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| **Requests to Release or Modify Original Loan Collateral Checklist**  Section 232 | **U.S. Department of Housing**  **and Urban Development**  Office of Residential Care Facilities |

**Warning**: Anyone who knowingly submits a false claim or makes a false statement is subject to criminal and/or civil penalties, including confinement for up to 5 years, fines, and civil and administrative penalties. (18 U.S.C. §§ 287, 1001, 1010, 1012; 31 U.S.C. §3729, 3802).

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| **Project Name:** |
| **Project Number:** |
| **Applicant Name:** |

The Healthcare Regulatory Agreements for Borrowers and Operators provide language requiring prior HUD approval when the “Approved Use” of a facility changes or when the collateral securing an FHA-insured mortgage needs to be modified (see *Section 232 Handbook 4232.1, Section III Asset Management, Chapter 3.4 Request to Release or Modify Original Loan Collateral*). The Regulatory Agreements define “Approved Use” as the use of the Project for the operation of the Healthcare Facility as a certain *type of facility* with a *specific number of beds/units* in use, “and such other uses as may be approved in writing from time to time by HUD based upon a request made by Borrower, Master Tenant . . . or Operator, but excluding any uses that are discontinued with the written approval of HUD” (see *Section I.1. of Healthcare Regulatory Agreement – Borrower* and *Section 3 of Healthcare Regulatory Agreement – Operator*). The Regulatory Agreements also require the prior written approval of HUD for any additions to or subtractions from the Mortgaged Property[[1]](#footnote-2) or the Project[[2]](#footnote-3) (see *Section 34 of Healthcare Regulatory Agreement – Borrower* and *Section 5(b) of Healthcare Regulatory Agreement – Operator*). This checklist should be used to obtain prior HUD approval if the Approved Use of the subject Project is changing, or for revision to the Mortgaged Property or Project, including, but not limited to, the following:

* Reduction, sale or acquisition of beds, or a change in the type of beds
* Easements, eminent domain, or sale, disposition, or acquisition of land or other real property
* Remodeling[[3]](#footnote-4) portions of the mortgaged property
* Adding to, subtracting from, reconstructing, or demolishing portions of the mortgaged property.

**EARLY SUBMISSION REQUIREMENTS:**

A consultation with federally-recognized tribes may be required for activities that include ground disturbance (digging), installation of an underground tank, installation of utility lines, construction, etc. Tribal consultation must be initiated by HUD and the activity must not begin before HUD completes its environmental review. **If tribal consultation is required, please notify the ORCF Account Executive as early as possible or upon submission of your request for this transaction** **so that HUD can initiate a Tribal Consultation.** The documentation required for this early submission, outlined in Exhibit 35 of this checklist, should be sent to the following email address: [OHPTribeNotice@hud.gov](mailto:OHPTribeNotice@hud.gov).

**SUBMISSION REQUIREMENTS:**

* This checklist should only be used to obtain HUD approval for **Requests to Release or Modify Original Loan Collateral** transactions, as defined above, regardless of how those modifications will be financed (e.g., with or without advances from the reserve for replacement account).
* Lender shall transmit the checklist documents via the HUD Healthcare Portal (link [here](https://www.hud232portal.com/)). In the Portal, select *Asset Management > Project Request Form* > *Change in Collateral.*
* It is **critical** that you name each file according to the naming convention provided in the checklist **highlighted in green.** These highlighted numbers are important codes that “guide” the Portal system to recognize the type of transaction submitted, section number of the checklist, and the identity of the document. Therefore, using the naming conventions provided in the sample checklist that follows, appropriate file names for this submission package would include **99901-a\_Lender’s Narrative [OR] 99901-a\_LendersNarrative [OR] 99901-a\_LNarrative.** In all three examples, the critically important portion of the file name is the five-digit number, dash, letter, and underscore that have been highlighted in green on the checklist.

***Transaction Type:*** *Please check all that apply. For Change in Beds transactions only, complete Section I of the checklist. For Changes in Land and/or Other Changes in Collateral, complete Section II.*

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| **Change in Beds** | **Change in Land** | **Other Changes in Collateral** |
| Reduction of beds  Acquisition of beds  Sale of beds  Change in type of beds | Easements  Eminent domain  Sale, disposition or acquisition of land or other real property | Remodeling\*  Reconstructing  Demolishing portions  Expansion of building or parking lot (*without expanding the parcel*) |
| *\*See first page of Checklist for “remodeling” definition.* | | |

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| **No.** | **Item** | **Incl.** | **N/A** |
| **Section I: Change in Beds** | | | |
|  | **92401-a\_**Copy of completed Requests to Release or Modify Original Loan Collateral Checklist |  |  |
|  | **92402-a\_**Lender Narrative – Requests to Release or Modify Original Loan Collateral (Form HUD-90030-ORCF)  *When there is an increase/decrease in the licensed beds or the approved use of ANY unit type (such as conversions of SNF units to ALF units) impacting 10% or more of the units and/or where value is impacted, include participant’s justification supporting the request. Examples of appropriate justification would be an appraisal or Broker’s Opinion of Value.* |  |  |
|  | As-Proposed Budgets  Each including census mix and occupancy assumptions.   1. **92403-a\_**Stabilized Operating Budget (12 months) 2. **92403-b\_**Initial lease-up budget (monthly, initial occupancy to stabilized occupancy) |  |  |
|  | Licenses   1. **92404-a\_**Form HUD-92576A-ORCF, Certificate of Need for Health Facility and Assurance of Enforcement of State Standards 2. **92404-b\_**Copy of existing facility license 3. **92404-c\_**Copy of application for facility license if number of beds will increase   If the regulatory entity that issues the license(s) does not allow application for license(s) prior to submission of the application for Capital Improvements, HUD will accept a letter from the entity applying for the license(s), that covers the following: an explanation of the application process (with documented verification from licensing entity), identification of the entity that is anticipated to hold the license(s), and the number of beds that will be covered by the license(s). |  |  |
|  | **92405-a\_**Relocation plan during construction (if applicable) |  |  |
|  | **92406-a\_**Project Capital Needs Assessment (PCNA) (if applicable)  Provide if 10 years or more since last PCNA. |  |  |
|  | For projects that are selling and/or permanently transferring beds to another facility  NOTE: If beds are being transferred to another FHA-insured facility, that facility must also provide the documents listed in Section I of this checklist in a separate submission.  **92407-a\_**Release Instrument  Provide if beds being transferred need to be released from the Mortgage, Operator Security Agreement, Healthcare Regulatory Agreements and/or Master Tenant Security Agreement |  |  |
|  | For projects that are acquiring beds from the state and/or another facility  NOTE: If beds are being transferred from another FHA-insured facility, that facility must also provide the documents listed in Section I of this checklist in a separate submission.   1. **92408-a\_**Authority from State   Certificate of Need (CON), or other state authority for the additional beds, if applicable   1. **92408-b\_**Purchase and Sale Agreement 2. **92408-c\_**Bill of Sale   Or other document effectuating the transfer of the beds |  |  |
|  | For projects that are adding beds in a space not previously occupied as residential and where there is an above ground storage tank (AST)   1. **92409-a\_**Completed acceptable separation distance (ASD) calculations 2. **92409-b\_**Proposed mitigation plan (please review the [**Lender's Environmental Checklist**](http://portal.hud.gov/hudportal/documents/huddoc?id=223f-EnvChecklist_Apr2014.xlsx) for mitigation  guidance) |  |  |
|  | For projects that wish to amend the definition of “Approved Use” in the Healthcare Regulatory Agreements (optional)  **92410-a\_**Amendment to Healthcare Regulatory Agreement(s)  NOTE: HUD does not require amendment of the definition of “Approved Use” in the Regulatory Agreement(s), but HUD will consider requests to review and sign an amendment as a courtesy. |  |  |
| **Section II: Change in Land and Other Changes in Collateral** | | | |
|  | **92411-a\_**Copy of completed Requests to Release or Modify Original Loan Collateral Checklist |  |  |
|  | **92412-a\_**Lender Narrative for Requests to Release or Modify Original Loan Collateral (Form HUD-90030-ORCF)  *When there is an increase/decrease in the licensed beds or the approved use of ANY unit type (such as conversions of SNF units to ALF units) impacting 10% or more of the units and/or where value is impacted, include participant’s justification supporting the request. Examples of appropriate justification would be an appraisal or Broker’s Opinion of Value.* |  |  |
|  | As-Proposed Budgets  Each including census mix and occupancy assumptions.   1. **92413-a\_**Stabilized Operating Budget (12 months) 2. **92413-b\_**Initial lease-up budget (monthly, initial occupancy to stabilized occupancy) |  |  |
|  | **92414-a\_**Project Capital Needs Assessment (PCNA) (if applicable)  Provide if 10 years or more since last PCNA |  |  |
|  | Easements and Maintenance Agreements  These documents must be legible.   1. **92415-a\_**Existing 2. **92415-b\_**Proposed |  |  |
|  | **92416-a\_**Documents related to Eminent Domain proceedings (if applicable) |  |  |
|  | Purchase or Sale Documents (in connection with selling or acquisition of land/buildings)   1. **92417-a\_**Purchase contract and amendments **{OR}** 2. **92417-b\_**Option Agreement |  |  |
|  | **92418-a\_**Deed/Ground Lease (if applicable)  Including HUD requirements/provisions outlined in HUD-92070-ORCF, Lease Addendum |  |  |
|  | **92419-a\_**ALTA/ACSM Land Title Survey  Provide if this transaction will cause changes to the insured legal description. See HUD-91111-ORCF, Survey Instructions and Borrower’s Certification for applicability. Electronic version of the survey must be legible when expanded. |  |  |
|  | **92420-a\_**Plans and Specifications |  |  |
|  | **92421-a\_**State Licensing Approval of Plans/Building Permits  Provide documentation from the State licensing authority demonstrating that any required plan reviews have been completed. If the State is unwilling to prepare a letter, provide copies of review comments or a certification from the mortgagor’s design architect that the appropriate reviews have been requested from the State. |  |  |
|  | **92422-a\_**HUD-935.2D-ORCF, Affirmative Fair Housing Marketing Plan  Applicable if adding new beds or units AND loan falls under Section 232 NC/SR or Section 241a (AFHMP is not required if project is a Section 223(f) or 223(a)(7)). |  |  |
|  | Assurance of Completion  Applicable if new buildings or other improvements are being constructed   1. **92423-a\_**Commitment Letter from Surety/Performance Bond **{OR}** 2. **92423-b\_**Commitment Letter from Bank for Letter of Credit |  |  |
|  | Owner-Architect Agreement on AIA Form B108  Required only if an Architect is involved.   1. **92424-a\_**Design and Supervisory Architect 2. **92424-b\_**Design Architect only 3. **92424-c\_**Supervisory Architect only 4. **92424-d\_**Other(s) |  |  |
|  | **92425-a\_**Owner-Contractor Agreement on AIA Form A107  Required only if a General Contractor is involved. |  |  |
|  | Evidence of Compliance  Evidence should address requirements for rebuilding if partially destroyed.   1. **92426-a\_**Zoning (if applicable) 2. **92426-b\_**HUD-91130-ORCF, Building Codes 3. **92426-c\_**Verification of Zoning and Code Variances 4. **92426-d\_**CMS Fire Safety Requirements for Long-Term Care Facilities, Automatic Sprinkler Systems (if applicable) |  |  |
|  | Municipal Inspection Reports   1. **92427-a\_**Fire Marshall 2. **92427-b\_**State Health Department 3. **92427-c\_**Verification that health standards are met for private sewer or water  systems |  |  |
|  | **92428-a\_**Relocation plan during construction (if applicable) |  |  |
|  | **92429-a\_**Commercial space leases (if applicable) |  |  |
|  | **92430-a\_**Real Estate Tax Abatement/Exemption (if applicable) |  |  |
|  | Title  Applicable if amendments to the HUD Loan Documents\* are being recorded in the public records due to this transaction.   1. **92431-a\_**Existing Title Insurance Policy 2. **92431-b\_**Pro Forma Date-Down Title Insurance Endorsement or New Title Insurance Policy, with necessary endorsements attached 3. **92431-c\_**Exception documents  Exception documents, title exceptions and survey noted exceptions should match. Exception documents must be provided for all new items recorded after the existing title insurance policy. These documents must be legible.   ***\*Loan Documents*** *means the Security Instrument, the Note, the Borrower Regulatory Agreement, the Master Tenant Regulatory Agreement, if applicable, the Operator Regulatory Agreement, and all other agreements, instruments, and documents which are now existing or are in the future required by, delivered to, and/or assigned to Lender and/or HUD in connection with or related to the Loan, whether executed or delivered by or on behalf of Borrower or Operator or Master Tenant, if applicable, as such documents may be amended from time to time, provided that the Borrower-Operator Agreement and the Master Lease, if applicable, and any amendments thereto shall not be considered Loan Documents.* |  |  |
|  | Amendments to HUD Loan Documents  Applicable only if the insured legal description is changing as a result of this transaction.   1. **92432-a\_**Amendment to [and/or Partial Release of] Security Instrument/Mortgage/Deed of Trust 2. **92432-b\_**Amendment to Healthcare Regulatory Agreement – Borrower 3. **92432-c\_**Operator’s Omnibus Amendment to Regulatory Agreement Security Agreement, Assignment of Leases and Rents, Operating Lease and Memorandum of Operating Lease 4. **92432-d\_**Master Tenant’s Omnibus Amendment to Regulatory Agreement, Security Agreement, Assignment of Leases and Rents, Master Lease and Memorandum of Master Lease (if applicable) 5. **92432-e\_**Amendments to UCC Financing Statements |  |  |
| **ENVIRONMENTAL REQUIREMENTS for Section II Transactions** | | | |
|  | Environmental Review  A new Phase I ESA in accordance with ASTME 1527-13 (or the most recent edition) is required if the activity being approved involves: (1) significant ground disturbance (digging) or construction not cointemplated in the original application; (2) a change in land use not contemplated by the original risk-based mitigation conducted on the site (i.e., from commercial to residential; (3) site expansion or addition; and/or (4) any other activities that may result in contaminant exposure pathways or activities not contemplated in the original application.   1. **92433-a\_**Phase I Environmental Report 2. **92433-b\_**Draft HUD-4128 and additional reports (if applicable) 3. **92433-c\_**Phase II Environmental Report (if applicable) 4. **92433-d\_**Biological Assessment (if applicable) 5. **92433-e\_**Standard Flood Hazard Determination Form, FEMA No. 086-0-32 6. **92433-f\_**Other (if applicable): *[describe]* |  |  |
|  | **92434-a\_**State Historic Preservation Office letter/requirements  Provide all information that was sent to the SHPO and any response received. |  |  |
|  | Tribal Notification Information  ORCF must complete the Tribal Notification process, please review the [**Lender's Environmental Checklist**](http://portal.hud.gov/hudportal/documents/huddoc?id=223f-EnvChecklist_Apr2014.xlsx) for activities that may require Tribal consultation, including ground disturbance (digging), installation of an underground tank, installation of utility lines, construction, etc.. Tribal consultation must be initiated by HUD and the activity must not begin before HUD completes its environmental review. **If tribal consultation is required, the ORCF Account Executive should be notified as early as possible or upon submission of your request for approval of capital improvements** **so a Tribal Consultation can be initiated by HUD.** The documentation required for this early submission should be sent to the following email address: [OHPTribeNotice@hud.gov](mailto:OHPTribeNotice@hud.gov).To assist ORCF with this process, please provide the following:   1. **92435-a\_**Project description (Provide a very detailed description of the type of project, purpose of the project, the proposed activities/site work, and the current condition of the site [e.g., what is on the site now], and the estimated cost of the proposed activities) 2. **92435-b\_**Maps (Location map, aerial view, site layout map and topographic map) |  |  |
|  | Floodplain (required if change in building footprint or legal description [e.g., adding land]) The following information is required if the site is located in a 100- or 500-year floodplain. Exception: The 8-step process is not required for HUD’s approval of a project site when only an incidental portion of the site is situated in an adjacent floodplain when: (i) The construction (including existing improvements) and landscaping activities (except for minor grubbing, clearing of debris, pruning, sodding, seeding, etc.) do not occupy or modify the 100- or the 500-year floodplain; (ii) appropriate provision is made for site drainage; and (iii) a covenant or comparable restriction is placed on the property’s continued use to preserve the floodplain.   1. **92436-a\_**Evidence of participation in an early warning system 2. **92436-b\_**Emergency evacuation and relocation plan 3. **92436-c**\_Identification of evacuation route(s) out of the 500-year floodplain 4. **92436-d**\_Identification marks of past or estimated flood levels on all structure 5. **92436-e**\_Evidence that current or prospective tenants have been or will be informed of the flood hazard 6. **92436-f\_**Conditional Letter of Map Revision (CLOMR) from FEMA that will remove the property from the FEMA-designated 100-year floodplain when the conditions are met 7. **92436-g**\_Narrative   Narrative should explain reasons why the proposal must be located in a floodplain. Alternative sites (Identify all practicable alternative sites outside the floodplain that were considered within the local housing market area, the local public utility service area, or whichever geographic area is more appropriate. The actual sites must be identified and the reasons for the non-selection of those sites as practicable alternatives must be described.)   1. **92436-h**\_All mitigation measures to be taken to minimize adverse impacts and to restore and preserve natural and beneficial values |  |  |
|  | Aboveground Storage Tank (AST) Information:  Existing or proposed AST(s) of explosive or flammable hazards located on-site or directly visible from the site provide:  For projects that are not adding beds:  A conformance letter must be requested from the local fire department that specifically addresses the safety of the AST.   1. **92437-a\_**Letter that was sent to the Fire Department (required) 2. **92437-b\_**Conformance letter received from the Fire Department 3. **92437-c\_**Completed acceptable separation distance (ASD) calculations (required when the Fire Department did not provide a conformance letter) 4. **92437-d\_**Proposed mitigation (please review the [**Lender's Environmental Checklist**](http://portal.hud.gov/hudportal/documents/huddoc?id=223f-EnvChecklist_Apr2014.xlsx) for mitigation guidance)   For projects that are adding beds in a space not previously occupied as residential:   1. **92437-e\_**Completed acceptable separation distance (ASD) calculations 2. **92437-f**\_Proposed mitigation plan (please review the [**Lender's Environmental Checklist**](http://portal.hud.gov/hudportal/documents/huddoc?id=223f-EnvChecklist_Apr2014.xlsx) for mitigation  guidance) |  |  |
| **FINAL SUBMISSION DOCUMENTS** | | | |
|  | **92438-a\_**Final Submission Documents *(as applicable)*  When uploading, please clearly identify what the document is in the file name. |  |  |

1. *This term is defined in the Security Instrument/Mortgage/Deed of Trust, form HUD-94000-ORCF to include the Land, the Healthcare Facility, the Improvements, the Fixtures, the Personalty, any and all licenses, bed authority, and/or certificates of need required to operate the Healthcare Facility, and more.* [↑](#footnote-ref-2)
2. *As defined in the Security Instrument/Mortgage/Deed of Trust, form HUD-94000-ORCF, “****Project****” means any and all assets of whatever nature or wherever situated related to the Loan, including without limitation, the Mortgaged Property, any Improvements, and any collateral owned by the Operator securing the Loan.* [↑](#footnote-ref-3)
3. *The various forms of Borrower and/or Operator Regulatory Agreements existing on residential care facility projects require written approval from HUD prior to remodeling, adding to, subtracting from, reconstructing, or demolishing a portion of the mortgaged project.* ***“Remodeling,”*** *for purposes of this Section, is defined as repairs/improvements that constitute* ***“Substantial Rehabilitation,”*** *as defined in the Section 232 Handbook 4232.1, Section II Production, Chapter 2.6.B:*

   *Hard costs exceed 15% of the project’s value after completion of improvements****.*** *(Note: No new appraisal is needed. Lender/Applicant may present evidence of reasonable value (i.e., cap rate, current income/assets, original appraisal, etc.). OR*

   *Two or more major building components are being substantially replaced. The component must be significant to the building and its use, normally expected to last the useful life of the structure, and not minor or cosmetic. Substantially replaced means that at least 50% of the component must be replaced. Examples of major building components are: roof structures, wall or floor structures, foundations, plumbing systems central heating systems, air conditioning systems, and electrical systems.* [↑](#footnote-ref-4)