Section III
Asset Management

Chapter 5

Section 232
Risk Mitigation Branch and Asset Management Tools

5.1 Introduction

The Risk Mitigation Branch is a group of Account Executives (AE) created to service projects that are at risk of default. The AEs within the Risk Mitigation Branch work collaboratively with the AEs in Asset Management to proactively identify issues, and when appropriate, transfer the project to the Risk Mitigation Branch for enhanced servicing. The main focus of the Risk Mitigation Branch is to develop an ongoing communication schedule with all parties in an effort to proactively pursue all efforts to avoid a claim to the insurance fund. Sometimes several workout strategies are pursued concurrently. The participation in weekly or bi-weekly status meetings by *all* parties (Mortgagee/Servicer, Borrower, and Operator) to the FHA insured loan is required, when a project is assigned to Risk Mitigation Branch.

Events that would trigger ~~the re-~~an Asset Management assignment to the Risk Mitigation Branch, if deemed appropriate by AE and Risk Mitigation Branch, would include:

1. Default of the Mortgage Payment
2. Special Focus Designation
3. Ban on Admissions
4. A serious decline in Survey or Financial Performance
5. Any other situation where all attempts to cure has been unsuccessful by the AE and more specialized and concentrated focus is needed by the Risk Mitigation team.

Upon assignment to the Risk Mitigation team, the AE will review all efforts to date and engage all participants to develop a plan to cure the default.

When the loan is assigned to the Risk Mitigation Branch, the Account Executive will initiate the reoccurring meeting with all parties and require the submission of monthly financial reports.

The agenda will include the following:

1. In collaboration with the AE, the Mortgagee/Servicer, Borrower, and Operator, must develop a plan to cure the default event and avoid an FHA insurance claim
2. Review and Discuss the Monthly Submission of Financials
3. Review and Discuss the current and historical Physical Condition of the Project
4. Review and Discuss the current and historical Survey Inspection Results

All meetings, action plans, and participants to the calls will be documented in iREMS by the Risk Mitigation Branch AE. Other participants (e.g. Program Management, ORM, and OGC) may be invited to participate in some of these calls depending on the severity of the situation and likelihood of a claim.

The items that will be discussed when developing the action plan will include, but are not limited to, the following:

1. Whether the project is currently listed or may be listed for Sale
2. Use of a consultant (when appropriate)
3. Change of Participant (CHOP):
    a. Change of Ownership,
    ~~a.~~b. Change of Operator~~-~~,
    c. ~~Transfer~~Change of ~~Assets (TPA) or~~ Management Agent,
    ~~b.~~d. Assumption of existing FHA insured loan

This chapter discusses the various risk mitigation tools and processes that may be used on existing FHA Insured Loans. These include Loan Modifications, Operating Loss Loans, and as a last resort, Partial Payment of Claim. This chapter also discusses Mortgagee/Servicer workouts/claim procedures and HUD-Held servicing and note sales on projects where an assignment has occurred.

In the event that a viable workout ~~could not~~cannot be achieved, a claim may be unavoidable. If this is to occur, it is the Mortgagee/Servicer's responsibility to ensure all assets and collateral for the FHA insured loan remain with the project (e.g. the inventory from the UCC Agreements and/or PCNA) and the Borrower/Operator understands they may not liquidate the project, and are to ensure the project and collateral remain secure. Even after the claim, ORCF will attempt to ~~recover~~achieve the highest recovery and require that the full assets of the ~~insuring~~HUD-held loan remain intact.

5.2 Loan Modifications

A loan modification is a change to the note and/or the mortgage. The modification permanently changes the terms of the mortgage and/or note secured by the project, and as such it may need to be recorded in accordance with state and local law. The modification recasts the principal balance of the mortgage note and establishes a new amortization schedule.

HUD distinguishes between two different types of Loan Modifications – Interest Rate Reduction Only and Default.

Loan Modification - Interest Rate Reduction Only. In this type of Loan Modification, the existing insured loan is current. The only change made to the mortgage note is to reduce the interest rate and subsequently change the required principal and interest payment on the mortgage note. The term (duration) of the mortgage note must not be revised – it must equal the remaining term of the mortgage note at the time of the Loan Modification. At the time of the Loan Modification, the loan must not be subject to a prepayment lock-out and any prepayment penalty required by the mortgage note must be satisfied.

Default Loan Modification. In this type of Loan Modification, the existing insured loan is not current. Upon HUD's approval, the term (duration) of the mortgage note may be extended. As in the case of the Loan Modification – Interest Rate Reduction Only, the interest rate and the required principal and interest payment on the mortgage note will be decreased. Moreover, in accordance with procedures outlined in Section 5.5 below, an override of a prepayment lock-out and/or prepayment penalty may be approved by HUD.

<u>Requirements for Review of Loan Modifications</u>

A. **Loan Modification Applications.** Loan Modification applications must be assembled, reviewed for completeness, accuracy and eligibility, and submitted by the Mortgagee/Servicer to ORCF with a recommendation for approval. A checklist of the required application exhibits as well as the instructions for submitting the application is posted on the Section 232 Program website. Prior to submitting a Default Loan Modification application, the Mortgagee/Servicer must discuss the proposal specifics and any ~~further~~ required exhibits ~~(not on the posted checklist)~~ with the Risk Mitigation Branch AE assigned to the project.

B. **Interest Rate (Trade) Premium.** The following costs cannot be paid from trade premium: borrower counsel, organizational costs and third party reports costs (e.g~~.~~., PCNA). Any portion of the interest rate (trade) premium that is not retained by the Mortgagee/Servicer or applied to Mortgagee/Servicer costs (such as Mortgagee/Servicer's Counsel fees and

Government National Mortgage Association (GNMA) commitment fee) may be used to defray the prepayment ~~premium~~penalty on the existing GNMA Securities, with the balance, if any, remaining to be contributed to the project's Reserve for Replacement (R4R) account. Note: On Loan Modifications, ORCF will not object to all or a portion of title and recording costs being covered by trade premium.

C. **Prepayment Lockout Periods and Penalties**.

1. Mortgagee Letter 87-9 (Mortgage Prepayment Provisions for FHA-Insured and Coinsured Multifamily Projects) establishes Program Obligations that Mortgagee/Servicers must follow when issuing Municipal or GNMA bonds for the purpose of financing an FHA-insured loan.

2. Mortgagee Letter 87-9 clarifies HUD's position with respect to the inclusion of provisions prohibiting partial or full prepayments ("lock-outs") and prepayment penalties in fully-insured and coinsured project mortgages, including all Healthcare Facility insured mortgages.

3. In order to include lock-outs and/or prepayment penalties in the terms of the mortgage note, the Mortgagee/Servicers must include in the mortgage note certain language prescribed in Mortgagee Letter 87-9 that specifies conditions upon which HUD may override the lock-out and/or prepayment penalty provision in the event of a default, in order to thus facilitate a refinancing or partial prepayment of the mortgage in an attempt to avoid an insurance claim.

4. Mortgagee Letter 87-9 stipulates that HUD may override the lock-out and/or prepayment penalty provision, in general, if HUD determines that prepayment will avoid a mortgage insurance claim and is therefore in the best interest of the Federal Government. Particular conditions governing the override of a prepayment lock-out and/or penalty provision are:
    a. The project Borrower has defaulted and HUD has received notice of such default, as required by 24 CFR ~~Part~~ 207-256 (full Insurance cases) or ~~Part~~24 CFR 251.810 or ~~Part~~24 CFR 255.808 (coinsurance cases);
    b. HUD determines that the project has been experiencing a net income deficiency, which has not been caused solely by management inadequacy or lack of Borrower interest, and which is of such a magnitude that the Borrower is currently unable to make required debt service payments, pay all project operating expenses and fund all required HUD reserves;
    c. HUD finds there is a reasonable likelihood that the Borrower can arrange to refinance the defaulted loan at a lower interest rate or otherwise reduce the debt service payments through partial prepayment; and

d. HUD determines that refinancing the defaulted loan at a lower rate or partial prepayment is necessary to restore the project to a financially viable condition and to avoid an insurance claim.

5. Section 18-3(b) of the GNMA Mortgage-Backed Securities (MBS) Guide 5500.3 Rev. 1 (“GNMA Guide”) provides the Mortgagee/Servicer authority, as the GNMA Issuer, to buy out of the MBS a loan that is ninety (90) days or more delinquent. The GNMA Guide also provides permission to re-securitize the defaulted loan into new securitizations, subject to a HUD-approved modification.

5.3 Section 223(d) Operating Loss Loans (OLL)

Section 223(d) Operating Loss Loans (OLL) provide Borrowers of FHA-insured loans a vehicle for recouping their out-of-pocket expenditures to fund unforeseen operating deficits on projects during the early years of the project’s operation. HUD's authority to approve a Section 223(d) Operating Loss Loan is set forth in Section 223(d) of the National Housing Act (NHA), which was later amended by Section 427 of the Housing and Community Development Act of 1987. Section 223(d) authorizes two types of OLL, both of which are available to FHA-insured Section 232 new construction and substantial rehabilitation health care projects managed by ORCF. Section 232/223(f) projects are ineligible for the OLL. For further details, please see Production, Chapter 2.11.

~~Promulgation of Section 223(d) of the NHA is an indication of HUD’s awareness that a project may struggle in the early years of operations due to cash flow demands and unforeseen expenses; and that HUD is concerned about these debt service problems and net operating losses. To preserve projects and to encourage Borrowers to provide working capital to fund early financial shortfalls and avert mortgage defaults, the OLL permits Borrowers to recover their unplanned contributed equity more quickly than surplus cash notes and surplus cash distributions would otherwise allow. Thus, the OLL serves as a valuable incentive for encouraging Borrowers to remain financially committed to their projects.~~

~~OLL applications must be assembled, reviewed for completeness, accuracy and eligibility, and submitted by the Lender to ORCF with a recommendation for approval. A checklist of the required application exhibits as well as the instructions for submitting the application will be posted on the Section 232 Program website. Prior to submitting an OLL application, the Lender must discuss the proposal specifics and any further required exhibits (not on the posted checklist) with the Risk Mitigation Branch AE assigned to the project.~~

~~A. **General Requirements.** To be eligible for an operating loss loan, the following conditions apply:~~

1. ~~The existing project mortgage must be insured by the Secretary under Section 232 New Construction/Substantial Rehabilitation of the National Housing Act and must include at least 20 beds (skilled nursing home or intermediate care facility); or 5 bedroom accommodations (board and care facilities).~~

2. ~~An allowable loss has been experienced. The loss loan must not exceed the amount of the operating loss.~~

3. ~~The operating loss must have occurred during a specific period of time.~~

4. ~~The Borrower entity must have owned the project during the loss period.~~

5. ~~All funds in the Initial Operating Deficit, if applicable, have been disbursed.~~

6. ~~All cost certification requirements have been satisfied.~~

7. ~~The Borrower, Operator, and Management Agent, as applicable, meet ORCF standards for project management.~~

8. ~~The Lender on the first mortgage must consent in writing to the OLL.~~

9. ~~The mortgage term must not exceed the unexpired term of the original mortgage.~~

10. ~~Section 223(d) requires that the OLL must be made to, and represent an operating loss by, the Borrower entity.~~

B. ~~**Financial Viability.** Implicit with the concept of an OLL, is that this supplemental loan is intended for those projects that survive early financial struggles and finally attain a self-sustaining operational state. The OLL proposal must demonstrate that the project is financially viable, i.e., that it has sufficient net operating income to meet the increased debt service obligations that come with the OLL. Self-sustaining operations is defined as follows:~~

1. ~~The project must have achieved stabilized occupancy, and,~~

2. ~~After achieving a stabilized occupancy, the project is solvent, i.e., revenues exceed expenses and current assets exceed current liabilities with all mortgage obligations met in a timely manner after the OLL is in place.~~

~~In certain instances, an OLL may be proposed as an essential element of a work-out strategy designed to rescue a "troubled" project and avert an FHA claim. In those infrequent instances, an OLL may be approved based on *projected* sustaining occupancy and debt~~

~~service coverage. However, only actual losses (confirmed by audit) may be funded, and there must be strong indications that a self-sustaining operational state will be reached within a reasonable period of time. Refer to Production, Chapter 2 for further discussion regarding stabilized occupancy and debt service coverage requirements.~~

~~With regard only to an OLL proposed as part of a workout to avert FHA claims, the proceeds of the loan may be required to cure financial deficits. If the loan proceeds are needed to cover mortgage deficits, all or part of the loan proceeds shall be held in escrow by the Lender until the project has become self-sustaining. The funds escrowed for these purposes shall be released only with prior approval from ORCF. The requirements for the escrow will be defined as a Special Condition in the Firm Commitment.~~

~~C. **Definition of an Operating Loss.** Certain project-related costs are disallowed in calculating the operating loss for an OLL. An operating loss is defined as the amount by which the sum of the taxes, interest on the mortgage debt, mortgage insurance premiums, hazard insurance premiums, and operating expenses exceed project income. The following disbursements must not be included: payment to mortgage principal, depreciation, payments to the R4R account, payments to the sinking fund, Lender fees, officers' salaries, bad debts (rents/revenue that is deemed uncollectible) and charges incurred in connection with the application for the OLL.~~

~~D. **Section of the Act and Determination of the "Loss Period."** The original form of OLL, Section 223(d)(2), allows for Borrower recovery of defined operating losses incurred during the first two years of operation after the cost cutoff date. The later variation of OLL, Section 223(d)(3), permits a loan for operating losses during any period of consecutive months (but not exceeding 24 months) during the first ten years following the date of completion of the project as determined by the Commissioner. There may be two OLLs (one under Section 223(d)(2) and one under Section 223(d)(3)) for any individual project but no more than one per subsection. However, the OLLs must not be for the same 24-month time period.~~

~~The selected 24-month period is referred to as the "loss period" and losses claimed during that time frame must be evidenced by audited financial statements.~~

~~E. **Calculating the Potential Loan Amount.** Adhering to the definitions of allowable costs above, the determination of the maximum insurable OLL amount is made using one or more of the criteria of the Maximum Insurable Loan Calculation (Form HUD-92264A-ORCF). The operating loss loan is limited to both 100% of the operating loss *and* the amount supported by the debt service limitation. Note that ORCF current guidelines require a minimum *combined* Debt Service Coverage Ratio (DSCR) of 1.45. Additionally, for operating loss loans pursuant to Section 223(d)(3), a further limitation on the loan amount is imposed, namely 80% of the unreimbursed cash contributions. Further guidance on calculating the OLL amount is provided in Production, Chapter 3.~~

~~The HUD underwriter may request an appraisal consulting assignment by an ORCF appraiser, and the resulting recommendations may include the requirement for an independent appraisal, market study and/or other independent consultation.~~

~~F. **Application Fees and MIP.** Application fees are required for all Section 223(d) Operating Loss Loans. Fee rates are published in the Federal Register. Since OLL's are considered higher risk loans, the MIP is set higher than for lower risk loans. Rates are published in the Federal Register annually. See Production, Chapter 1 for further guidance.~~

~~G. **Processing Procedures for OLL's.** Underwriting guidance can be found in Production, Chapter 2 and on the Section 232 Program website.~~

~~H. **Preliminary Discussions.** At the request of the Borrower, or the Lender, the AE (and/or other ORCF representatives) will conduct informal, preliminary discussions with the Borrower and/or Lender. These preliminary discussions will define the objectives that would be addressed by the OLL, and will seek to ensure that the Borrower is acquainted with ORCF guidelines relative to OLL's.~~

5.4 Partial Payment of Claim (PPC)

This section provides guidance regarding Partial Payment of Claim (PPC) specifically applicable to the Section 232 Program.

When a Mortgagee/Servicer of a loan on a Section 232 project becomes eligible to file an insurance claim and to assign the mortgage to the Federal Housing Administration (FHA) Commissioner ("the Commissioner") pursuant to 24 CFR Part 207.258, the Commissioner may request the Mortgagee/Servicer, in lieu of a full assignment, to accept a partial payment of the claim under the mortgage insurance contract and to recast the mortgage, under such terms and conditions as the Commissioner may determine. The Commissioner may request the Mortgagee/Servicer to participate in a Partial Payment of Claim ("PPC") in lieu of a full assignment only after a determination that partial payment would be less costly to the Federal government than other reasonable alternatives for maintaining the project. This determination is based upon the findings of criteria indicated in this chapter and such other findings as the Commissioner deems appropriate.

~~In order to avoid a full insurance claim and assignment of the entire mortgage to FHA, FHA pays the Mortgagee/Servicer a portion of the principal balance and overdue accrued interest, and recasts the remaining principal balance of the mortgage under terms and conditions determined by HUD, through a PPC.~~ Prior to processing of the PPC proposal, the Mortgagee/Servicer must voluntarily agree to accept a partial payment of the insurance claim in accordance with the terms detailed in this chapter. If applicable, the Mortgagee/Servicer must also waive any prepayment and lockout provisions in the mortgage. ~~As~~If the Mortgagee accepts the Commissioner's offer of a PPC~~ is completed,~~, in order to avoid a full insurance claim and assignment of the entire mortgage to FHA, FHA will pay the Mortgagee/Servicer a portion of the principal balance and overdue accrued interest (partial claim), and recast the remaining principal balance of the mortgage under terms and conditions determined by the Commissioner. As required by the PPC statute at Section 541 of the National Housing Act, as amended, (codified at 12 U.S.C. Section 1735f-19), the Borrower ~~enters~~will also enter into a ~~second HUD mortgage, the "~~PPC/Second Mortgage Note~~,"~~ in the amount of the ~~PPC~~partial claim ~~plus overdue interest on the~~and secured by a second HUD mortgage~~, obligating the~~. The Borrower ~~to pay 50~~is required to make payments equal to 75% of the project's annual future surplus cash flow ~~as~~toward repayment ~~on~~of the PPC Note if it is a for-profit ~~entities. On~~entity. For Borrowers that are non-profit entities, the future surplus cash/residual receipts repayment is~~ 75 to~~ 100% of surplus cash or residual receipts.

The process for requesting, reviewing, approving and closing PPCs is similar to other loan modification transactions except for parts of the closing activity. Borrowers of projects in danger of defaulting must be in discussions with their project's or projects' AE(s) early on, and must provide monthly financial statements well in advance of a request~~.~~ for consideration. However, the formal process begins when the Borrower submits a request and proposed plan, signed by its legally authorized agent, to the Mortgagee/Servicer, who then submits a complete ~~application~~proposal to HUD. Once ORCF obtains a complete PPC Proposal Package and undertakes a brief threshold review~~ described in Section 5.19 below~~, then ORCF's Risk Mitigation Branch completes a detailed analysis, and presents to ORCF's Loan Committee a recommendation to approve or reject the proposal. The Loan Committee then presents its recommendation to the Associate Deputy Assistant Secretary (ADAS), OHP.

A. **Background on Partial Payment of Claim.** Guidance on PPCs with respect to other FHA programs has historically been contained in 24 CFR 207.258b and HUD Housing Handbook 4350.1, REV-2 Chapter 14. While 24 CFR Part 232.251 and Housing Handbook 4350.1 REV-~~1~~2, Chapter 14 both specify that the current multifamily guidance for PPCs are not applicable to Section 232 projects~~ are not eligible for PPCs~~ (paragraph 14-2), in 1997, 12 U.S.C. Section 1735f-19 was amended to encompass mortgages on healthcare facilities and permit PPCs on Section 232 projects.

   ~~Mortgagee Letter 2011-15 and ~~24 CFR Part 232.~~882 implement~~256 implements policies with respect to PPCs for the Section 232 Program, but ~~do~~does not address notes for which assignment to the Secretary has already been completed and which are thus HUD-held. Mortgagee Letter ~~2011-15 also complements Mortgagee Letter 87-9 which~~87-9 allows for the waiver of prepayment penalties and lockout provisions in mortgages to avoid a mortgage insurance claim. Projects approved for a PPC are deemed to have complied with all terms of

Mortgagee Letter 87-9.

B. **Applicable Policies.** ~~Mortgagee Letter 2011-15 as well as CFR~~This section and 24 CFR Part 232.256 set forth the minimum conditions that must be met for a Section 232 mortgage to be eligible for a PPC. These minimum conditions are subject to the inclusion of additional conditions and/or more stringent consideration, based upon the individual circumstances of each proposed PPC, as the Commissioner deems appropriate. The minimum conditions are:

1. The Mortgagee/Servicer is entitled, after a default as defined in 24 CFR Part 207.255, to assign the mortgage in exchange for the payment of insurance benefits.

2. The relief resulting from partial payment when considered with other resources available to the project must be sufficient to restore the financial viability of the project. In evaluating financial viability, the Department will evaluate the adequacy of the debt service coverage ratio, which would generally be expected to be at or above 1.20, after allowing for the mortgage insurance payment. The Department will also consider the size of the requested PPC as a percentage of the current outstanding mortgage, keeping the PPC no larger than essential and not exceeding 50 percent.

3. The project is or can (at reasonable cost) be made physically sound.

4. The current or proposed Operator of the project is satisfactory to the Commissioner, as demonstrated by past experience in operating similar type health care projects and by state regulatory performance.

5. The default under the insured mortgage was beyond the control of the Borrower and/or Operator, or in the case of a ~~Transfer~~Change of ~~Physical Assets~~ ~~(TPA~~Participant (CHOP), the proposed Borrower or Operator, unless ORCF determines that any Borrower/Operator deficiencies giving rise to the default have clearly been addressed.

6. The project is serving as, or potentially could serve as, a needed nursing home, intermediate care facility, or board and care home, or assisted living facility.

7. The property covered by the mortgage is free and clear of all liens other than the insured first mortgage.

8. The Mortgagee/Servicer has voluntarily agreed to accept a PPC under the mortgage insurance contract and to recast the remaining mortgage amount under terms and conditions prescribed by the Commissioner.

9. The Borrower has agreed to repay to the Commissioner an amount equal to the partial payment, with the obligation secured by a second mortgage on the project containing terms and conditions prescribed by the Commissioner. The terms of the second mortgage will be determined on a case-by-case basis to ensure that the estimated project income will be sufficient to cover estimated operating expenses and debt service on the recast FHA-insured mortgage.

10. For a partial payment of claim, the Borrower (or Identity-of-Interest Operator) has made a net capital *contribution* (not a loan) equal to 5% or more of the original mortgage to fund operating shortfalls since final closing (for a non-profit, including its in-kind services acceptable to ORCF). The consecutive timeframe for this determination commences at final closing, and then continues up to the date of initial default. This calculation period can be adjusted at HUD's sole discretion. If a ~~TPA~~Change of Participant CHOP will be involved, then contributions to be brought to the project at closing by the acquiring Borrower can be included in this determination.

11. The Borrower has remitted all net cash (i.e., the cash remaining after the project has paid all of its operating expenses) to the Mortgagee/Servicer between the date of default and the date of closing on the PPC. If the Operator is a different entity than the Borrower, then this requirement is expanded, and the Operator must also submit to the Borrower all net cash derived from the operation between the date of default and closing of the PPC.

C. **PPC Submission Package.** The Mortgagee/Servicer's formal proposal is to be submitted to the AE servicing the particular mortgage loan. If a ~~Transfer~~Change of ~~Physical Assets (TPA~~Participant (CHOP) is anticipated, then a ~~TPA~~CHOP application in accordance with ORCF requirements must be concurrently submitted. The PPC proposal must be assembled, reviewed for completeness, accuracy and eligibility, and submitted by the Mortgagee/Servicer to ORCF with a recommendation for approval. A checklist of the required proposal exhibits as well as the instructions for submitting the proposal will be posted on the Section 232 Program website. Prior to submission, the Mortgagee/Servicer must discuss the proposal specifics and any further required exhibits (not on the posted checklist) with the Risk Mitigation Branch AE assigned to the project, and must demonstrate that all of the requirements set forth above are met.

D. **Recast First Mortgage Terms.** The First Mortgage Note will be modified to reflect:

1. A reduced principal mortgage (as a result of the PPC);

2. ~~An~~As of the date that HUD issues a PPC approval letter, an interest rate not to exceed 125 basis points over the 10-year Treasury rate ~~on the day a terms letter~~or such higher

rate as the lender has then established to HUD's satisfaction is ~~offered~~essential to obtain Ginnie Mae securitization;

3. The maturity date, which is the original maturity date unless an extended date within statutory authority has been agreed upon; and

4. Modified monthly payments of principal and interest as re-amortized based on the reduced principal, new interest rate and, if applicable, new term.

If requested by the Mortgagee/Servicer, the First Mortgage Note may include a restriction on prepayment for the purpose of enhancing the marketability of the new GNMA Mortgage-Backed Security (MBS). Any prepayment restriction must be in accordance with Mortgagee Letter 87-9.

E. **PPC/Second Mortgage Note Terms.** The PPC/Second Mortgage Note, created to compensate FHA for its insurance claim loss when the first mortgage is recast in a lesser amount, has a principal amount equal to the amount of the reduction in the FHA-insured first mortgage principal plus overdue interest~~.~~ (partial claim). Subject to any requirements for additional Borrower cash or excess project cash, HUD will include in the PPC/Second Mortgage Note the amount of interest computed since the date of delinquency based on the actual number of days in a 365- or 366-day year. Late fees accrued since the last payment or any other costs to close cannot be included in the transaction or paid ~~by the~~with project funds in the future. The terms of the PPC/Second Mortgage Note will be as follows:

1. An interest rate equal to the applicable Federal Rate for the month of closing. This rate can be located at: http://www.irs.gov.

2. Maturity date coterminous with the First Mortgage Note.

3. A "due-on-sale, refinance, or termination" provision.

4. As long as the Second Mortgage Note is held by HUD, a service charge, calculated at 0.50 percent annually based on the unpaid principal balance of the Second Mortgage Note, must be paid to HUD monthly.

5. The minimum annual payment on the PPC/Second Mortgage Note will be 75 percent of annual surplus cash on for-profit entities and 100% of residual receipts/surplus cash (this percent can be negotiated by ORCF when the PPC is contemporaneous with a change in ownership and control of the mortgaged asset) ~~as~~for nonprofits. The determination of whether a project is subject to surplus cash or residual receipts ~~are~~ will be specified in the Regulatory Agreement between the Secretary of Housing and

Urban Development and the project Borrower, ~~together~~in accordance with the applicable HUD Regulations and administrative requirements. ~~The~~This payment of surplus cash or residual receipts to be applied to the second mortgage note payment is due within 10 days of the required filing of the Annual Financial Statement. Borrower's share shall be determined under the circumstances above. The minimum annual payment will be applied towards interest first and then principal.

6. Consistent with the PPC/Second Mortgage Note, in the event, and when, the project is operated by an entity that is legally distinct from but has an identity of interest with the Borrower, the *minimum* annual payment on the PPC/Second Mortgage Note will be 100 percent of annual surplus cash or residual receipts as defined in the Borrower Regulatory Agreement. Additionally, in that event, the Borrower must collect from the Operator a lease payment equaling or exceeding all payments required of the ~~Purchaser~~Borrower for payment of all principal, interest, escrow and fees on any amortizing notes, *plus* any ~~surplus cash or residual receipts~~Working Capital (defined in the Operator Regulatory Agreement) as agreed to in negotiations for the PPC. Before calculating that ~~rent~~lease payment, no payments to the Operator or any related party, beyond 4% (four percent) of gross revenue (as a management fee) will be deducted. The Borrower must accomplish any amendment to the lease necessary to effectuate this ~~rental~~ calculation prior to the completion of the PPC transaction.

7. Language prohibiting successors and assigns of the beneficiary of the PPC/Second Mortgage Note from imposing property insurance requirements that exceed the original principal balance contained in the First Mortgage Note or are in addition to those required by the First Mortgage Note Holder so long as the First Mortgage Note is insured or held by the Secretary of Housing and Urban Development.

[NOTE: HUD has the right to sell the PPC/Second Mortgage Note. If HUD sells the PPC/Second Mortgage Note, the Borrower and Operator are required to submit annual financial statements to the PPC/Second Mortgage Note Holder in the same form as submitted to HUD or other format acceptable to the note holder.]

F. **Other Terms and Conditions of the PPC Transaction.**

1. If Identity-of-Interest expenditures have been included as a Borrower's ~~Contribution~~contribution in calculating eligibility for a PPC, then ~~a requirement~~it is required that those expenditures cannot be taken or must be re-deposited for any year in which surplus cash is negative (not to exceed the amount of the negative surplus cash). The redeposit or accrual can only be repaid from the Borrower's share of surplus cash in future years.

2. The monthly deposit to the R4R Account will resume with the first payment of the recast First Mortgage Note. Previous deposits that were not made in the past will not be required to be addressed, unless the reserve balance has been determined to be inadequate.

3. All escrows, such as tax, hazard insurance and mortgage insurance premium (MIP) shall be fully funded at closing.

4. If the insured First Mortgage Note is repaid, the Borrower must establish and maintain continued funding of all escrows required by the First Mortgage Note until the PPC/Second Mortgage Note is repaid in full.

5. Project operating income must not be used to pay financing fees, attorney fees, consultant fees, other professional fees, or any other costs of the restructuring transaction. The Borrower's share of future surplus cash may be used for these purposes only if available for distribution in accordance with the applicable HUD regulatory requirements and ~~applicable policy guidelines.~~administrative requirements.

6. Cash held in suspense by the Mortgagee/Servicer will be allowed by HUD to be used at closing to pay reasonable closing attorney fees, title and recording fees, escrow shortages and interest for the remainder of the closing month. The PPC will not be increased if project cash is insufficient to cover these costs.

7. HUD will include in the PPC/Second Mortgage Note the amount of interest computed since the date of delinquency based on the actual number of days in a 365- or 366-day year. The Mortgagee/Servicer cannot collect more interest from the project than paid by HUD.

8. The Sources and Uses of Funds Statement for the refinancing must not show disbursements of funds to the Borrowers as funds are prohibited from being disbursed to the Borrowers in a PPC transaction.

9. No funds will be paid to identity-of-interest persons or entities. The Sources and Uses of Funds Statement must also be signed by the Borrower or its representative below the following statement: “Warning: ~~It is a crime to~~ Anyone who knowingly ~~make~~submits a false ~~statements to~~ claim or makes a ~~Federal Agency. Penalties upon conviction can include a fine~~false statement is subject to criminal and ~~imprisonment. For details, See Title 18,~~/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S. ~~Code~~C. §§ 287, 1001 ~~and~~, 1010~~.”~~, 1012; 31 U.S.C. §3729, 3802).”

10. The ~~first mortgage~~First Mortgage insurance documents in a PPC shall provide that the Borrower and the Mortgagee/Servicer of the ~~first mortgage~~First Mortgage loan must provide notices and documentation to the ~~second note holder~~Second Note Holder upon the occurrence of events that could affect the value and position of the ~~second mortgage~~Second Mortgage Mortgagee/Servicer such as: full or partial payment on the ~~first mortgage~~First Mortgage loan, ~~events~~Events of ~~default~~Default on the ~~first mortgage~~First Mortgage loan, declaration of bankruptcy by the Borrower, and any documentation related to a bankruptcy or any foreclosure action.

11. In the event the First Mortgage Note is prepaid and there is no additional FHA-insured or HUD-held debt on the project, the Borrower will furnish HUD and the Second Mortgage Note Holder audited annual financial statements until the PPC/Second Mortgage Note is satisfied.

12. The Borrower must not incur additional collateralized debt without the prior written consent of HUD, PPC/Second Mortgage Note Holder and any separate or additional note holder.

13. The PPC/Second Mortgage Note Holder (subject to the rights of the ~~first mortgage~~First Mortgage Lender) has the right to foreclose on the security interest in the net cash flow perfected by filing of a UCC-1 Financing Statement, in the event of a default on the PPC/Second Mortgage Note.

14. After the closing of the PPC transaction, the Borrower and Operator shall each be required to file annual financial statements (and more frequent financial statements when requested) consistent with their amended first mortgage regulatory agreements, new second mortgage regulatory agreements, and riders thereto that will be required and executed as part of the PPC transaction.

G. **Closing Documents.** The required closing documents are listed on the ~~Closing~~Partial Payment of Claim Document Checklist posted on the Section 232 Program website.

Upon receipt of HUD's Preliminary Approval Letter, the Borrower and Mortgagee/Servicer must notify ORCF's Closing Coordinator (Closer) of the targeted closing date and the closing date must occur within 60 days from the date of notification of ORCF's approval. The Mortgagee/Servicer's requested date will be accommodated to the extent possible but the Closer, in cooperation with the OGC Reviewer, has the final authority to set the closing date.

Upon receipt of the Borrower's acceptance and notification of the target closing date, the Closer will coordinate with OGC Counsel in Headquarters and with Multifamily Claims Branch and Multifamily Note Servicing to confirm the projected closing date or suggest alternative dates if the Borrower's dates cannot be accommodated. Delays due to

Borrower's, Mortgagee/Servicer's or other party's action or inaction will be deemed the Borrower's responsibility. The Borrower is strongly encouraged to meet the targeted closing dates, as delays may be costly. Once the amount of the PPC Second Mortgage Note is determined, any increase in the funds required to close (e.g., interest) must be funded by the Borrower at closing, unless other disposition is approved by ORCF.

H. **Claims Branch Process.** Upon receipt of the Borrower's acceptance letter, the Closer will contact the Mortgagee/Servicer, Mortgagee/Servicer's Counsel, Borrower and Borrower's Counsel, and representatives of Multifamily Claims Branch and OGC to schedule a closing coordination call. The closing coordination call allows the parties to discuss closing requirements, timing, issues and logistics. It also allows OGC to coordinate submission of draft closing package with the Mortgagee/Servicer's Counsel.

The Closer will also contact the AE to obtain copies of the documents needed for inclusion in the Multifamily Claims Branch Package for PPCs.

The total amount of a PPC will be determined by the certification of mortgage balance (Certification) from the Mortgagee/Servicer after the application of remaining net cash proceeds and all unapplied funds. The Certification will include all escrow balances and must be signed by the Mortgagee/Servicer and the Borrower.

Working with ORCF, the Claims Branch will verify the current first mortgage's unpaid principal balance (UPB) and calculate the mortgage interest owing, from the date of the last payment up to, but not including, the date of closing.

The Claims Branch's calculations are based on a 365 or 366 (leap year) day year, which may cause disparities in interest calculations between HUD and the Borrower or Mortgagee/Servicer. Prior to closing, ORCF will provide to the Claims Branch a Closing Memorandum detailing the application of the partial claim payment to interest and principal. As part of the Closing Memorandum, a Sources and Uses Statement will be attached.

I. **Closing Process.** Upon receipt of all documents for Claims, the Closer will prepare a memorandum for Claims. This will serve as the cover letter for the submission of all the documents referenced as claims documents above. The Closer will confirm with OGC that all comments regarding the legal documents have been addressed and the transaction is ready to close.

Upon receiving notification that the transaction is ready to close the Mortgagee/Servicer's Counsel will prepare the final loan closing documents and obtain signatures. The Borrower's signature must be affixed to the documents before they are submitted to ORCF for signature. If ORCF is expected to forward the documents to a title company or other party for closing, proper mailing media (i.e~~.~~., an overnight service envelope with an addressed bill of lading) must be included with the documents submitted for signature.

On the day of closing, the Multifamily Claims Branch will not trigger the wire transfer to pay the partial claim before all approved documents modifying the First ~~Deed of Trust~~Mortgage and all approved documents establishing the Second ~~Deed of Trust~~Mortgage have been executed and recorded in an agreed upon order. Additionally, the Multifamily Claims Branch will not trigger the wire transfer to pay the claim before a title policy has been issued which confirms the continuing first lien priority of the First ~~Deed of Trust~~Mortgage and the second lien priority of the Second ~~Deed of Trust~~Mortgage.

All parties must be made aware that there is no guarantee that the PPC payment will be received in escrow the day the claim is triggered. Closing parties should make their plans accordingly. The Mortgagee/Servicer's attorney shall forward scans by email of final, executed, and, if applicable, recorded documents to ORCF on the day of closing.

J. **Post-Closing.** After closing, the Mortgagee/Servicer's attorney shall submit hard and electronic copies of all closing and supporting documents, including certified copies of all recorded documents, along with a copy of the final title policy to ORCF and OGC.

As long as the PPC~~ second mortgage note~~/Second Mortgage Note is owned by HUD, ORCF's Risk ~~Management~~Mitigation Branch will compare the Annual Financial Statement submitted by the Borrower to the final HUD-approved ~~base line~~baseline and 20-year projections. Significant deviations will be investigated to ensure all income and expenses, reserves and accounts payable are properly accounted for and that surplus cash or residual receipts are accurate. Expenses will also be closely examined to ensure no expenses have been incurred related to the PPC as these are disallowed, except as surplus cash or residual receipts distributions per the terms and conditions of the PPC transaction. All accounting, legal, and consultant fees must be paid for by the Borrower and not out of project accounts.

After completion of the financial statement analysis, the AE is required to summarize the analysis in the Integrated Real Estate Management System (iREMS). This must be completed annually as long as HUD is the holder of the PPC/Second Mortgage Note.

The AE will follow established protocol to ensure filing of accurate financial statements and that required payments are made on the PPC/Second Mortgage Note.

5.5 Mortgagee/Servicer Workouts/Claim Procedures and Requirements

A. Alternative election by Lender.

1. Except to the extent that HUD has approved an extension of a period for an election to assign a mortgage (requests for which are required in circumstances set forth in this Section ~~4.10~~5.5 and in 24 CFR 207.258), when the Lender becomes eligible to receive mortgage insurance benefits pursuant to 24 CFR § 207.255(a)(3) or (b)(3), the Lender must, within 45 calendar days after the date of eligibility (such period is referred to as the ''Eligibility Notice Period'' for purposes of this section), give the Commissioner notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner, as provided in ~~paragraph~~ 24 CFR 207.258(b~~) of this section,~~), or to acquire and convey title to the Commissioner, as provided in ~~paragraph~~ 24 CFR 207.258(c~~) of this section.~~). Notice of this election must be provided to the Commissioner in the manner prescribed in 24 CFR part 200, subpart B. HUD may extend the Eligibility Notice Period at the request of the Lender under the following conditions:
    a. The request must be made to and approved by HUD prior to the 45th day after the date of eligibility; and
    b. The approval of an extension shall in no way prejudice the Lender's right to file its notice of its intention to file an insurance claim and of its election either to assign the mortgage to the Commissioner or to acquire and convey title to the Commissioner within the 45-day period or any extension prescribed by the Commissioner.

2. For any mortgage insured under Section 232 of the Act, the Lender must, prior to the deadline for filing its notice of intent to file an insurance claim:
    a. Request up to a 90-day extension of the deadline for filing the notice of the Lender's intention to file an insurance claim and the Lender's election to assign the mortgage or acquire and convey title in accordance with the Lender certificate, which HUD may further extend at the written request of the Lender;
    b. Assist the Borrower in arranging refinancing to cure the default and avert an insurance claim, if the Commissioner grants the requested (or a shorter) extension of notice filing deadline;
    c. Report to the Commissioner at least monthly on any progress in arranging refinancing;
    d. Cooperate with the Commissioner in taking reasonable steps in accordance with prudent business practices to avoid an insurance claim;

e. Require successors or assigns to certify in writing that they agree to be bound by these conditions for the remainder of the term of the prepayment lock-out or prepayment premium; and
f. After commencement of amortization of the refinanced mortgage, notify HUD of a delinquency when a payment is not received by the 10th day after the date the payment is due.

3. *Acknowledgment of election.* For mortgages insured pursuant to Section 232 of the Act, if the Servicer provides notice to the Commissioner of its election either to assign the mortgage to the Commissioner or to acquire and convey title to the Commissioner, the Commissioner shall, not later than 90 calendar days after the expiration of the Eligibility Notice Period, as defined in ~~paragraph~~ 24 CFR 207.258(a)(1~~) of this section,~~), as the same may have been extended, acknowledge and accept, or reject for cause, pursuant to program requirements, the Servicer's election, provided that the Commissioner may, in the Commissioner's discretion, extend such 90-day period by no more than an additional 90 calendar days if the Commissioner determines that such an extension is in HUD's interest.

B. Assignment of mortgage to Commissioner.

1. Timeframe; request for extension.
   a. If the Lender elects to assign the mortgage to the Commissioner, the Lender shall, at any time within 30 calendar days after the date HUD acknowledges the notice of election, file its application for insurance benefits and assign to the Commissioner, in such manner as the Commissioner may require, any applicable credit instrument and the realty and chattel security instruments.
   b. The Commissioner may extend this 30-day period by written notice that a partial payment of insurance claim under § 207.258b is being considered. A Lender may consider failure to receive a notice of an extension approval by the end of the 30-day time period a denial of the request for an extension.
   c. The extension shall be for such term, not to exceed 60 days, as the Commissioner prescribes; however, the Commissioner's consideration of a partial payment of claim, or the Commissioner's request that a Lender accept partial payment of a claim in accordance with § 207.258b, shall in no way prejudice the Lender's right to file its application for full insurance benefits within either the 30-day period or any extension prescribed by the Commissioner.
   d. The requirements of paragraphs B.2 and B.3 of this section shall also be met by the Lender.

2. Notice of assignment. On the date the assignment of the mortgage is filed for record, the Lender must notify the Commissioner, in the manner prescribed in 24 CFR part

200, subpart B, of such assignment, and must also notify the FHA Comptroller ~~by telegram of such recordation~~of such recordation. Notably, although the regulation mentions "telegram", a modern notification method (i.e., via email) is used as of this Handbook publication date.

3. The Mortgagee/Servicer must also ~~proceed consistently~~comply with all other applicable ~~provisions~~requirements set forth in the federal regulation 24 CFR 207.258, the Legal Instructions Concerning Applications for Full Insurance Benefits – Assignment of Multifamily and Healthcare Mortgages to the Secretary, and the Fiscal Instructions for Filing for Multifamily Insurance Benefits.

Default Dates and Related Deadlines

Unpaid Installment Due On:	Must be Paid By:	Lender Eligible for Insurance On:	Notify HUD by C.O.B.:	Make Election to Assign Mortgage:
Jan 1	Jan 31	Feb –1	Mar –2	Mar 17
Feb 1	Mar –3	Mar –4	Apr –2	Apr 17
Mar 1	Mar 31	Apr –1	Apr 30	May 15
Apr 1	May –1	May –2	May 31	June 15
May 1	May 31	June 1	June 30	July 15
~~June1~~June 1	July 1	July 2	July 31	Aug 15
~~July1~~July 1	July 31	Aug –1	Aug 30	Sept 14
Aug 1	Aug 31	Sept 1	Sept 30	Oct 15
~~Sept1~~Sept 1	Oct 1	Oct –2	Oct 31	Nov 15
Oct 1	Oct 31	Nov –1	Nov 30	Dec 15
Nov 1	Dec 1	Dec –2	Dec 31	Jan 15
Dec 1	Dec 31	Jan –1	Jan 30	Feb 14

1. These dates assume 28 days in February; adjust for leap years.
2. For deadlines falling on Sat., Sun., or federal holiday, use next business day.

5.6 HUD-Held Servicing and Note Sales

Upon assignment of a Section 232 Program mortgage under the provisions of the National Housing Act, as amended, the note is deemed a HUD-held note which simply means that ~~HUD paid a claim on the note, now owns~~the former lender assigned the note to HUD, in exchange for payment of an insurance claim, so HUD is now the lender and is responsible for servicing the ~~note completely.~~ loan.

A. **HUD-Held Servicing.** Consistent with HUD's policies of providing access to affordable residential healthcare facilities as well as limiting losses to the Federal Housing Administration ("FHA') insurance fund, one of ORCF's goals is the prevention of mortgage assignments. Cooperation among ORCF, Mortgagee/Servicers and Borrowers is of paramount importance in accomplishing this goal. However, when an assignment takes place, ORCF Risk Mitigation staff will have already been involved with the project and have a plan on the most appropriate course of action to work with the project as well as determine the ultimate ~~settlement~~disposition of the project or note for HUD. ORCF's options after assignment generally include ~~holding the mortgage in default to try~~attempting to resolve the delinquency, placing the mortgage under a workout agreement to bring the project back into a financially viable status, placing the mortgage with the Property Disposition ~~“~~(PD~~”~~) Center for a foreclosure action, or selling the note in a note sale through the ~~FHA~~HUD Office of Asset Sales (OAS) at HUD. The ultimate decision as to which of these routes to pursue will depend upon the unique circumstances of each such Project.

Once a note is assigned, a claim is filed with the subsequent claim settlement on that note administered by the Multifamily Claims Branch. Note servicing-related activities are no longer performed by the Mortgagee/Servicer but are instead overseen by HUD’s Multifamily Notes Servicing Branch, which currently contracts out these administrative functions to a third party provider for Section 232 Program notes. These administrative functions include preparation of monthly billing statements and the application of collected payments; overseeing deposits to and withdraws from escrow accounts maintained for taxes, insurance and R4R; investing reserve funds, as applicable; and filing UCCs, as applicable.

~~It should be noted that~~The Borrower/Operator must continue to maintain the reserve accounts ~~continue to need to be maintained~~ in accordance with its Regulatory Agreement and other HUD-related mortgage ~~insurance~~ documents~~ and project~~. Project funds must not be used to pay legal or consulting fees related to foreclosure or bankruptcy-related actions. ~~Additionally, Monthly~~The Borrower/Operator is still required to submit monthly Accounting Reports and Annual Audited Financial Statements ~~continue to need to be submitted~~ to HUD ~~as required~~.

ORCF’s Risk Mitigation Branch administers HUD-held notes and manages the day-to-day issues as they arise with the Borrower and with the Operator if the Project is still in operation. The same levels of care and service provided to residents prior to the assignment are expected to be continued to be provided after the assignment. The Risk ~~Management~~Mitigation Branch will continue to explore practical options that preserve the value of the collateral securing the note to allow for maximizing the recovery on the claim paid from the FHA insurance fund.

B. **Note Sales.** Sales of Section 232 Program notes are managed by ORCF with the Office of Asset Sales (OAS~~,~~), which ~~coordinate~~coordinates the disposition of ~~FHA~~HUD-held single family, multifamily and healthcare mortgage notes. The OAS Loan Sale program is intended to minimize claim costs and maximize recoveries to the FHA insurance fund on performing and non-performing notes that were assigned to HUD under provisions of the National Housing Act. Notes sales are completed in compliance with the Debt Collection Improvement Act of 1996 which requires credit agencies with over $100 million in loan assets to sell delinquent loan assets that meet certain criteria and with OMB Circular Number A-11, Part 5, Section 185. It is noted that the mortgage note on the project is offered for sale, and it is not the project itself that is being offered for sale.

OAS contracts with a third party to oversee certain administrative functions and a Transaction Specialist to administer bidding-related aspects of note sales. The mortgage notes are secured by first liens on the project and are sold servicing-released and without FHA insurance. The second lien mortgage note (e.g., PPC/Second Mortgage Note) may be sold along with the first lien mortgage note on the project. The sales of Section 232 notes may take place in conjunction with the sale of other multifamily notes, or as a stand-alone sale of multiple healthcare notes. Details of upcoming of sales are announced in a Sales Announcement which can be viewed at the Asset Sales section of the Section 232 Program website. Information on upcoming note sales is also published in the Federal Register and via a print advertising campaign. The notes are offered individually and in pools, by collateral type, loan type, and geography. The notes are typically sold in a sealed-bid auction format~~ periodically.~~. However, notes have also been offered via online bidding conducted in real-time as an “English”, or “Outcry,” auction by OAS as an alternative sales process.

Parties interested in becoming a bidder must submit a Confidentiality Agreement and Qualification Statement which are provided by the Transaction Specialist. Among other things, it is noted that to become a Qualified Bidder, a party must not be in default on any FHA-insured or HUD-held loans and must not be in violation of any regulatory or business agreements on any projects insured by HUD. Borrowers with a performing loan(s) may bid on other loan(s) provided they are a Qualified Bidder but they cannot bid on their own loans in a sale. Qualified Bidders have access to a Bidder Information Package which has information about the loans, including Payment Histories, Asset Summary Reports, and Selected Attributes Loan Data. Qualified Bidders are eligible to submit questions in writing during a designated due diligence period. HUD will make every attempt to answer such questions ~~within forty-eight hours whenever possible.~~in a timely manner. OAS periodically informs the ORCF Risk Management Branch of Section 232 Program notes that have been assigned and whose related FHA claims have gone through full settlement and are thus eligible for a note sale. Notes that have been assigned, but whose claim has not yet been settled are not eligible for sale. ORCF’s Risk Management Branch will review the notes, and, after factoring in market conditions, timing, project-specific issues, feedback from OAS staff, and other qualitative factors, will then make a determination as to whether or not to include eligible notes on a case~~-~~-by~~-~~-case basis. In the pursuit of continuous improvement, ORCF statistically analyzes historical recovery rates of the notes sales under various parameters. In order to help further limit losses to the FHA insurance fund, historical recovery rates are factored into ORCF’s decision-making process when assessing the most appropriate course of action on a HUD-held note. Once ORCF’s Risk Management Branch has selected specific notes for an upcoming note sale, it is actively involved in assisting OAS in preparation for such sales. ORCF’s involvement includes compiling project-specific legal documents from the loan files, databases and other information to be used in the sales process by Qualified Bidders, participation in weekly OAS sale-specific working group meetings, and answering questions received from Qualified Bidders during the due diligence period.

The Borrower is also notified of the upcoming note sale and is reminded of its Regulatory Agreement compliance requirements and its payment obligations to HUD until notified that the note has been sold and closed. The Borrower may also be required to provide access to the project securing the loan for purposes of an environmental assessment, physical needs/site inspection, and/or market rent study. Additional documents that may be requested include recent rent rolls, financial statements, and copies of applicable licenses and certifications.

Notices are also sent to the Unit of Local Government (ULG) where the project is located to advise that HUD has acquired the mortgage for a healthcare development in their jurisdiction and is requesting input on disposition strategies which could benefit the city and its citizens. The ULG is also notified that as part of the disposition process, HUD has the statutory authority to allow a ULG to purchase the mortgage note outside of the auction process.

The marketing and due diligence period typically begins four weeks prior to when bids are due. Winning bids are then awarded and closings are scheduled to take place shortly thereafter. HUD does not provide any financing for these sales and purchasers must provide the full purchase price in cash. In some situations, upon review of the bids received and the level of bidder interest generated, a note may be removed from the auction and not sold if ORCF determines that a recovery may be greater if the note is instead offered at a subsequent note sale or if a new avenue of disposition is identified that would allow for a larger recovery. The decision to transfer funds from any reserve escrows to the winning bidder, or to apply those funds to enhance the recovery on the claim paid is assessed on a case-by-case basis by ORCF.

Additional information regarding current offerings and prior HUD note sales (including brochures, advertisements, results reports and successful bidder contact information) is available at the HUD OAS ~~on the Section 232 Program~~ website and via email at assetsales@hud.gov.