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Section III Asset Management

Chapter 4 Financial Operations

4.1 Introduction

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9 This chapter addresses loan servicing related to the financial operations of projects insured under
10 Section 232. For the purposes of this chapter, the term “Mortgagee/Servicer” means the primary
11 Servicer responsible for servicing the mortgage loan, whether such party is the originating
12 Lender or third-party Servicer for the originating Lender.
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4.2 Financial Submission Requirements

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16 The *Healthcare Regulatory Agreement - Borrower* (Forms HUD 92466, HUD 92466-EH and
17 HUD 92466-ORCF) requires the submission of audited annual financial information for the
18 Borrower. Additionally, amendments in 2012 to the Uniform Financial Reporting Requirements
19 rule (24 CFR 5.801 et seq.), applicable to all Section 232 Operators (amendments addressed in
20 this chapter and also delineated in the *Healthcare Regulatory Agreement – Operator*, Form HUD
21 92466A-ORCF) require submission of quarterly/year-to-date and annual financial statements
22 from the Operator. This same 24 CFR 5.801 requires that financial submissions for all Section
23 232-related projects (both Borrower and Operator) be submitted concurrently to HUD and the
24 Mortgagee/Servicer.
25

26 Borrowers are required to submit their annual financial statements within ninety days of their
27 fiscal year end into the Financial Assessment Subsystem (FASS), which uploads the financial
28 statements into the Integrated Real Estate Management System (iREMS), which ORCF uses in
29 its routine asset management of projects. Guidelines for accounting from HUD’s Real Estate
30 Assessment Center (REAC), revised submission procedures formulated in 2004, and the
31 guidelines for REAC submissions, can be found on the REAC website.
32

33 HUD systems perform an analysis of the financial submission of the Borrower to measure the
34 financial condition of the project and to assess compliance with applicable laws, regulations, and
35 business documents. HUD requires Borrowers to submit audited financial statements each year
36 to the Mortgagee/Servicer and to HUD. HUD analyzes these financial statements to assess
37 compliance with program requirements, to evaluate the financial strength of the Borrower, and
38 for many other purposes. Mortgagee/Servicers should conduct their examination to the extent
39 necessary to classify asset values and make risk assessments.

40
41 A. FASS performs an initial assessment of the financial condition of the Borrower’s statement,
42 as well as a review of the project’s compliance with applicable laws, regulations, and
43 business documents. Compliance deficiencies identified either by this assessment or the
44 project’s auditor may be referred to ORCF or the Departmental Enforcement Center (DEC).

45
46 ~~A. Borrower Submission Requirements:~~

47 B. In addition to Regulatory Agreement financial submission requirements, the Uniform
48 Financial Reporting Requirements rule (24 CFR 5.801 et seq.) requires the electronic
49 submission to HUD and the Mortgagee/Servicer of Borrower financial information prepared
50 in accordance with Generally Accepted Accounting Principles (GAAP).

- 51
52 1. ~~For-Profit Borrowers~~ are required to electronically submit an audited Annual
53 Financial Statement (AFS) within 90 days after the end of each fiscal year,
54
55 2. Non-profit Borrowers are required to electronically submit a Borrower-certified
56 (unaudited) AFS within 90 days after the end of the fiscal year. An electronically
57 submitted, audited AFS is due no later than nine months after the end of the fiscal
58 year pursuant to 2 CFR 200. The Borrower may opt to submit the audited AFS
59 within 90 days after the end of the fiscal year. By submitting the audited AFS within
60 90 days the Borrower may eliminate the additional step of submitting a Borrower-
61 certified AFS. ORCF recommends Borrowers refer to 2 CFR 200 Subpart F for
62 current exemption thresholds as well as how to calculate the amount of federal
63 financial assistance received.
64
65 3. Non-profit Borrowers (receiving less than ~~\$500750~~,000 annually in combined federal
66 assistance) are required to electronically submit a Borrower-certified AFS within 90
67 days after the end of the fiscal year.

68
69 C. The HUD systems review of the Borrower’s financial statement in FASS may generate an
70 “AFS Evaluation Financial Risk” action in the HUD system. The Account Executive (AE)
71 will review the action and contact the project or Mortgagee/Servicer for additional details or
72 actions necessary to comply with the FASS deficiency. Commonly, if an “AFS Evaluation
73 Financial Risk” action is generated, or if other conditions indicate ongoing financial issues,
74 the Account Executive may require submission of a Monthly Accounting Report, which
75 consists of Monthly Report for Establishing Net Income, Form HUD-93479-ORCF, Schedule
76 of Disbursements, Form HUD-93480-ORCF and Schedule of Accounts Payable, Form HUD-
77 93481-ORCF. The Borrower must continue to submit these forms until advised by the
78 Account Executive that submissions should cease.

79
80 D. Operator Submission Requirements:

- 81
82 1. As set forth in 24 CFR Part 5.801 and in the Healthcare Regulatory Agreement-
83 Operator, Section 232, Form HUD-92466A-ORCF, unless otherwise specified by
84 HUD, Operator shall submit, to the Lender on a quarterly and year-to-date basis (or
85 more frequently if specified by HUD), ~~prepared and certified by an authorized~~

86 representative or agent of Operator, such financial reports relating to the operation of
87 the Healthcare Facility in the formats and at such times as may Project. These
88 reports must be approved by HUD prepared in accordance with Program
89 Obligations GAAP and certified by an authorized representative of Operator.
90

- 91 2. Detailed requirements for Operator quarterly and year-to-date submissions reports will
92 be conveyed updated via the Section 232 Program website. HUD would anticipate that
93 for most operators, such reports will be of a type kept in their ordinary course of
94 business, but must, as a minimum include the following financial statements prepared
95 in accordance with GAAP. Reports prepared on the tax basis will not be accepted:
96

- 97 • Such Balance Sheet
- 98 • Profit & Loss Statement/Statement of Operations
- 99 • Statement of Cash Flows
- 100 • Schedule of Disbursements
- 101 • Schedule of Aging Accounts Receivable
- 102 • Schedule of Aging Accounts Payable
103

104 Once the financial reports are received, the Mortgagee/Servicer will determine the
105 Period Ending, Months in Period, Total Operating Revenues, Operating Expenses,
106 FHA Insured Principal and Interest Payment, FHA Mortgage Insurance Premium
107 (MIP), the Actual Number of Resident Days and other data fields that HUD may
108 identify. The Mortgagee/Servicer will then load the information into the Section 232
109 Portal Website using the prescribed upload format. The definitions and data format
110 required for the submission can be found on the 232 Portal Website as a tab under the
111 upload template link.
112

- 113 3. Unless changed in the Federal Register, the reports must be submitted no later than
114 sixty (60) days after the period covered by the reports, except for reports relating to
115 the final quarter of each year, which shall be submitted no later than ninety (90) days
116 after end of the fiscal year. Within 30 days of the report's receipt by the Lender, the
117 Lender must submit the information to ORCF's 232 Portal. Such reports are subject
118 to the sanctions contained in 18 U.S.C. Sections 1001, 1010, 1012 and 404212 USC
119 §1735f.-15.
120

- 121 4. Based on indications of facility risk, ORCF may request Operators and/or Borrowers
122 to submit monthly accounting reports using prescribed formats. These reports are
123 submitted by the Operator and/or Borrower to both the Mortgagee/Servicer and
124 ORCF.
125

126 E. Ongoing Master Tenant Financial Requirements:
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128 As required in the Healthcare Regulatory Agreement-Master Tenant,
129 Form HUD-92337-ORCF, Master Tenant shall submit, or cause to be submitted, to
130 HUD and Mortgagee/Servicer, on a quarterly and year-to-date basis (or more
131 frequently if specified by HUD), prepared, and certified by an authorized

132 representative or agent of Master Tenant, such financial reports relating to the Master
133 Tenant. ~~Such reports~~ Reports must be submitted no later than sixty (60) days after
134 the period covered by the reports, except for reports relating to the final quarter of
135 each year, which shall be submitted no later than ninety (90) days after end of the
136 fiscal year. Such reports are subject to the sanctions contained in 18 U.S.C. Sections
137 1001, 1010, and 1012. Additional information regarding the procedure and format
138 for submitting the Master Tenant financial submission will be provided for on the
139 Section 232 Program website.

140
141 E.F. Midsize and Large Portfolio Post Closing Quarterly Financial and Operational Review
142 and Analysis:

143
144 For the entity that was the subject of a corporate credit review, HUD will require ongoing
145 submission of the same financial and operational information. The data to be collected will
146 be similar to that required during the initial review ~~material, and made.~~ The electronic
147 procedure for submitting the data will be available on the Section 232 Program website.
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4.3

Financial Assessment System (FASS) Submissions

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151 A. The Borrower must notify their Mortgagee/Servicer within two business days of receiving a
152 Notification of Failure to File Financials by the required deadline in Financial Assessment
153 System (FASS).

154
155 This notification is sent automatically to the email the project registered in the system when a
156 deadline for submission of annual financial information is missed. The Borrower must
157 submit the Operator's and/or Borrower's Notification to HUD of Threats to Permits and
158 Approvals, Form HUD-93335-ORCF. Reference Handbook Section III, Chapter 3.10 for
159 additional notification requirements.
160

- 161 B. Once notified, the Mortgagee/Servicer must work with the Borrower to ensure submission is
162 forthcoming, ~~and address any delays and address any delays.~~ The Mortgagee/Servicer must
163 submit Servicer's Notification to HUD of Risks to Healthcare Project, Form HUD-93334-
164 ORCF consistent with the timeframes listed in the form.

165
166 The Mortgagee/Servicer must notify the AE if there are extenuating circumstances that are
167 preventing the immediate submission, and provide the AE with the action plan to submit the
168 required information expeditiously.

- 169
170 C. Extended periods without filing FASS requirements by the deadline will warrant referral to
171 the DEC, and additional actions may be taken by HUD to ensure compliance.
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4.4

Financial Risk Metrics of Operator

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A. Key Indicators

The annual and quarterly review of the project operations by the Operator, coupled with the annual Borrower financial submissions, will allow both HUD and the Mortgagee/Servicer to maintain an ongoing understanding of performance. Key indicators of the Operator financial statements will be used to monitor performance and to measure against future routine reviews. Typically, the annual and quarterly reviews are all that are necessary for monitoring the financial operations of a project; however, HUD does reserve the right to require monthly financial reports (of the Operator, the Borrower, or both) to be submitted (to HUD, the Mortgagee/Servicer or both) if financial indicators suggest this level of monitoring is needed or if noncompliance with HUD business agreements (by the Borrower, Operator or Management Agent) is suspected.

If the Borrower is the same legal entity as the Operator, then the Borrower itself will submit the Operator financial data. Detailed instructions for the submission of quarterly and annual Operator financials, using the Section 232 Healthcare Portal, may be found on the Section 232 Program website.

~~B. Withdrawal of Project Funds (Distributions)~~

[B. Post-Closing Mezzanine Debt Financing-Reference Section II, Chapter 3.4. of this Handbook for additional information.](#)

C. Lease Payment Changes

If a change in the lease payment is contemplated, a Lease Payment Analysis should be conducted to evaluate the change to determine if it enhances or improves the financial stability of the Project. Lease payments must be sufficient to (1) enable the Borrower to meet debt service and impound requirements; and (2) enable the Operator to properly maintain the Project and cover operating expenses. The minimum annual lease payment must be at least 1.05 times the sum of the annual principal, interest, mortgage insurance premium, reserve for replacement deposit, property insurance and property taxes. Reference Section II, Chapter 8.6 of this handbook for additional information.

4.5

Withdrawal of Funds from Borrower Entity or Operator Entity

A. As set forth in federal regulation 24 CFR 232.254, and applicable only to transactions for which a firm commitment has been issued on or after July 12, 2013, with mortgage insurance transactional documents consistent with the regulation (see ~~in the~~ particular ~~the~~ ORCF *Healthcare Regulatory Agreement—Operator, Borrower* and specifically Sections 15 and 16 thereof), a Borrower may make and take distributions of mortgaged property, to the extent and as permitted by the law of the applicable jurisdiction, provided that:

218 1. The Borrower is in compliance physically, financially and with all legal documents
219 signed by HUD and other program obligations, in order for the Borrower to take any
220 distributions or surplus cash.

221
222 4.2. The calculation shall be made no less frequently than semi-annually.

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224 2.3. The Borrower must demonstrate positive surplus cash. To the extent that surplus cash
225 is negative, the Borrower must repay any distributions taken during such calculation
226 period within 30 calendar days, unless a longer time period is approved by HUD.

227
228 3.4. The Borrower shall be deemed to have taken distributions to the extent that surplus
229 cash is negative, unless in conjunction with the calculations of surplus cash, the
230 Borrower provides to HUD documentation evidencing, to HUD's reasonable
231 satisfaction, a lesser amount of total distributions was taken.

232
233 Note, however, that the distributions of an Operator in transactions for which a firm
234 commitment was issued on or after July 12, 2013, are governed separately by 24 CFR
235 232.1013, and if a Borrower and Operator are the same legal entity then that entity's
236 distributions are constrained by both the Borrower restrictions and the Operator restrictions.

237 238 C. Mortgagee/Servicer's Analysis of Its Overall Portfolio

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240 Certain non-profit Borrowers may be allowed distributions depending on the form of
241 Regulatory Agreement issued. Please reference the specific Regulatory Agreement in force
242 for the particular Project in order to assure these provisions apply. Appendix 4.1, "Borrower
243 Distributions Chart-Guidance on the Regulatory Agreements Regarding Distributions and
244 Residual Receipts" is provided for reference.

245 246 B. Borrower Advances and Contributions

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248 If the Borrower has advanced funds to the Project for operational or other expenses and
249 expects repayment of that advance with or without interest, advance notification of ORCF is
250 required, regardless of the issuance of a corresponding Surplus Cash Note. Reference
251 Section III, Chapter 3.4.5 of this handbook for further guidance. Only surplus cash can be
252 used to repay recognized Borrower Advances.

253
254 If a Borrower contributes funds to the Project for operational or other expenses, or for any
255 other reason with no recourse, no advance ORCF notification is required. Advances and
256 Contributions should be recorded in the financial records.

257 258 **4.6**

Mortgagee/Servicer's Analysis of Its Overall Portfolio

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260 To have a full and accurate picture of the financial condition of its portfolio,
261 Mortgagee/Servicers must assess the probability that existing loans might not be repaid.

262 Mortgagee/Servicers will need to estimate the losses that could be incurred and to establish
263 procedures for assessing the risk inherent in each loan in their portfolios. An annual meeting
264 between a Mortgagee/Servicer and their assigned AE(s) should be conducted to align risk
265 mitigation efforts. The Mortgagee/Servicer shall contact the AE when the project is
266 experiencing operational challenges ~~which may~~that warrant discussions amongst the parties.
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