite beneficial easements or licenses, is shown.  Confirm inclusion of the following ALTA 2021 [Table A items](https://www.nsps.us.com/page/2021ALTA)**: 1, 2, 3, 4, 6a, 6b, 7a, 8, 9, 10, 12, 16, 17, and 18.** ORCF will not generally require Survey Table A, Item 11(a) and 11(b). If required, it will be a special condition to the Firm. (Lean Blast 2/23/22)  Confirm “the U.S. Department of Housing and Urban Development (HUD)” is included in the standard certification above the surveyor’s signature.  Confirm state-specific requirements as applicable (e.g., seal, licensure, etc.)  Confirm that any items identified on ORCF’s Title and Survey Review have been resolved. Request a copy of this review if not previously provided by ORCF.  **Pre-Existing Survey or Expired Survey:**  If a pre-existing or expired survey is permitted by ORCF, a copy of the survey and Borrower’s Certification form HUD-91111-ORCF are required.  NOTE: For Section 223(a)(7) projects, a pre-existing survey is acceptable *unless* there are new easements, new encroachments, changes in the legal description, or any unusual circumstances requiring special attention or conditions. (Lean Blast 2/24/21)  NOTE: *See* Handbook 4232.1, Section II, Chapter 7.5.K for guidance related to high pressure gas or liquid petroleum transportation pipelines; overhead high voltage transmission lines; and support structures for high voltage transmission lines, radio antennae, satellite towers, cellular towers, etc.  **NOTE ON ENVIRONMENTAL ISSUES**: *See* Handbook 4232.1, Section II, Chapter 7, for guidance on environmental requirements.  **Floodways:** All Section232 projects are considered “Critical Actions” under 24 CFR Part 55 (*see* 24 CFR 55.2(b)(3)) so projects **cannot** be approved on properties with a (a) regulatory floodway (Zone A*x*), (b) Coastal High Hazard areas (Zone V*x*) or (c) FEMA-identified Special Flood Hazard Area (SFHA) in which the community has been suspended from or does not participate in the National Flood Insurance Program. Consult ORCF if you see a regulatory floodway, Coastal High Hazard area, or other SFHA without an accompanying community panel number on the Project site.  **Floodplains:**   * Refinances of existing FHA-insured mortgages with no new construction or rehabilitation and no physical impacts or changes except for routine maintenance: Exempt from 24 CFR Part 55 environmental requirements. *See* 24 CFR 55.12(c)(2) and 24 CFR 50.19(b)(21). No Restrictive Covenant for floodplains is needed; however, flood insurance is required for any buildings in the floodplain. * 223(f) refinances of non-FHA-insured mortgages, or refinances of existing FHA-insured mortgages that include additions of buildings or land, or changes, improvements or repairs that do not qualify as routine maintenance (*see* HUD Notice CPD-16-02): If there is a 100-year or 500-year floodplain on the site (NOT floodway), the Project may require a Modified 5-Step Process under 24 CFR 55.12(a) unless it meets an exception in 24 CFR 55.12(c). Check Firm Commitment Special Conditions or inquire with ORCF to see whether a Modified 5-Step was completed or whether an exception has been met. The Incidental Floodplain Exception (24 CFR 55.12(c)(7)) requires a permanent [Restrictive Covenant](https://www.hudexchange.info/resource/4053/sample-restrictive-covenant-for-floodplains-and-wetlands/) protecting the floodplain areas from development to be recorded. Flood insurance is also required for any buildings in the floodplain.   **Wetlands**:   * Refinances of existing FHA-insured mortgages with no new construction or rehabilitation and no physical impacts or changes except for routine maintenance: Exempt from 24 CFR Part 55 environmental requirements. *See* 24 CFR 55.12(c)(2); 24 CFR 50.19(b)(21). No Restrictive Covenant for wetlands is needed unless ORCF requests one in the Special Conditions to the Firm Commitment. * 223(f) refinances of non-FHA-insured mortgages, or refinances of existing FHA-insured mortgages that include additions of buildings or land, or changes, improvements or repairs that do not qualify as routine maintenance (*see* HUD Notice CPD-16-02): If there are wetlands on the site, the Project may require a Modified 5-Step Process under 24 CFR 55.12(a) unless it meets an exception in 24 CFR 55.12(c). Check Firm Commitment Special Conditions or inquire with ORCF to see whether a Modified 5-Step was completed or whether an exception has been met.   + - If wetlands on the site have not been and will not be impacted by the improvements, ORCF may require a Rider to Regulatory Agreement – Wetlands as mitigation from the Modified 5-Step Process (see 24 CFR 55.12(a)) or a permanent [Restrictive Covenant](https://www.hudexchange.info/resource/4053/sample-restrictive-covenant-for-floodplains-and-wetlands/) for Wetlands to qualify the Project for the Incidental Floodplain/Wetland Exception (see 24 CFR 55.12(c)(7)). Check Firm Commitment Special Conditions.     - If wetlands have been or will be impacted by improvements, the Incidental Floodplain/Wetland Exception does not apply and the project must obtain a Section 404 permit from the Army Corps of Engineers for all HUD-approved wetland impacts. In addition, HUD can still require a permanent Restrictive Covenant on the unaffected wetlands or a Rider to Regulatory Agreement – Wetlands as a mitigation strategy to protect remaining wetlands from future impacts.   In all deals, check the firm commitment for any environmental special conditions, and discuss any questions with the ORCF Closer, OGC LEAN Coordinator, and/or your office’s Environmental Officer. Here is the link to the [Sample Restrictive Covenant for Floodplains and Wetlands](https://www.hudexchange.info/resource/4053/sample-restrictive-covenant-for-floodplains-and-wetlands/) . | |
| 24 Φ | [**Request for Endorsement of Credit Instrument & Certificate of Lender, Borrower & General Contractor (HUD-92455-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92455-orcf.pdf)  Section II(2)(d): This section should list any UCC filings made in connection with the acquisition of personal property (or state “none”).  Section III (Certificate of General Contractor): This section should be deleted.  Closing Document Memorandum Exhibit: Must list all HUD form documents used in the closing and any changes made. Confirm the Exhibit identifies the changes by listing the document title and section containing changes, and includes language redlined against the HUD form that shows how the redlined language deviates from the HUD form language. (Lean Blast 8/26/2020)  Permits & Licenses Exhibit: Should be a list compiled by the Lender in its due diligence. A certification by Borrower or other party is not acceptable.  If there is secondary financing, the approved note should be another Exhibit. Section I.D.1(c) applies where tax-exempt bond financing is involved. |
| 25 Φ | **Special Conditions of the Firm Commitment**  Confirm (in conjunction with ORCF) all special conditions are adequately addressed and satisfied. Where a certification is required to satisfy a special condition, the certification must include the required language per 24 CFR 200.62:  *“Each signatory below hereby certifies that the statements and representations of fact are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of U.S. Department of Housing and Urban Development (HUD) in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.”*  Certification - No Adverse Material Change (Standard Condition of the Firm Commitment): Borrower and Operator certification of no adverse changes since Firm Commitment was issued. There is no HUD form, but the certification should match the language of the Firm Commitment and must be dated as of the date of closing. |
| 26 | [**Agreement and Certification (HUD-93305-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/93305-orcf.pdf)  Ensure the appropriate box for refinancing is checked.  Allow paragraphs 3-5 and 7-13 (regarding the General Contractor, Architect, identities of interests, and construction costs) to be stricken through but not deleted. |
| ***Change of Participant (CHOP)*** *(Applicable only if there is a Change of Participant)* | |
| 27 | [**Lender Narrative – Change of Ownership (HUD-92266**](https://www.hud.gov/sites/documents/92266.pdf)**-ORCF, HUD-92266A-ORCF, and/or HUD-92266B-ORCF)**  The Change of Participant (formerly known as TPA) application must reflect the loan information for the loan being assumed, and on the way the transaction is structured. The current loan can be assumed, then refinanced; or the current owner can refinance, then the loan can be assumed by the purchaser. |
| 28 | [**Model Form Bill of Sale and Assignment (HUD-9222**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92228_orcf.docx)**8-ORCF)** |
| 29 | **Change of Participant Documents**  **A. Purchase and Sale Agreement**  **B. Deed (applicable if new Borrower)**  **C. License approval (applicable if new Operator)**  NOTE: If a CHOP is part of the refinancing transaction, it must be approved in the Firm Commitment. *See* Section 232 Handbook, Section III, Asset Management, Chapter 7. |
| ***OPINION LETTERS AND SEARCHES*** | |
|  | [**Guide for Opinion of Borrower's Counsel (HUD-91725-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/91725-orcf.pdf)  For additional guidance, see [Instructions to Guide for Opinion of Borrower’s and Operator’s Counsel (HUD-91725-INST-ORCF)](https://www.hud.gov/sites/dfiles/OCHCO/documents/91725inst_orcf.docx).  NOTE: Any deviations from the template in the assumptions, opinions, and confirmations section are permitted only if (i) required as a matter of factual accuracy or (ii) necessary to reflect state/local law. See HUD-91725-INST-ORCF, page 1.  Inapplicable provisions, particularly in the “Documents Reviewed” section, should be replaced with “intentionally deleted” to preserve numbering and formatting.  Opinion 7(i): attorneys may change “default” to “material default.” *See* FAQ 4/29/15.  Multiple Opinions: If the opinion letter is bifurcated (split) into multiple letters (*e.g.*, opinion from counsel licensed in the property jurisdiction and an opinion from counsel licensed in the organizational jurisdiction), ensure that both opinions are addressed to HUD for purposes of reliance and that together the two opinions provide the full opinion letter required by the Guide for Opinion of Borrower’s Counsel (HUD-91725-ORCF).  Exhibits:  Exhibit A: Ensure [Exhibit A to Opinion of Borrower’s Counsel - Certification (HUD-91725-CERT-ORCF)](https://www.hud.gov/sites/dfiles/OCHCO/documents/91725cert-orcf.pdf) is attached and correctly references the law firm  Exhibit F: All litigation must be included even if previously disclosed during underwriting. Any newly discovered litigation also must be submitted to ORCF for approval and include the five items required in LEAN Blast 2/26/2020. ORCF must review and approve all litigation.  All other exhibits must be attached, including status certificate(s) and comparison copy to the HUD form.  NOTE: UCC and Docket Searches are not collected in the closing docket though the parties must make all required disclosures and certifications as required by the HUD form. |
|  | [**Guide for Opinion of Master Tenant's Counsel (HUD-92335-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92335_orcf.docx)  *(Applicable only if there is a Master Lease)*  For additional guidance, see [Instructions to Guide for Opinion of Borrower’s and Operator’s Counsel (HUD-91725-INST-ORCF)](https://www.hud.gov/sites/dfiles/OCHCO/documents/91725inst_orcf.docx).  Paragraph E: If a fixture filing must be made in both the property jurisdiction and the organizational jurisdiction, revise to reflect three (3) UCC financing statements.  Paragraph JJ: If the Master Tenant is a party to the DACA, include the clause “including rights to the Project’s accounts and deposit accounts for accounts receivables subject to the Control Agreement.” (*see* [FAQ dated 04/22/14](https://www.hud.gov/program_offices/general_counsel/healthcarefaqs/232OpinionsFAQ#7))  Opinion 2: Insert bracketed language “and operate,” if appropriate  Multiple Opinions: See Item 30 of this punchlist.  Litigation (Exhibit F): See Item 30 of this punchlist.  Exhibits:  Exhibit C: Ensure Certification of Master Tenant (HUD-92335-ORCF Ex. C) is attached and correctly references the law firm  All other exhibits must be attached, including status certificate(s), comparison copy to the HUD form, and list of litigation. Comparison copies are required for all opinions. |
|  | [**Guide for Opinion of Operator’s Counsel, and Certification (HUD-92325-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92325_orcf.docx)  See [Instructions to Guide for Opinion of Borrower’s and Operator’s Counsel. (HUD-91725-INST-ORCF](file:///C:\Users\H45133\Downloads\Instructions%20to%20Guide%20for%20Opinion%20of%20Borrower’s%20and%20Operator’s%20Counsel%20(HUD-91725-INST-ORCF))) for additional guidance.  For owner-operated projects, Borrower must submit this opinion in addition to the Opinion of Borrower’s Counsel (HUD-91725-ORCF).  Paragraph O: If a fixture filing must be made in both the property jurisdiction and the organizational jurisdiction, revise to reflect three (3) UCC financing statements.  Exhibits:  Exhibit C: Ensure Certification of Operator (HUD-92325-ORCF Ex. C) is attached and correctly references the law firm.  All other exhibits must be attached, including status certificate(s), comparison copy to the HUD form, and list of litigation.  Multiple Opinions: See Item 30 of this punchlist.  Litigation (Exhibit F): See Item 30 of this punchlist. |
| **RECORDED DOCUMENTS & TITLE POLICY (listed in the suggested recording order)** | |
|  | **Ground Lease**  *(Applicable only if there is a ground lease)*  **A. Ground Lease Estoppel Certificate**  An estoppel certificate for new or existing ground lease, dated within 30 days of closing. There is no HUD form, but it should state that there is no default under the lease and that no state of facts exists that would constitute a default with the giving of notice or passage of time and that there are no unpaid rents or other payments.  Includes Landlord confirmation of the legal description.  **B. Ground Lease** (*See* Section 232 Handbook, Section II, Chapter 5.4)  May be recorded or unrecorded. If unrecorded, a recorded Memorandum of Ground Lease is required.  Confirm lessor and lessee are correctly identified.  Confirm lease does not restrict the successful operation of the project and establishes lessee has the right to use the property for the approved use.  Term may be at any stage of a 99-year lease, so long as the lease is renewable, or have at least 10 years remaining after the maturity date of the loan. *See* Section 232 Handbook, Section II, Chapter 5.4.A; 12 USC 1715w(b)(4).  ORCF must determine if the rent payment is acceptable under Program Obligations. S*ee* Handbook 4232.1, Section II, Chapter 5.4.  Confirm lessor has limited rights to prevent ground lessee from altering the property.  Confirm lessee has the right to petition rezoning, if necessary, to render the approved use of the project as conforming.  If ground lessor requires that construction begin or be completed by a certain date, then include language that any extensions granted by HUD shall be deemed to be approved by ground lessor.  Confirm a default under the HUD-insured loan is not a default under the ground lease.  Confirm legal description is consistent with title policy and survey.  **C.** [**HUD**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92070_orcf.docx) **Ground Lease Addendum (HUD-92070-ORCF)**  The ground lease must incorporate by reference the HUD-required lease addendum, or if there is an existing ground lease, an amendment is required to incorporate the HUD Ground Lease Addendum.  Confirm that ORCF has approved the optional purchase price in Section B.  **D. Memorandum of Ground Lease**  If the ground lease is not recorded, a memorandum of ground lease must be recorded.  Properly formatted for recording. NOTE: HUD expresses no preference about where the original goes after recording.  Names and addresses of parties to lease  Ground lease term  Legal description consistent with title policy and survey |
|  | **Assumption Documents**  *(Applicable only if closing is concurrent with a Change of Participants)*  Confirm parties and recording references are accurate. |
| 35 Φ | [**Security Instrument (HUD-94000-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/94000_orcf.docx)  Preamble: Confirm the correct mortgage granting clause is selected (A, B, or C) and confirm that the maturity date of the mortgage is correct.  Section 1 (Definitions): Confirm the definition of “Approved Use” matches the number of licensed beds and the number of ORCF-approved beds (if different).  Section 47 (Construction): Strike through if inapplicable.  Section 51 (Exhibits): Confirm Exhibit B (Modifications to Security Instrument) is attached if applicable; State-Specific Addenda are available on [ORCF website](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/final_232_documents). |
| 36 Φ | [**Healthcare Regulatory Agreement – Borrower (HUD-92466-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92466-orcf.pdf)  Confirm recorded return blanks provide for return to the HUD attorney.  Confirm “No” is checked for non-profit distributions if required by the terms of a Section 8 Housing Assistance Payments contract.  Confirm “Approved Use” definition is consistent with Borrower’s security instrument.  Section 13(b): Confirm the initial deposit, monthly deposit, and PCNA dates from the Firm Commitment. If the Reserve for Replacement funds are to be transferred from a previously HUD-insured loan, include old and new project numbers.  Section 14: Add deal specific provisions relating to a long-term debt service reserve, if required by Firm Commitment. *See* Handbook 4232.1, Section II, Chapter 2.5.PP for guidance.  Section 38 Addendum: Confirm names of liable entities/individuals identified in the Firm Commitment, and legally sufficient signatures.  NOTE: The Borrower generally should not be listed as a Section 38 entity; if Borrower is reflected, HUD counsel should discuss with ORCF (*see* Handbook 4232.1, Section II, Chapter 6, Section 6.1.E.3 for guidance).  Riders (including a Rider for Floodplains and Wetlands, Residual Receipts Rider, etc.) may be required to comply with special conditions of the Firm Commitment or in certain circumstances to satisfy Program Obligations. For the Green MIP Rider, see .[ML 2022-13](https://www.hud.gov/sites/dfiles/OCHCO/documents/2022-13hsgml.pdf)  Ensure all signature pages have formalities required for recording a deed under the law of the Project jurisdiction. |
| 37 | **Borrower UCC-1 Financing Statements**  Confirm Borrower’s exact legal name and address.  Confirm name and address of Lender.  Confirm Box 11 is checked and completed with “Secretary of Housing and Urban Development, ORCF 451 7th Street SW, Washington D.C. 20410, as an additional secured party” (variations allowed).  Confirm the FHA Number is noted somewhere.  Exhibit A: Confirm legal description is consistent with title policy and survey.  Exhibit B: Confirm collateral description (“all assets” description) is attached.  Confirm that the UCC-1 is filed with the state of organizational jurisdiction and recorded in the county records of the Project jurisdiction. |
| 38 | **Memorandum of Master Lease**  *(Applicable only if there is a Master Lease and the Master Lease is not recorded)*  A separate Memorandum of Master Lease must be recorded in each local jurisdiction in which there is/are project(s) in the Master Lease Portfolio. There is no HUD form of Memorandum of Master Lease. NOTE: A previously recorded MOML is acceptable if it is accurate.  Confirm name of the Master Lease is accurate  Confirm the HUD Addendum to Master Lease and any existing amendments or joinders are included.  Confirm the names and addresses of parties to master lease:  Master Tenant  Landlord (Borrower)  Confirm the Master Lease term is included.  Confirm legal description(s) are consistent with title policy and survey. |
| 39  Φ | [**Healthcare Regulatory Agreement – Master Tenant (HUD-92337-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92337_orcf.docx)  *(Applicable only if there is a Master Lease)*  NOTE: A separate Healthcare Regulatory Agreement – Master Tenant is required for each project in the Master Lease Portfolio.  Confirm recording return blanks provide for return to the HUD attorney.  Section 2: Confirm definition of “Approved Use” is consistent with the Borrower’s Regulatory Agreement and Security Instrument.  Confirm the legal description is consistent with title policy and survey.  Riders may be required to comply with special conditions of the Firm Commitment or in certain circumstances to satisfy Program Obligations. |
| 40 | 1. [**Master Tenant Security Agreement (HUD-92340-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92340_orcf.docx)   *(Applicable only if there is a Master Lease)*  This document is not recorded, but the **Master Tenant Assignment of Leases and Rents** is recorded.  A separate Master Tenant Security Agreement is required for each project in the Master Lease Portfolio.  Recital F: Include the last sentence if Master Tenant and Borrower share an identity of interest. Otherwise, delete or strikeout.  Section 15: Remove brackets around Medicaid, if applicable. NOTE: It may be necessary to refer to LCM or Lender’s Narrative to determine if this provision is applicable.  Section 24: include this section if the Operator is unrelated to Borrower and this section is otherwise applicable. If not, strikeout or replace with “intentionally deleted.”  Exhibit A: Confirm legal description is consistent with title policy and survey  Exhibit C: Confirm this is completed in its entirety. Unapplicable items should state “none” or “n/a.”  Rider to Master Tenant Security Agreement: Can only be attached if Operator is unrelated to Borrower. If there is IOI between Borrower and Operator, strike the Rider.   1. [**Master Tenant Assignment of Leases and Rents (HUD-92334-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92334_orcf.docx)   *(Applicable only if there is a Master Lease)*  Confirm legal description is consistent with title policy and survey. |
| 41 | **Master Tenant UCC-1 Financing Statements**  *(Applicable only if there is a Master Lease)*  Confirm Master Tenant’s legal name and address.  Confirm name and address of Lender.  Confirm Box 11 is checked and completed with “Secretary of Housing and Urban Development,” ORCF 451 7th Street SW, Washington D.C. 20410, as an additional secured party (variations allowed).  Confirm the FHA Number is noted somewhere.  Confirm collateral description is attached (should match Exhibit B from Master Tenant Security Agreement).  State UCC: Confirm your project’s legal description is included with all legal descriptions under the same Master Lease.  County UCC: Confirm the version specific to your project’s jurisdiction has only your project’s legal description and is recorded in the Project’s county. |
| 42 | **Memorandum of Operator Lease**  *(Applicable only if there is an Operator Lease and it is not recorded)*  NOTE: A previously recorded MOL is acceptable if it is accurate.  Confirm names and addresses of parties to the Operator Lease.  Confirm Operator Lease term is included (and is consistent with the Operator Lease and any extensions).  Confirm the legal description is consistent with title policy and survey. |
| 1. Φ | [**Healthcare Regulatory Agreement – Operator (HUD-92466A-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92466a_orcf.docx)  NOTE: For owner-operated projects, the Borrower must sign the Regulatory Agreement in its capacity as Operator of the project, in addition to the Healthcare Regulatory Agreement – Borrower (HUD-92466-ORCF).  Confirm recording return blanks provide for return to the HUD attorney.  Section 3(a): Confirm “approved use” definition is correct.  Section 8(a): Choose appropriate language depending on if there is an identity of interest between Borrower and Operator. |
| Φ | [**Operator Security Agreement (HUD-92323-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92323_orcf.docx) **and Operator Assignment of Leases and Rents (HUD-92324-ORCF)**  NOTE: For owner-operated projects, Borrower must sign the Operator Security Agreement in its capacity as Operator of the project.  Section 21: The Operator Security Agreement is NOT recorded, but the [Operator Assignment of Leases and Rents (HUD-92324-ORCF)](https://www.hud.gov/sites/dfiles/OCHCO/documents/92324_orcf.docx) must be recorded.  Section 25: include this section if the Operator is unrelated to Borrower and this section is otherwise applicable. If not, strikeout or replace with “intentionally deleted.” If Section 25 is applicable, then attach the Rider to Operator Security Agreement (which is part of the HUD form).  Exhibit C: Must be completed in its entirety. Insert required information or state “none” or “n/a.” Exhibit C-1 (Cash Flow Chart) is required.  **Cash Flow Chart (Exhibit C-1)**  General requirements (s*ee* Handbook 4232.1, Section II, Chapter 16.3 and 16.4):  Must depict entire flow of funds from payment of operating costs to debt service payments on the FHA-insured loans, including all accounts through which project funds flow or which are related to the project (*e.g.*, investment accounts).  Show the depository bank, the account number, and name of each party named on each account. Explain how any other parties on the account are related to the operator.  Show which accounts will be subject to DACAs or DAISAs, the parties to each, and the nature of each (*i.e.*, immediate control DACA vs. future notification).  Identify the account into which non-government (private pay/insurance) receivables are initially deposited. This account should be subject to a DACA.  Identify the account into which government (Medicare/Medicaid) receivables are initially deposited. This account should be subject to a DAISA.  If the account into which government receivables are paid is not in the name of Operator, Lender’s Counsel must submit an explanation of how this structure is permitted by applicable government healthcare programs.  Show how FHA debt service will be paid, including any tenant or master tenant rent accounts. A tenant rent account is an account established solely for the purpose of funding lease costs.  **Commingled accounts:**  Generally, HUD does not permit government receivables for different projects to be initially deposited into a commingled account. The use of commingled accounts is subject to HUD’s written approval and must be identified on the Cash Flow Chart, which must show all facilities whose funds are proposed to flow through such account. Commingled accounts cannot include funds from non-FHA-insured projects. All projects must be listed. *See* Handbook 4232.1, Section II, Chapter 16.4.G.  In the case of a “concentration account”, the Cash Flow Chart must indicate the control agreement that applies to the account and list the other projects sweeping funds to the account.  **AR Financing:**  If AR financing is involved, the chart must show the flow of AR loan disbursements and repayments. The chart must depict whether repayments will go through any AR Lender account *(e.g.*, daily paydowns) and identify the account into which AR loan draws (and any remittances of excess funds not necessary for paydown) will be deposited.  The Cash Flow Chart must show all uses of the AR funds (*i.e.*, just to make lease payments or a line of credit to be used on a continuous basis for most operating expenses).  *See* Handbook 4232.1, Section II, Chapter 16.4.D.  The lease payment structure must match Section 3.4 of the Intercreditor Agreement, with monthly debt service being paid directly to the FHA Lender or with the FHA Lender able to debit the monthly debt service amount out of a designated account. *See* Handbook 4232.1, Section II, Chapter16.5.  If there is AR financing for multiple projects, the cash flow chart should depict the above as to all projects on the same AR line.  The Cash Flow Chart must depict any proposed Borrower Representative accounts (where a single Operator or Operator affiliate is solely authorized to make AR draws on behalf of multiple Operators). *See* Handbook 4232.1, Section II, Chapter 16.4.H.  **Master Lease:**  If a master lease is involved, the chart must depict the Master Tenant’s position in the cash flow process (including any Master Tenant accounts and any deposit account agreements proposed to govern such accounts). If AR financing is not involved or funds do not flow through Master Tenant, Master Tenant’s and Borrower’s agreement to such method of payment must be documented (for instance, in the Master Lease).  NOTE: If the Master Tenant is involved in the flow of funds, the Master Tenant must be a signatory to the Intercreditor Agreement. |
|  | **Operator UCC-1 Financing Statements**  See comments above in Item 37.  Exhibit B (description of collateral) should match Exhibit B of the Operator Security Agreement. |
|  | [**Master Lease Subordination [, Non-Disturbance and Attornment] Agreement (HUD-92333-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92333-orcf.pdf)  *(Applicable only if there is a Master Lease)*  A separate Master Lease Subordination Agreement/SNDA is required for each project on the Master Lease.  Select the proper title for the document (Subordination Agreement or SNDA). An SNDA is appropriate only if there is no identity of interest between Borrower and Operator. If there is an identity of interest between Borrower and Operator, then non-disturbance provisions are not permitted (strike Paragraphs 4 and 7, and replace with "Intentionally Omitted”).  Confirm the legal description is consistent with title policy and survey. |
|  | [**Subordination [, Non-Disturbance and Attornment] Agreement of Operating Lease (SNDA) (HUD-91110-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/91110_orcf.docx)  *(Applicable only if there is an operating lease and there is no Master Lease. This item is N/A when there is a Master Lease.)*  Ensure the appropriate title is used (Subordination Agreement or SNDA).  If there is an identity of interest between Borrower and Operator, the document title should be “Subordination Agreement” and the non-disturbance provisions (Sections 3(b) and 8) are not permitted. |
|  | [**Subordination Agreement – Financing (HUD-92420-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/92420_orcf.docx)(required for secured secondary financing)  In Section 3(b), verify subordinate loan terms match the Firm Commitment. |
|  | **Commercial Space Leases**  *(Applicable only if there is a commercial lease)*  **A. Estoppel Certificate for Commercial Space Lease**  There is no HUD form. Confirm an estoppel certificate is attached to copy of the commercial lease, and should include statements that:  the attached commercial space lease is complete and unmodified  in full force and effect  there are no defaults by either party to the lease  **B. Commercial Space Lease**  The use of Project space for a commercial purpose requires ORCF approval. ORCF will confirm that the proposed commercial space complies the following conditions from Handbook 4232.1, Section II Chapter 2.6.E: (1) commercial space does not exceed 10% of the gross floor area and (2) commercial lease income does not exceed 15% of the gross project income, unless the commercial space is exclusively for the residents of the project in which case those limits may be exceeded.  **C. Subordination of Commercial Space Lease**  All commercial leases must be subordinate, or subordinated, to the FHA mortgage by its own terms or through a subordination agreement. A lessee at arms-length with the lessor (i.e., a non-IOI relationship) may request the subordination be provided through a subordination, non-disturbance, and attornment (“SNDA”) agreement. |
|  | **Title Policy (pro forma for review, original delivered at closing)**  **Title Policy Jacket**  Jacket: ALTA 2006 or acceptable state-approved alternative.  NOTE: *ORCF has not yet issued guidance on ALTA 2021 revisions.*  **Schedule A**  Confirm the date of insurance is the date of the HUD closing.  Confirm the amount of insurance is equal to loan amount.  Name of Insured: “[Lender] and/or U.S. Department of Housing and Urban Development, their successors and/or assigns, as their interests may appear.”  Title encumbered by the Insured Mortgage is vested in: [Borrower]  Estate or interest: Fee Simple or Leasehold (and appurtenant beneficial easements, if applicable)  Insured instruments should include Security Instrument and Healthcare Regulatory Agreement—Borrower, as incorporated in the Security Instrument  Legal description must be consistent with the Survey, Security Instrument, and all other closing documents.  Legal description must include appurtenant beneficial easements necessary for project operation (*e.g.*, utility easement, access easement)  **Schedule B-I**  All listed documents (aka “title exception documents”) must be provided and must be clearly labelled with the corresponding the title policy exception number.  Provisions in title exception documents that violate Federal statutes or regulations, or Program Obligations must be deleted, released, amended, or modified, as appropriate. NOTE: The 2021 ALTA Policy specifically carves out illegal/discriminatory restrictions from the title exceptions. See Handbook 4232.1, Section II, Chapter 9.2 D.  The exception documents must not create any encumbrances or liens that compromise or impair the first lien position of the FHA-insured Security Instrument. *See* [12 USC 1715w(b)(4)](https://www.law.cornell.edu/uscode/text/12/1715w#b_4); 24 CFR 200.71.  Evaluate any rights of reversion or rights of re-entry in accordance with the first lien (as commonly given under state law) requirement of the National Housing Act. If there is no issue under state law, consult with ORCF on the acceptability of the right of reverter.  Any encumbrance or use restriction that impairs long-term marketability, value, operations, or represent considerable risk must be subordinated or addressed/resolved to ORCF’s satisfaction.  No unpaid taxes or assessments. All references to taxes/assessments must specify that taxes are “not yet due or payable.” If taxes are due or payable, they must be paid prior to closing.  All non-standard indemnification or hold harmless provisions binding on Borrower must be identified to and discussed with ORCF.  All encroachments must be reviewed by and resolved to the satisfaction of ORCF. If an encroachment is not addressed on the ORCF Title/Survey review, identify the risk and discuss with the ORCF closer.  Beneficial easements necessary for the operation of the project that are included in the legal description can appear on Schedule B-I with appropriate limiting language (e.g., “terms and conditions”).  Any Restrictive Covenant for Floodplains and/or Wetlands must be recorded ahead of the Insured Mortgage (thus appearing on Schedule B-I) if satisfying the Incidental Floodplain/Wetland Exception (*see* Environmental comments in Tab 23 and 24 CFR 55.12(c)(7)).  **Schedule B-II (in no particular order)**  UCC fixture filing(s) for Borrower and Operator recorded in appropriate recording office. NOTE: If Borrower is also the Operator, the filing must include the collateral descriptions from the Security Instrument and the Operator Security Agreement.  Healthcare Regulatory Agreement – Operator  Assignment of Leases and Rents – Operator  Operating Lease **OR** Memorandum of Operating Lease (if applicable)  Operating Lease Subordination/SNDA Agreement (if applicable)  All listed documents must be provided and must be clearly labelled to correspond to the pro forma title policy.  Master Lease - additional recorded documents:  UCC fixture filing(s) for Master Tenant recorded in appropriate recording office.  Master Lease **OR** Memorandum of Master Lease  Master Lease Subordination/SNDA Agreement  Healthcare Regulatory Agreement – Master Tenant  Master Tenant Assignment of Leases and Rents  **Required Endorsements (if available under state law)**  (*See Firm Commitment for list of required endorsements. Note that ORCF has not yet issued guidance on the ALTA 2021 endorsements)*  ALTA 3.1-06 or equivalent (Zoning) (may not be available depending upon the zoning laws of the local jurisdiction)  Paragraph 13 of conditions (Arbitration clause) must be deleted  ALTA 9-06 (Comprehensive)  ALTA 9.6-06 (Private Rights)  ALTA 8.1-06 or equivalent (Environmental)  ALTA 17-06 or equivalent (Access & Entry)  ALTA 18-06 or equivalent (Single Tax Parcel) *(use when the project site consists of a single parcel without an easement listed as part of the insured property in Schedule A);* **OR** ALTA 18.1-06 (Multiple Tax Parcel) *(use when the project site consists of multiple parcels and/or an appurtenant easement that is referenced in Schedule A).*  ALTA 19.1-06 (Contiguity) – Use when there are multiple parcels, including adjacent appurtenant beneficial easements  ALTA 22-06 or equivalent (Location of Improvements)  ALTA 25-06 or equivalent (Survey)  **Other Endorsements (as appropriate)**  Endorsement(s) for encroachments listed in Schedule B-I, as appropriate.  ALTA 13.1-06 and CLTA 107.5 or equivalent (Ground Leases) - use with leaseholds.  ALTA 26-06 (Subdivision) - use to protect against loss from failure of the lot or parcel to be a separate and lawfully created tract pursuant to state and local law.  ALTA 28-06 (Easement – Damage or Enforced Removal) - use for encroachments of the building onto an easement on the land or for floating, non-plottable, or blanket easements.  ALTA 28.1-06 (Encroachments – Boundaries and Easements) - use for encroachments of “improvements” onto adjoining land or onto an easement; may also us for floating, non-plottable, or blanket easements.  ALTA 35-06 (Mineral/Extraction Rights) or 41.1-06 (Water Rights) - used when prior owners have retained water or mineral extraction rights.  ALTA 39-06 (Electronic signature endorsement) - use when original ink signatures will not be provided by the Title Company. *NOTE: The 2021 ALTA Policy includes this coverage automatically.*  CLTA 100.19 (Covenants, Conditions and Restrictions) *-* used when restrictive covenants or restrictions are recorded.  Additional endorsements are allowed at the Lender’s election.  **Title Agent Letter of Authority** (required if the title policy is being issued by an agent)  Must be on letterhead of the national title company.  Must be addressed to HUD and Lender.  Must be dated or effective as of the date of closing.  Must state the agent is in good standing with the title company and has authority to issue the policy.  **Closing Protection Letter** (required if there is a title agent and the agent is also acting as an escrow agent and/or collects documents necessary for closing)  Must be addressed to HUD and Lender.  Must be effective through the date of closing.  Confirm the Closing Protection Letter applies to transactions in the Project state. |
| ***NOTE*** | |
| 1. Φ | [**Healthcare Facility Note (HUD-94001-ORCF)**](https://www.hud.gov/sites/dfiles/OCHCO/documents/94001_orcf.docx)  NOTE: GNMA requires errors in the Note to be corrected.  Confirm loan amount and monthly payment amount in numeric and written form.  Include [State Note Rider](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/underwriting/223f) if applicable.  Paragraph 9 and the Prepayment Rider:  Confirm the prepayment rider is titled “Rider 1”  Check prepayment dates for typos (i.e., September 31).  Do not allow language that appears to alter the Note or other loan documents. For example, language on the use of insurance proceeds is not appropriate. However, language that echoes “alternative A” to paragraph 9 regarding advance notice and specific date for repayment is permissible.  Confirm closing date is the date of HUD endorsement (“as evidenced by HUD’s endorsement for insurance of this Note dated \_\_\_”).  223(a)(7) loans: confirm endorsement panel language, old and new FHA project numbers, the name of Borrower, the name of the Lender, and the amount of the note.  For 223(a)(7) transactions, review a copy of the HUD prepayment approval letter and HUD-9807 (provided by the Lender) to determine if any additional conditions are required in connection with the transaction closing.  For tax-exempt bond financing, ensure compliance with the prepayment requirements found in Handbook 4232.1, Section II, Chapter 3.14.F. |
| ***CLOSING DELIVERABLES***  Items 52-59 - additional documents that must be collected at closing (not subject to legal review) | |
| 1. Φ | Borrower Certificate of Cost (HUD-2205A-ORCF) (if required by Firm Commitment) |
| 1. Φ | Latest Approved Closing Statement (Sources & Uses in form HUD-92264a-ORCF)   * Proof of Existing Indebtedness Payoff * Invoices |
| 1. Φ | Payment receipt - MIP |
| 1. Φ | Payment receipt - Inspection Fee |
| 1. Φ | Payment receipt - FHA Application Fee |
| 1. Φ | Borrower Certification - Completion of Critical Repairs (HUD-91118-ORCF) (if there are critical repairs)  a. Photographs – Critical Repairs (labeled to corresponding repair)  b. Invoices – Critical Repairs (labeled to corresponding repair) |
| 1. Φ | Borrower Certification - Completion of Non-Critical Repairs (HUD-92117-ORCF) (if there are non-critical repairs and Borrower elects to complete non-critical repairs prior to closing)   1. Photographs – Non-Critical Repairs (labeled to corresponding repair) 2. Invoices – Non-Critical Repairs (labeled to corresponding repair) |
| 1. Φ | Certification of Insurance ([HUD-92435-ORCF](https://www.hud.gov/sites/dfiles/OCHCO/documents/92435_orcf.docx)) |
| Other | **Wire Transfer Confirmation for Payoff**  Comes post-closing to ORCF Closer. |
|  | Additional deliverables may vary. The Lender is responsible for appropriate numbering to upload to the Portal. |