

Section II Production

Chapter 9 Closings

9.1

Introduction

- A. After the Firm Commitment is issued, the closing of a Section 232 project is a collaborative effort primarily among the ORCF Closing Coordinator (hereinafter referred to as the “Closer”), the HUD Closing Attorney (hereinafter referred to as the “HUD Attorney”), the Lender’s Attorney, and the Lender. This Chapter focuses mostly on the closing roles and requirements of the Closer and the Lender. In addition to the requirements set forth in this Chapter, and Appendix 9.2, Electronic Closing Guidance more detailed requirementsclosing protocols for the Lender’s Attorney and HUD Attorney aremay be distributed by the HUD Office of General Counsel and made available on HUD’s website. The contents within this Chapter are not intended to be and must not be interpreted as legal guidance.
- B. **Lender’s Responsibilities.** Lenders are strongly encouraged towill engage and be represented by competent legal counsel experienced in HUD closings throughout the loan application and closing document preparation and submission process. Lenders should not rely on personnel other than their legal counsel, and legal support staff under the careful oversight of legal counsel, in preparing and submitting closing documents. It is HUD’s experience that Lenders that rely on personnel other than those with proper legal training and experience often submit incomplete closing documents with numerous errors. This practice unnecessarily consumes HUD staff time and greatly increases the chances for disruptive and delayed closings, which ultimately becomes more expensive to the parties. At the HUD Closing-Attorney’s discretion and in accordance with professional responsibility standards, the HUD Closing-Attorney may decline to communicate with anyone other than the Lender’s attorneyAttorney with respect to the transaction and may also reject any closing document (s) that is incomplete.

9.2

The ORCF Closer

ORCF utilizes a Closer for all of its closings. A Closer will be assigned to a project after the Firm Commitment has been issued. The Closer serves as the main point of contact for ORCF and will work closely with all of the parties to ensure that ORCF program and administrative

requirements are satisfied prior to closing. The Closer's responsibilities include, but are not limited to, the following:

A. Draft Closing Documents.

1. Upon assignment, the Closer will send an introductory email to the Lender and the Lender's Attorney with directions on the delivery of the draft closing documents to the Closer. If the closing documents are incomplete or substantially incorrect, the project may be marked inactive, removed from the Closer's assignments, and placed back in the closing queue. Once a complete/acceptable closing package is received and verified, the project will be marked as active and reassigned to a Closer as availability allows. The Closer will remain the primary point of contact and be available to respond to all closing related questions, concerns and/or issues after discussion with appropriate internal and external parties.
- ~~2. The appropriate closing checklist must be placed in front, on top of the closing package. (Closing document checklists are referenced in Appendix 9.1.) Documents must be tabbed according to the corresponding number on the checklist. All documents must be submitted in one hard copy package. The closing package must also contain evidence that all Special Conditions have been satisfied.~~
- ~~3.2.~~ HUD anticipates that the documents in every submission are the final drafts of documents that all parties to the transaction have agreed upon prior to submission. If documents need additional review by the parties or by third parties, then the submission must be held by the Lender until all issues can be resolved and final draft versions of documents can be — submitted for HUD review.
- ~~3. Portal Submission: A complete electronic draft Closer package, as required by the checklist, must be uploaded to the ORCF Portal. A complete set of the documents listed on the HUD Attorney Closing Punchlist must be submitted electronically to the HUD Attorney for legal review in accordance with Appendix 9.2, Electronic Closing Guidance.~~
- ~~4. The closing package must include both a clean copy of each document and a redline of the document against the HUD form where applicable. HUD's OMB-approved form documents includes blank spaces for insertion and bracketed alternatives to accommodate project specific information. Lender's Attorney is responsible for completing HUD's OMB-approved forms through insertions in blanks, the selection of bracketed language, formatting documents for signature and recordation (including separating and marking counterpart signature pages), and insertion of signature and notary blocks. Inapplicable provisions (e.g., inapplicable construction provisions in refinance transactions) should be shown as strikethroughs. Theses strikethroughs alert HUD and the Lender to modifications during the loan servicing period and mitigate shifting document numbers and paragraphs. For HUD closing documents that provide bracketed alternatives, the preparer may remove or strike through the alternatives that do not apply. For example, sections of the Note (form HUD-94001-ORCF) provide~~

84 bracketed alternatives for interest rate definitions, payment provisions, prepayment
85 provisions, and endorsement panels. The form completion changes outlined in this
86 paragraph are not considered substantive changes and do not require explicit HUD
87 approval.

88
89 4.5. If a document is being resubmitted in response to HUD comments, that second
90 submission must include both a clean copy of the document and a redline against the
91 earlier submission. ~~All proposed changes must be approved by both the Closer and~~
92 ~~HUD Attorney.~~

93
94 For proposed substantive changes to OMB-approved HUD forms (that do not meet
95 the criteria outlined in the first paragraph), the Lender must submit a detailed
96 explanation to justify the requested changes. The request will be reviewed by the
97 Closer and HUD Attorney, as appropriate, and in their sole discretion, may
98 recommend approval to the appropriate HQ office. Final approval for changes to a
99 HUD-form may only be granted by Headquarters. All proposed changes to non-HUD
100 forms must be approved by the Closer or the HUD Attorney, as applicable.

101
102 5.6. The Closer will review the draft closing documents to ensure that all programmatic
103 requirements are met, all Special Conditions have been satisfied, and any repairs have
104 been acceptably completed with adequate evidence. The Closer will notify the
105 Lender, the Lender's Attorney, and the HUD Attorney of any deficiencies. The HUD
106 Attorney will ~~perform a similar, but~~ review the documents for legal, review
107 sufficiency and will notify the Closer and Lender's Attorney of any deficiencies. The
108 HUD Attorney will provide written comments on the initial closing document
109 submissions to Lender's Attorney by e-mail (comments may be included in a separate
110 document attachment(s) or within the body of the e-mail). All deficiencies must be
111 cured prior to ~~establishing~~ confirming a closing date. Failure to cure deficiencies will
112 lead to a canceled or delayed closing.

113
114 6.7. Piece-meal deficiency responses will not be accepted. Instead, responses to
115 deficiencies must be submitted together in one e-mail or package with a written
116 explanation. The written explanation must clearly identify which documents are
117 attached and what changes have been made. ~~Lender's Attorney will ensure that~~
118 responsive comments are transmitted in an organized manner that allows the HUD
119 Attorney and Closer to quickly identify and resolve each comment (i.e. list of
120 responsive document(s) labeled to match a corresponding HUD comment). Lender's
121 Attorney must ensure that revised electronic documents are appropriately labeled (e.g.
122 by version number or date) to avoid any confusion with a prior draft. If the HUD
123 comments were particularly extensive, Lender's Attorney should first confirm the
124 preferred means of response (i.e. e-mail or an updated download link)

125
126 B. **Amendments to the Firm Commitment.** Requests to amend the Firm Commitment must
127 be submitted to the Closer on ~~Lender~~ Lender's letterhead; the request must list the proposed
128 amendments and attach the proper documentation. The Closer will review and, if
129 appropriate, prepare, execute, and distribute the amendment.

- 130
- 131 C. **Completion of Repairs.** If required by the Firm Commitment, the Closer will ensure that
- 132 repairs are completed. The Closer will review evidence of completion, including supporting
- 133 photographs and invoices, and the Borrower's Certification— Completion of Critical
- 134 Repairs (Form HUD-91118-ORCF). For ~~non~~Non-critical or Borrower elected repairs, the
- 135 Closer will review the Escrow Agreement for Non-critical; Deferred Repairs (Form HUD-
- 136 92476-ORCF) and list of repairs to be completed. For ~~non~~Non-critical or Borrower elected
- 137 repairs completed prior to closing, the Closer will review evidence of completion
- 138 (photographs and invoices) and the Borrower's Certification-~~Full or Partial~~ Completion of
- 139 Non-Critical Repairs (Form HUD-92117-ORCF). If any remaining repair items are not
- 140 completed, the Closer will review and approve a request for amendment to the Firm
- 141 Commitment with a revised list of repairs. Please note that the Green MIP Non-critical repair
- 142 list cannot be changed at closing without written prior approval of the Energy Professional.
- 143
- 144 D. **Survey and Title.** If necessary, the Closer will coordinate resolution of any issues related to
- 145 the title and ALTA survey. If the date of the survey or most recent update is more than 120
- 146 days prior to the closing date, the survey must comply with Section II of form HUD-91111-
- 147 ORCF and the required certification must be completed and signed. ORCF expects covenants
- 148 that run contrary to the Fair Housing Act or other civil rights laws to be removed. To avoid
- 149 delays in closing, the parties should discern early whether such covenants exist and, if so,
- 150 immediately commence necessary actions to remove them. Initiating this effort obviously
- 151 involves having a title search conducted early in the application process. In the event that,
- 152 despite such timely and ardent effort, the parties are not able to timely obtain removal of the
- 153 covenant, then, in order to avoid a closing delay, ORCF would expect those efforts to be
- 154 clearly documented and would expect documents to be executed affirmatively
- 155 acknowledging the unenforceability of such provisions and repudiating them. A certification
- 156 signed by the parties involved, certifying they will work to have the covenants removed post-
- 157 closing as expeditiously as possible, is required prior to Closing.
- 158
- 159 E. **Management Conference Call.** If applicable, the Closer will ensure that a conference call
- 160 between the ORCF servicing Account Executive for the project and the Borrower occurs
- 161 prior to closing.
- 162
- 163 F. **Closing Statements and Cost Certifications.** The Closer will review and examine all
- 164 closing statements and, if applicable, cost certifications (e.g., the Borrower's Certificate of
- 165 Actual Cost (Form HUD-2205A-ORCF~~7~~)). The Closer will review all supporting documents
- 166 such as the payoff letters and invoices.
- 167
- 168 G. **Execution of ORCF Closing Documents.** Once all program and legal requirements are
- 169 met, the Closer will work with the Lender's Attorney, the Lender, and the HUD Attorney to
- 170 ensure that HUD signatory closing documents are signed by the appropriate ORCF
- 171 Authorized Agent in advance of the closing. Documents must not be sent for ORCF's
- 172 signature without prior, express approval from the Closer.
- 173
- 174 H. **Closing Date.** ~~The Closer will work with~~Once the HUD Attorney and Closer have
- 175 completed a review of the closing documents a determination will be made by the HUD

Attorney in collaboration with the Closer and other parties ~~to help determine~~ on a closing date. -A closing date may be canceled or delayed if program or legal requirements are not fully satisfied. The Closer will be accessible at all times on the closing day to troubleshoot and/or respond to any closing issues that may arise.

- I. **Amounts Due to HUD.** The Closer will confirm the correct amount of the Mortgage Insurance Premium (MIP) due at closing and, if applicable, the Inspection Fee, and/or an additional Application Fee. All such payments shall be made through Pay.gov prior to closing and evidenced by appropriate receipts. See Section 9.5 below for more information on required fees and refunds.

9.3

The Lender

The following are key responsibilities of the Lender in the closing process. In addition, it is the Lender's duty to keep the Closer informed of any special circumstances related to the closing.

- A. **Execution of Firm Commitment.** The Lender should execute and have the Borrower execute the Firm Commitment within 10 business days of receiving the Firm Commitment. Acceptance of Firm Commitments executed beyond 10 business days is subject to ORCF approval.
- B. **Amendments to the Firm Commitment.** Material changes to a transaction may require amendments to the Firm Commitment. Any material adverse conditions or changes to any facts or circumstances that would make any information submitted, or which should have been submitted, with the application for mortgage insurance (including without limitation any such information relating financial statements, rent rolls, reports, investigations or other credit risks) incomplete or inaccurate must be disclosed to ORCF. ORCF considers such information to determine whether an amendment to the Firm Commitment is required and/or whether the deal may proceed. No part of the Firm Commitment may be amended without the prior approval of ORCF. To amend the Firm Commitment, the Lender must submit a written request on letterhead to the Closer setting forth the specific changes requested. This request must include documentation to support the requested change(s). When possible, all requested changes to a Firm Commitment must be combined into one request in order to minimize the number of amendments.
1. **Extensions.** Firm Commitments may be extended for periods of time depending on project type; however, processing and underwriting conclusions must be current at the time of any extension. For 223(f) projects, the Closer may extend the Firm Commitment for one 60-day period. For 223(a)(7) projects, the Closer may extend the Firm Commitment for one 90-day period. For new construction projects, the Closer may extend the Firm Commitment in 30-day increments. Extension requests beyond these periods require review and approval by the assigned project ORCF Workload Manager. The Lender's request to amend the Firm Commitment must provide a justification acceptable to HUD that the extension of the Firm Commitment

is warranted and necessary in order to accomplish closing by the end of the extension period. Requests for extension must be based upon and must include the following statement ~~(if true)~~: “The requested delay is not likely to change significantly the underwriting data on which the commitment was based or to undermine the feasibility of the project due to a change in the market, inflation, or other factors affecting cost.” If, at the expiration of the extension period, the closing fails to occur, HUD reserves the right to consider the application withdrawn. In that case, the application must be updated and submitted as a new application in order to receive further consideration.

2. **Interest Rate Changes.** ORCF suggests that the interest rate not be locked without confirmation that the closing is moving forward. Locking the interest rate prior to such confirmation will be at the Lender and Borrower’s own risk. HUD will not close a transaction without all program and legal requirements being fully satisfied solely to accommodate a security delivery or obligation deadline. Once the interest rate has been locked, a request to amend the Firm Commitment must be submitted. Such a request must include a revised, signed Maximum Insurable Loan Calculation (Form HUD-92264A-ORCF).

C. **Satisfaction of Special Conditions.** Evidence of satisfaction of all Special Conditions listed in the Firm Commitment must be provided prior to closing and must be submitted with the draft closing document package. The Closer will provide a Special Conditions Matrix to keep track of the status and documentation related to each Special Condition.

The following apply to 232 New Construction, Substantial Rehabilitation and 241:

1. Deferred Submission items (see the Lender’s Architectural Reviewer and Cost Analyst’s Statement of Work, Section IV.A.12) and/or any additional changes must be identified by addendum(s), must be reviewed by the underwriter of record, and approved by HUD 15 days prior to Initial Closing.
2. The addendum(s) must include a list of drawing numbers and page numbers with a description of the change(s). Addendum(s) must be clearly noted, and all drawings and specifications affected must have sheets and pages revised and replaced. Addendum(s) shall have no effect on cost or value. The Architect of record and the Lender’s construction analyst must review the addendum(s) for acceptability.

C.D. **Evidence of Completion of Repairs.**

1. Critical Repairs: All critical repairs must be completed prior to closing. Evidence of completion includes a signed and dated Borrower’s Certification — Completion of Critical Repairs (Form HUD-91118-ORCF) along with clear, supporting photographs and invoices. Other items may be requested by the Closer as needed in order to verify that all repairs have been completed.

~~2.~~ Non-Critical or Borrower Elected Repairs: Completion of ~~non~~Non-critical repairs prior to closing isare encouraged. If the ~~non~~Non-critical/Borrower elected repairs are

not completed by closing, they must be completed within 12-months of closing. An Escrow Agreement ~~for~~ Non-critical; Deferred Repairs ([Form HUD-92476-ORCF](#)) must be established, which includes the list of repairs.

[3.2.](#) If all, or a portion of, the ~~non~~Non-critical/Borrower elected repairs ([Form HUD-92117](#)) have been completed prior to closing, the Lender must submit a signed Borrower's Certification-Full or Partial Completion of Non-Critical Repairs. As with critical repairs, clear, supporting photographs and invoices demonstrating proof of completion must be attached. For the remaining repair items, a request to amend the Firm Commitment must be submitted with an attached, revised list of repairs. See above for more information on amendments.

[4.3.](#) See Production, Chapter 10.16 for more information on repairs.

[D.E.](#) **Evidence of Insurance.** Prior to closing, evidence must be provided showing that the project has all required fidelity, property, and professional liability insurance coverages. The insurance coverages must be current and in conformance with all ORCF requirements. If a policy will expire within ~~one month~~30 days of closing, proof of renewal will be required. See Production, Chapter 14, Insurance Requirements, for details on insurance coverage.

[E.F.](#) **Closing Statements and Cost Certifications.**

1. Closing statements, sometimes referred to as settlement statements, are required for all closings. [Closers will accept the Sources and Uses page from form HUD-92264a-ORCF \(Rev. 1/2023\) as the loan closing statement.](#) The final version of the closing statement must be signed by both the Lender and the Borrower and presented prior to closing. At a minimum, the statements must include the following: amounts to be paid to satisfy Borrower's obligations for existing indebtedness; repairs, if any; financing fees; HUD fees; legal expenses; title and recording costs; third-party costs; interest rate premium payments, if any; bond premium payments; other allowable costs; and any Lender-required escrows for taxes, insurance, or other items, [including required Debt Service Reserves, as applicable.](#) The statement must also include any cash contribution by the Borrower. For Section 223(a)(7) projects, the closing statement must be supported by current payoff letter(s) and invoices. The closing statement must show the transfer amount of the Reserve Fund for Replacement and any additional initial deposit amount, if required. Also, for Section 223(a)(7) projects, the Closer will compare the amount of the transfer of the current replacement reserves on the Closing Statement to the amount in the Lender Narrative. If the amount has decreased by \$20,000 or 20%, the Lender will be asked to recalculate the necessary reserve for replacement deposits. The Lender must provide a letter certifying that the Lender has recalculated the necessary reserve for replacement deposits, considered any changes to the current reserve for replacement since the time of the original firm application, and, that based upon that review, the Lender has notified the Closer of any necessary increases to the initial deposit to the reserve for replacement account or monthly deposit. The ORCF Underwriter must approve any changes to the reserve for replacement requirements. For changes to Reserve amounts, a revised Reserve for Replacement Funding Schedule may be

required. ORCF would not anticipate any further changes to the Reserve for Replacement Schedule or required deposits after Closing. Note: security extension fees are not an allowable mortgageable cost.

2. If a Borrower's Certificate of Actual Cost (also known as a "Cost Certification") is required, it must include the supporting documents such as current payoff letter(s) and invoices. The Cost Certification must be signed by the Borrower and will be reviewed and approved by ORCF. See Production, Chapter 11.15 for more information.

F.G. **Fees.** The Lender must ensure that all fees due at closing are properly prepared and delivered at closing. Any missing or incorrect fee may result in a delayed closing. See Section 9.5 on Fees Due.

G.H. **Lender and Lender's Attorney.** The Lender must at all times work closely with its attorney to ensure all closing requirements are met in a timely manner.

H.I. **Lender's Certificate/Request for Endorsement.** The Lender will be required to execute either a Lender's Certificate or a Request for Endorsement, which include several certifications. It is the Lender's responsibility to perform any necessary due diligence to allow the Lender to make such certifications accurately.

9.4

General Closing Logistics

A. Type of Closing. ~~ORCF closings may take place with all parties present, a "table closing," or remotely, a "by mail closing." There may also be a "skeleton closing," wherein only one or some of the parties attend. Although "by mail" or "skeleton" closings are encouraged, the HUD Attorney will make the final determination on the type of closing to conduct and will provide the Lender and Lender's Attorney appropriate instructions. By mail closings are conducted at the discretion of the HUD Attorney and may be limited in circumstances where incomplete or substantially incorrect documents are received or certain circumstances demonstrate the need to have a table closing. Under no circumstances should the endorsed note be provided to the FHA Lender prior to closing.~~ ORCF closings will be conducted electronically. See Appendix 9.2, Electronic Closing Guidance for more detailed instructions applicable to electronic closings.

No later than the morning two business days before closing, Lender's Attorney shall provide the HUD Attorney with a substantially full set of complete closing documents via electronic means. See Section II 9.4.E. for information regarding recorded documents. The electronic copy must include separate files for each document, with file names that reflect the title of the document and the order of the applicable closing checklist, preferably in searchable PDF format. Lender's Attorney must ensure that all closing documents submitted to the HUD Attorney at closing is consistent with the draft documents previously reviewed and approved by the HUD Attorney and the Closer, and that no modifications to the closing documents

(form and non-form) have been made without the HUD Attorney's actual knowledge and written prior approval.

B. Under no circumstances will the one original endorsed Note (or a copy or electronic version) be provided to the Lender prior to closing.

~~B-C.~~ **Date of Closing.** ~~The Once the HUD Attorney and Closer have completed a review of the closing documents the HUD Attorney and Closer, in collaboration, will set a closing date will be set by the HUD Attorney after consultation with the Closer.~~ The closing date will only be set once all programmatic and legal requirements have been fully satisfied. The closing may be cancelled if documents are not satisfactory or if any programmatic or legal requirement is not met: at least four business days before closing.

All closing documents must be dated with the same date, to the extent possible, which may be prior to the date the Note is endorsed by HUD for insurance. However, the following documents must be dated the date of endorsement (whether Initial, Initial/Final, or Final Endorsement, as applicable, as such terms are defined in the HUD Firm Commitment):

1. Title insurance policy;
2. Incumbency Certificates;
3. All required legal opinion letters;
4. Lender's Certificate (form HUD-92434-ORCF);
5. Request for Endorsement of Credit Instrument and Certificate of Borrower, Lender and General Contractor (form HUD-92455-ORCF);
6. Estoppel Certificates; and
7. Certificate of No Material Adverse Change.

~~C-D.~~ **Documents to be signed by ORCF.** The documents to be signed by ORCF, such as the Healthcare Facility Note (Form HUD-94001-ORCF), the Healthcare Regulatory Agreement —Borrower (Form HUD-92466-ORCF), and any other documents required in the transaction, will be signed by ORCF in advance of the closing. Once the Closer ~~has~~and the HUD Attorney have approved the documents for signature, the Closer will coordinate ORCF's execution of the documents. The Lender and Lender's Attorney must ensure that the documents have been properly prepared and are received by ORCF in sufficient time for execution and shipment. The documents must be in final form before sending them for ORCF signature, and the documents must be the exact versions approved by all parties, including HUD. ORCF will execute a maximum of four copies of the documents; however, to cut down on administrative time two copies are strongly encouraged. Any changes to loan documents, including the endorsed Note, after HUD has signed or approved the documents must be specifically approved in writing by the HUD Closer and HUD Closing Attorney before the changes are made. See Appendix 9, Electronic Closing Guidance for guidance on digital signatures.

E. **Recording Documents.** ~~Documents may~~Unless other arrangements are made with the

specific written approval of the HUD Attorney:

- (i) HUD encourages that documents be recorded in advance of the closing with prior approval from the HUD Attorney- and Closer; however, Borrower and Lender assume all risk thereto.
- (ii) Lender's Attorney must submit documents bearing evidence of recording from the recorder's office or copies certified by the title company to be true and correct copies of each of the recorded documents. The title company's certification should include the date of recording, the document recording information and the recording location.

Counsel Attorney should refer to the Appendix 9, Electronic Closing Guidance on when Electronic Signatures are acceptable.

~~D.F.~~ **Closing Day.** The HUD Attorney will lead a “table” or “skeleton” The final closing. If docket is submitted to the HUD Attorney no later than two days prior to the confirmed closing “by mail,” the Lender’s Attorney, Lender, Owner, Borrower, Borrower’s Attorney, Operator, Operator’s Attorney, and other related parties must be readily available by telephone should date. After submission, the HUD Attorney will review the closing package to ensure that documents are legally sufficient and in conformance with the Firm Commitment and previously approved draft documents. Comments on the final closing docket, if any question or problem arise. All documents, will be provided to Lender’s Attorney so that documents can be appropriately revised for closing. Any comments must be satisfactory to HUD, resolved before the endorsed Note can be delivered on the Closing Day. It is HUD's expectation that all documents be in complete and final form, and be the exact same versions as previously submitted and approved, with only such changes as may be required or approved by HUD. All HUD requirements must be satisfied. Once the closing docket has been approved by HUD and all other conditions of closing have been met, HUD will distribute an electronic scan of the HUD-endorsed Note and will send the physical copy of the HUD-endorsed Note per the Lender’s instructions. At the conclusion of the closing, on the Closing Day, HUD Attorney will deliver the endorsed Healthcare Facility Note to the Lender’s Attorney either in person or by mail according to the Lender’s instructions.

~~E. Closing Document Copies.~~ After closing, the Lender’s Attorney must provide a compact disk, or a Zip file, containing scanned copies of the documents accepted by the HUD Attorney at the closing. The Closer will provide the details on where to send the disk or file.

~~G.~~ As a negotiable instrument, the Note must continue to be prepared, executed, and maintained as a single original hard-copy document executed with “wet signatures” and held in the Lender’s physical possession. Until determined by HUD, electronic signatures are not authorized for the Note. See Appendix 9, Electronic Closing Guidance for other documents that must be maintained as a single original hard-copy document executed with “wet signatures” and held in the FHA lender’s physical possession.

9.5

Fees Due and Refunds

- 442
- 443 A. **Mortgage Insurance Premium (MIP).** A first year MIP fee is due at closing. The amount
- 444 of the fee is listed in the Federal Register, published annually on or about July 1, and varies
- 445 per type of program under which the loan is insured and will be set forth in the Firm
- 446 Commitment.
- 447
- 448 B. **Inspection Fee.** The Inspection Fee varies by program. See Production, Chapter 2, General
- 449 Program Requirements, under each program section for specific amounts and formulas.
- 450
- 451 C. **Additional Application Fee.** If the mortgage amount has increased since the initial
- 452 submission of the Application or the issuance of the Firm Commitment, an additional
- 453 application fee will be required, which will be set forth in the Firm Commitment
- 454 Amendment.
- 455
- 456 D. **HUD Application Fee Refunds.** If the mortgage amount has decreased since the initial
- 457 submission of the Application or the issuance of the Firm Commitment, the Lender may
- 458 request a refund of the application fee after closing. Requests for refunds must be sent to
- 459 OHPrefunds@hud.gov and must include the project name and FHA number in the subject
- 460 line with the Request of Overpayment of Firm Application Fee (Form HUD-91112-ORCF)
- 461 attached. Refunds are sent via electronic transfer.
- 462
- 463

9.6

Closing Section 232/223(a)(7) and Section 232/223(f) Loans

464

465 ~~There are several types of~~ A loan insured under Section 232 pursuant to Section 223(a)(7) ~~loans,~~

466 ~~which are refinances of~~ the refinance of an existing FHA ~~loans such as Insured Mortgage. The~~

467 ~~original loan may have been a~~ new construction, substantial rehabilitation, 223(d), 223(f) and,

468 223(i), 241(a) or another 232/223(a)(7) loan.

469

470 A loan insured under Section 232 pursuant to Section 223(f) is the refinance or purchase of a

471 residential care facility project, which may or may not be currently FHA-insured. When sending

472 the draft closing documents for HUD review, documents should be submitted to HUD in

473 accordance with the process set forth in Appendix 9.2, Electronic Closing Guidance. If this

474 method is infeasible for a given transaction, Lender's Attorney should discuss alternative

475 arrangements with the HUD Attorney as soon as possible.

476

477 ~~The Closer checklists and to the HUD Attorney checklists which set forth the documents~~

478 ~~required to close these loans are identified in Appendix 9.1. When sending the draft closing~~

479 ~~documents for HUD review, place the appropriate checklist on top of the closing package;~~

480 ~~additionally, please tab and organize the corresponding documents to match the checklist.~~

481

482 The closings of ~~these two types of~~ 223(f) and 223(a)(7) loans are similar. A few key differences

483 are:

484

1. No repair Inspection Fee is required for loans processed under Section 223(a)(7).
2. A cost certification, the Borrower's Certificate of Actual Cost, is required for all Section 223(f) loans. This document is only required for Section 223(a)(7) projects that have repairs but did not submit a PCNA. See Production, Chapter 11.15 for full details on cost certifications. All cost certifications will be reviewed and approved by ORCF.
3. A closing statement is required for all Section 223(a)(7) and Section 223(f) loans; however, for Section 223(f) loans, supporting documentation does not have to be attached to the closing statement if it is provided with the Borrower's Certificate of Actual Cost.
4. Total Lender's Fees are limited to 2.0% of the mortgage amount for a Section 223(a)(7) loan; they are limited to 3.5% for a Section 223(f) loan. Fees may be up to 5.5% for bond transactions.
5. The repair escrow overage for a Section 223(a)(7) loan is 10% of estimated costs; the overage is 20% for a Section 223(f) loan.
6. Prior to the closing of a Section 223(f) loan, a conference call between the Borrower and the servicing ORCF Account Executive must be scheduled. This is not required when the loan is insured under Section 223(a)(7), but may be requested by HUD in certain circumstances.
- 6.7. The Borrower on the existing loan must be the same as the Borrower on the 223(a)(7) loan. If there will be a new Borrower on the 223(a)(7) loan, the new Borrower will need to assume the existing loan to be refinanced with the 223(a)(7) loan and comply with ORCF's CHOP requirements. Note that a change to ownership entities/structure can be done in conjunction with a Section 232 refinance under Section 223(a)(7) of the National Housing Act. In this situation, the required exhibits for the processing of this change are listed on the 223(a)(7) Firm Application Checklist and HUD Refinance Closing Checklist posted on the Section 232 Program website. (See Section III Chapter 7.2)

9.7

Closing New Construction, Substantial Rehabilitation, Section 241(a) Loans

Loans insured under Section 232 for New Construction or Substantial Rehabilitation are for the complete construction of a project or for substantial repairs or improvements to an existing project.

A loan insured under Section 241(a) is a supplemental loan to an existing loan insured by FHA to allow for an addition or improvements to a project.

For the above loans, the closings are either Insured Advances or Insurance Upon Completion. If the loan is for Insured Advances, there are two closings: an initial closing prior to the start of work and a final closing after the completion of the work. If the loan is for Insurance Upon Completion, there is only one closing. Because of the complexities of these types of closings, the following sections provide more closing information.

Loans under Section 241 will require the use of "supplemental" ORCF OMB forms. If the 241(a) loan includes property that is not encumbered by the First Security Instrument, then the First Security Instrument and related loan documents shall be modified to the to include such additional property. The expanded legal description will be used for the supplemental loan documents. A title endorsement to the senior loan policy will be required to insure that the senior mortgage, as modified, remains in a first lien position, and to also include any modifications to the legal description. A Section 241(a) supplemental loan should not be cross-defaulted to the first lien mortgage. A default under the prior recorded mortgage will trigger a default under the Section 241(a) loan, but a default under the supplemental 241 loan should not trigger a default under the first mortgage.

9.8

Initial Closings: Required Forms and Documentation

In addition to the documents listed below, see Appendix 9.1 for the reference to the checklist of documents required to close these types of loans. Note: there is only one checklist for both the Closer and the HUD Attorney.

A. **Construction Contract** (Form HUD-92442-ORCF). These contracts may be either Lump Sum or Cost Plus. See Production, Chapter 11.13.A for more information on these contract requirements.

1. Attach the Contractor's and/or ~~Owner's~~Mortgagor's Cost Breakdown (Form HUD-~~23289~~2328-ORCF) as Exhibit A to the contract. This form must be approved and signed by ORCF with the Firm Commitment.
2. Attach the Supplementary Conditions of the Contract for Construction (Form HUD-92554-ORCF). ~~The Davis-Bacon Wage Determination must be included in the specifications. The Closer will confirm with HUD's Office of Davis-Bacon and Labor Standards and Enforcement (DBLS) that the Davis-Bacon Wage Determination is current as of the date of initial endorsement closing. The Lender must certify confirm in an email to the Closer prior to closing, that the most current and applicable wage decision has been incorporated in the Construction Contract and Specifications prior to closing. See Appendix 4.1, Labor Standards and Enforcement Protocol for information on coordinating with Labor Standards and Enforcement, the office of DBLS. Note: The Davis-Bacon Act is not applicable to the performance of the work under a 241 loan if the senior loan was insured pursuant to Section 223(f).~~

3. Attach the AIA Document A201-2017 (or latest addition), General Conditions of the Contract for Construction. The AIA Document A201 may not be altered, except the standard binding arbitration provisions in the AIA Document A201 must be stricken, unless prohibited by applicable state law.

~~3.~~ 4. An Incentive Payment Addendum is incorporated in the Construction Contract (Form HUD-9244392442-ORCF), if the Borrower and contractor have agreed to such a payment, and there is no Identity-of-Interest between the Borrower and contractor.

5. A Retainage Reduction Rider may be incorporated into the Construction Contract (Form HUD-92442-ORCF) outlining ORCF's retainage release requirements. See Production, Chapter 10.15.D for more information on retainage reduction

- B. **Owner-Architect Agreement** (AIA Document B108). The Agreement must include the HUD Amendment to the B108 (Form HUD-92408-ORCF), which contains a section for disclosing parties in an identity-of-interest relationship with the Architect. If there are no such parties, then the form should indicate “none.” See Production, Chapter 4.2, Exhibit C, Chapter 10.55 for additional information. The Architect administering the Construction Contract shall not have any identity of interest with Owner, Contractor, and/or any Project subcontractor, or with the Design Architect of record. This form ~~must~~ will be reviewed by ORCF and accepted at the Firm Commitment stage. See Production, Appendix 10.2.B for more information on AIA Document B108.
- C. **Assurance of Completion.** Documentation and HUD review will vary depending on the type of assurance of completion provided. Except for letters of credit, the HUD Attorney must review each type of Assurance of Completion, including the form of bonds where used.

1. Letters of Credit. These may be used instead of cash for all ~~assurances~~ assurance of completion and escrows required at initial and final closing, or during construction, except for up-front cash escrows. In any instance in which HUD allows the use of a letter of credit (whether for assurance of completion or to satisfy other types of escrow or deposit requirements), the following requirements apply:
 - a. Acceptance of a letter of credit is at the Lender's ~~discretion.~~ However, option, but when used, copies of the letter ~~letters~~ of credit must always be attached to the escrows and assurance agreements they collateralize.
 - i. Unconditional and irrevocable; and
 - ii. Issued by a banking institution; ~~and~~ i. Valid and collectible.
b. —
 - b. The Lender is responsible for ensuring that letters of credit are current, enforceable, and acceptable.
 - ~~b.c.~~ The Lender may not be the issuer of any letter of credit without prior written consent of ORCF FHA Commissioner.
 - ~~e.d.e.~~ HUD will neither look at the letter of credit nor render an opinion as to its

enforceability or acceptability; ~~letters of credit are accepted at the Lender's sole discretion.~~ See 24 CFR 200.63. The Lender is responsible for providing any funds that cannot be collected on a letter of credit.

2. Assurance of Completion for On-Site Improvements.- The Lender or Borrower may impose higher requirements, but must require one of the following as a minimum:
- a. Surety Bonds. The Payment Bond (Form HUD-92452A-ORCF) must be used for payment bonds and the Performance Bond-Dual Obligatee (Form HUD-92452-ORCF) must be used performance bonds; unless otherwise required by state law. Each bond must equal 100% of the ORCF estimate of the total for all improvements (Line 53, Contractor's and/or ~~Owner's~~Mortgagor's Cost Breakdown (HUD Form-92328-ORCF). The following requirements must also be satisfied:
 - i. The surety must be on the accredited U.S. Treasury list, Circular 570, published annually in the Federal Register on or about July 1;
 - ii. The bonds must not exceed limits listed in Circular 570;
 - ~~iii.~~ iii. The surety must be licensed to issue bonds in the state where the project is located;
 - ~~iii-iv.~~ iv. GNMA may also be named as an obligor if GNMA securities are being used;
 - ~~iv-v.~~ v. An original power of attorney from the surety company to its agent must be attached to each bond and dated the same day as the bond; and. A certification from the surety company attesting that the power of attorney attached to the certification is authentic and enforceable, is also required. The form of the power of attorney and certification shall be submitted; and
 - ~~v-vi.~~ vi. Payment and Performance bonds are required for Assurance of Completion of on-site improvements where payment for components stored offsite has been approved; (See Production, Appendix 10.3.B.6.d).
 - b. Completion Assurance Agreement (Form HUD-92450-ORCF). This agreement must be secured by a cash deposit (and/or one or more unconditional, irrevocable ~~letter~~letters of credit) for the appropriate percentage of the ORCF estimate of construction or rehabilitation cost, as described below:
 - ~~i.~~ i. For projects of less than four stories, ORCF requires a deposit of 15% of the HUD estimate of the cost of construction or rehabilitation ~~cost;~~
 - ~~i.~~ i. For large and for non-elevator projects buildings, or elevator buildings with four (4) stories or less;
 - ii. For elevator buildings of five (5) stories or more, ORCF requires a deposit of 25% of the HUD ~~estimate-estimated cost~~ of construction or rehabilitation ~~cost for projects where the structure includes an elevator, or the structure is four or more stories.~~

3. Assurance of Completion for Off-Site Improvements. See ~~Lender's Certificate~~Lender Certification (Form HUD-92434-ORCF) for requirements. Materials cannot be stored off-site without the prior written approval of the Lender and HUD. To assure the completion of work which may not be financed with mortgage proceeds, HUD may require submittal of one or more of the following is required items:

~~a. A Public Body Agreement acceptable to HUD from the controlling jurisdiction giving assurance for installation of utilities, streets or other facilities without cost to the Borrower. The Borrower's attorney's opinion as to whether the agreement is binding on the public body and succeeding administrations is required;~~

~~a. A cash~~Plans and specifications for the off-site improvements;

~~b. Contracts or other agreements governing the construction of the off-site improvements;~~

~~c. Off-site Bond – Dual Obligee (Form HUD-92479-ORCF);~~

~~b.d.~~An escrow using an Escrow Agreement for Offsite Facilities, (Form HUD-91071-ORCF) funded with cash and/or one or more letters of credit deposited with the Lender, a trustee, or an escrow agent acceptable to HUD, or an. The letters of credit must be unconditional, irrevocable letter of credit. The and for the amount must equal to or exceed ORCF's estimate of the cost of offsiteoff-site facilities; or

~~e. Where additional assurance is~~Letter of credit (see Production, Chapter 9.8.C.1);

~~f. Evidence of the entity's plans for off-site improvements (if the municipality or other governmental locality will be responsible for completion of those improvements); and~~

~~e.g.~~Other evidence as deemed necessaryappropriate by ORCF, one of the following will be (if required: in the Firm Commitment).

~~i. Offsite Bond – Dual Obligee (Form HUD-92479-ORCF), or~~

~~ii. A letter of credit.~~

D. **Building Loan Agreement** (Form HUD-~~92241~~92441-ORCF). This document sets out the responsibilities, conditions, and operating terms between the Lender and the Borrower, including the basis under which insured advances may be made during the construction period. Exhibit C, Disbursement Agreement is required and must set forth disbursements of Project Completion Funds in compliance with 24 CFR 200.54, if no Project Completion Funds, a schedule of Funds.

E. ~~Lender's Certificate~~Lender Certification (Form HUD-92434-ORCF). All required escrows, deposits, fees, and other amounts must be properly reflected in the Lender's Certificate as well as information concerning other bond obligations, extension fee agreements, and permanent loan commitments. Where permissible prepayment lockout and/or penalty provisions are included in the Healthcare Facility Note, this form may include conditions under which HUD may consider an override of such provisions. An addendum to the Lender's Certificate may be used to clarify certain expenses.

- F. **Agreement and Certification** (Form HUD-93305-ORCF). This obligates the Borrower to certify its actual costs of project construction or rehabilitation costs, and to disclose any identity of interest among project participants. It also obligates the Borrower to agree to a reduction of the mortgage amount in certain instances.
- G. **Application for Insurance of Advance Mortgage Proceeds** (Form HUD-92403-ORCF). An initial draw of loan proceeds may be made on the day of initial closing ~~upon recordation of,~~ provided that no draw may occur until HUD releases the Security Instrument, evidence it constitutes a first lien on the property, and HUD's delivery of the initially endorsed Note- to Lender. This form must be submitted to ORCF for review and approval prior to closing. Supporting documentation including invoices, receipts, or cancelled checks ~~organized~~ with tabs and a summary sheet for each line item, must also be submitted with the draw. A final, fully executed copy of this form must be submitted no later than three (3) days prior to initial closing. See Production, Chapter 10, Construction Period, Appendix 10.2, Instructions for Approval, for additional details.
- H. **Escrow Agreement for Operating ~~Deficits~~ Deficit** (Form HUD-92476B-ORCF). Any operating deficit escrow ~~requirements~~ prescribed in the Firm Commitment may be ~~in the form of~~ funded with cash, and/or one or more unconditional and irrevocable letters of credit ~~issued to the Lender by a banking institution.~~ (See Production, Chapter 9.8.C.1).
- I. ~~Eserow Agreement for Working Capital~~ **Escrow** (Form HUD-92412-ORCF). When the Firm Commitment requires a working capital deposit, the Borrower must ~~deposits~~ escrow with the Lender ~~a cash~~ escrow and/or one or more unconditional and irrevocable ~~letter(s)~~ letters of credit (See Production, Chapter 9.8.C.1) at initial closing. See Production, Chapter 10.15.C.
- J. **Minor Movable ~~Equipment~~ Escrow Agreement** (Form HUD-9443-ORCF). When the Firm Commitment requires an escrow for minor moveable equipment, the Borrower must ~~deposits~~ escrow with the Lender ~~a cash~~ escrow and/or one or more unconditional and irrevocable letters of credit (See Production, Chapter 9.8.C.1) at initial closing.
- K. **Other Escrows.** Other escrows may be required by the Firm Commitment. Examples include an Off-Site Escrow or a Demolition and Asbestos Removal Escrow.
- L. **Fee Payment from Cash Available to Borrower.**
1. Fees Paid at Initial Closing. Excess mortgage proceeds may be used to pay construction costs, permanent loan discounts, and other fees recognized by HUD under paragraph 19 of the Lender's Certificate.
 2. For New Construction, excess mortgage proceeds may also be allocated to the following items:
 - a. ORCF's estimate of the "as-is" value of land or the actual latest arms' length purchase price, whichever is less. The latest arm's length purchase price may include the following connected costs:

- i. Legal fees associated with acquisition of land, zoning, examination of title on the purchase, or defense of title after the purchase;
- ii. Prepaid special assessments;
- iii. Interest on bridge loans to purchase property after the date of submission of the initial application for mortgage insurance;
- iv. Taxes;
- v. Cost of improvements made to the project site by the Borrower;
- vi. Cash escrow to cover offsite construction cost;
- vii. Cost of any demolition reflected in the fair market value of the land (note that payment is approved as demolition progresses);
- viii. Construction and/or permanent loan discounts required to be paid at initial closing; and
- ix. Interest shortfall escrow, working capital deposit, initial operating deposit, debt service reserve, non-realty items, and any permanent loan discounts not required to be paid at initial closing.
- b. The remaining balance may be used to fund approved change orders or be held until final closing.
3. For rehabilitation of existing construction, excess mortgage proceeds may also be allocated to ORCF's estimate of the "as-is" value of land or the Borrower's acquisition cost/existing indebtedness, whichever is less, and items listed in 2 above.
4. Restricted Excess Mortgage Proceeds. Restricted excess mortgage proceeds are those excess mortgage proceeds determined not to be available to the Borrower during construction.
- a. These funds cannot be used to satisfy escrow requirements and must be held until final closing; and
- b. These funds must be identified in an unused column of the Financial Record of Mortgage Loan Transaction (Form HUD-92451) as restricted funds.
5. Fees Paid After Initial Closing. Excess mortgage proceeds may be used to fund permanent loan discounts, including those for unitary loans, and construction and permanent loan extension fees for payment after initial closing to the extent recognized by ORCF under paragraphs 19(b), (c) and (d) of the Lender's Certificate. In these instances, loan documents approved by ORCF must provide for the payment of such fees after initial closing, subject to the following:
- a. The Lender is required to escrow sufficient funds on the Borrower's behalf to cover fees approved in the Lender's Certificate, paragraphs 9(b), for payment after initial closing;
- b. The Borrower is required to furnish a written agreement to ORCF that any disbursements from the escrow accounts must require ORCF written approval;
- c. A letter of credit will not be accepted at initial closing for any of the amounts to be satisfied from excess mortgage proceeds; and
- d. Such escrowed excess mortgage proceeds may be released when earned.

- 797 M. **Permits, Approvals and Plans.** All building permits and other permits, governmental
798 approvals, for plans and plans specifications required to construct or to rehabilitate the
799 Project improvements must be provided for ORCF review and approval prior to initial
800 closing. Approvals and permits must be unconditional and consistent with the ORCF-
801 approved plans and specifications.
802
- 803 N. **Facility License.** Evidence must be provided at the initial closing that the application
804 process for the facility license has begun, and upon completion of the project, as
805 proposed, a license will be issued. The evidence must be confirmation from the
806 appropriate governing authority. The HUD approved individual entities and roles must
807 be shown on the application for the license at initial closing and on the license at final
808 closing.
809
- 810 O. **Easements and Use Agreements.** All easements and joint use agreements must be
811 approved by ORCF and the HUD Attorney. Beneficial easements required for operation
812 of the project, such as ingress/egress easements, must be part of the collateral and insured
813 legal description.
814
- 815 P. **Additional Agreements.** Any additional agreements that affect the property or financing
816 of the project must be disclosed to ORCF, including, but not limited to, construction
817 agreements; indemnifications, guarantees, and hold harmless agreements; and any other
818 document or information that would require reprocessing of the Firm Commitment,
819 increase Borrower's cash requirements, or increase the General Contractor's bond
820 requirement, or impact the marketability, risk to the project, loan, or Borrower. During
821 construction any easements, use agreements, or other similar instruments must be
822 presented to HUD for review and approval prior to recording them against the project.
823 Note: HUD policy is that the A201 shall not be altered or amended, except with regard to
824 the arbitration provisions in the form. Side agreements may only address matters outside
825 of the material terms of the Construction Contract, and may not negate the rights,
826 obligations, or any other material terms of the Construction Contract, including the form
827 A201.
828
- 829 Q. **Accounts Receivable Financing.** If there is to be accounts receivable financing on new
830 construction projects, final draft versions of the documents will be due at when
831 construction is 70% completion complete. In no event should Accounts Receivable
832 documents be executed without prior HUD written consent.
833
- 834 R. **Deposit Account Control Agreement (DACA) and Deposit Account Instruction**
835 **Service Agreements (DAISA).** ORCF requires that all project Owners and/or Operators
836 maintain appropriate agreements, approved by HUD, perfecting at the Lender's security
837 interest in project accounts. Final draft versions of the documents will be due at 70%
838 construction completion. See Section II, Chapter 16, Section 16.1.
839
- 840
- 841 S. **Required Organizational Documents.** The following organizational documents must
842 be provided for the Borrower, Master Tenant, and Operator. If the signature block for

any of these entities includes other entities (“upper tier entities”), organizational documents for those upper tier entities must also be provided:

1. Incumbency Certificate. A certificate dated the date of closing, and signed by the secretary or other authorized representative of the entity (which may be the individual executing the loan documents), stating: The organizational documents attached to the certificate are true and correct copies, and have not been amended, modified, rescinded, or revoked, and remain in full force and effect; and that name(s) and title(s), with specimen signature(s) of the individual(s) authorized to execute the loan documents.
2. Formation Documents. Copies of the entity’s filed formation documents, including all amendments and subsequent filings, certified by the relevant jurisdiction’s Secretary of State, or legal equivalent, within 60 days prior to closing, or such longer period approved by the HUD Attorney.
3. Governing Document. Copy of the entity’s fully executed governing document, including any and all amendments, and including the HUD-Required Provisions found in the legal punchlist applicable to the closing in effect as of the date of Firm Commitment.
4. Authorization. Evidence that the transaction is authorized, and that entity has authority to execute the loan documents and identifying the authorized signatory. If such authorization is not explicitly provided in the entity’s governing document, this may take the form of a resolution, written consent, or other legal equivalent, consistent with local law, custom, and the entity’s organizational documents.
5. Status Certificate. A status certificate from the Secretary of State, or legal equivalent, of the jurisdiction where Borrower is organized evidencing Borrower’s authority to do business (e.g., a Certificate of Good Standing). This status certificate must be dated within 30 days prior to closing, or a longer period if approved by the HUD Attorney. If the entity is not organized in the state, or US Territory, where the Project is located, a certificate from the Secretary of State, or legal equivalent, in the Project state, or US territory, evidencing Borrower’s authority to conduct business in the Project jurisdiction (e.g., a Foreign Status Certificate). Unless required by state law, upper tier entities organized outside the state in which the Project is located do not need to submit evidence of authority to conduct business in the Project’s state.

T. Title Insurance Policy.

1. Schedule A. Schedule A details the coverage provided by the Title Policy.

- i. Effective Date. The Title Policy effective date must be the same as the date of HUD’s endorsement of the Note with the time shown as 5pm or at least one minute after the time the last document was recorded.
- ii. Policy Amount. The amount of the title insurance coverage, shown in Schedule A, must be the full amount of the HUD-insured Loan. Note: For new construction and substantial rehabilitation loans, HUD requires that the Title Policy insure the full amount of the HUD-insured Loan (e.g., the amount of the Note); pending disbursement endorsements are permitted if the endorsements are consistent with the requirements of this Section. HUD insures all Section 223(a)(7) and Section 223(f) loan amounts in full at the time of endorsement, thus pending disbursement endorsements are not permitted for Title Policies issued with respect to Section 223(a)(7) or 223(f) loans.
- iii. Named Insureds. Schedule A, number 1 lists the insureds for the Title Policy. Lender “and/or the Secretary of Housing and Urban Development, and their successors and/or assigns, as their interests may appear” must be the named insureds on the Title Policy. No other parties, e.g., subordinate Lenders, may be named insureds.
- iv. Estate or Interest in the Land. Schedule A, number 2 identifies the type of estate encumbered by the Security Instrument. The identified estate must be consistent with the Firm Commitment. By statute, Borrower’s estate or interest in the Land must be fee simple or an eligible leasehold. In addition, the Borrower’s statutorily required interest, Schedule A, number 2 must also reference any appurtenant right, including beneficial easements. In such instances, Borrower’s appurtenant right must be distinguished from Borrower’s statutorily required interest (e.g., “fee simple as to [Borrower’s fee simple or leasehold estate] and easement as to [beneficial easement]”).
- v. Vested Title Holder. Schedule A, number 3 identifies the entity that holds title to the Land. Generally, except in the case of a leasehold mortgage, Borrower must be identified as the only vested title holder in Schedule A, number 3. If the Firm Commitment evidences HUD’s approval of an alternative (e.g., air rights, bifurcated ownership, or public entity held fee subject or joined to the Security Instrument), the vested title holder in Schedule A, number 3, must be consistent with the Firm Commitment.
- vi. Insured Mortgage. Schedule A, number 4 describes the instrument(s) that create the mortgage insured in the Title Policy. Both the Security Instrument and the Borrower’s Regulatory Agreement, because it is incorporated into the Security Instrument, must be shown in Schedule A, number 4. The reference to the Borrower’s Regulatory Agreement must state that the Borrower’s Regulatory Agreement is incorporated by reference in the Security Instrument

- (other legally equivalent phrasing may be used, subject to HUD Attorney approval).
- vii. Legal Description. The legal description of the Land used in the Title Policy must exactly match the legal description in the Firm Commitment, on the Survey, and in other closing documents except for minor stylistic differences or immaterial reference language. Appurtenant interests shown in Schedule A, number 2 may be listed as separate tracts, parts, or other legal equivalent.
2. Schedule B. Schedule B provides coverage of Exceptions.
- i. Standard Exceptions. The Title Policy must not include standard exceptions on Schedule B, unless a standard exception cannot be deleted under applicable state law. Lender and Lender’s Attorney are responsible for requesting deletion of standard exceptions from the Title Policy. Affirmative coverage over these matters is not permitted unless such coverage is the only available mitigation under applicable state law. Standard exceptions, sometimes called general exceptions, include, but are not limited to: Rights or claims of parties in possession not shown by the Public Records; Easements, or claims of easements, not shown by the Public Records; Encroachments, overlaps, boundary line disputes, or other matters which would be disclosed by an accurate survey or inspection of the Land; General exception for matters shown on survey, or that would be shown on survey; Any lien, or right to a lien, for services, labor, or material heretofore or hereafter furnished, imposed by law and not shown by the Public Records (aka mechanic’s liens); general exceptions for acreage or land size; and Taxes or special assessments that are not shown as existing liens in the Public Records.
- ii. Senior Record Exceptions. Schedule B must list items identified by title in the land records. In most jurisdictions, title matters senior to the HUD-insured mortgage are shown on a Schedule B-I. Senior record exceptions must either be approved by the HUD Attorney (in consultation with the Closer), or extinguished and removed, affirmatively insured over, or otherwise mitigated to the satisfaction of the HUD Attorney and ORCF, as appropriate. Note: Section 241 supplemental loans will always be subordinate to the senior FHA-insured mortgage and the senior FHA-insured mortgage will appear on Schedule B-I of their title reports. No monetary liens may supersede the HUD FHA-insured mortgage, except supplemental loans insured under Section 241, which will be subordinate, and real estate taxes and assessments for current year that are not yet due and payable.
- iii. Project Survey Exception. While the general title exception for survey matters is prohibited, minor survey matters expressly noted by the surveyor (e.g., a specific fence encroachment not affecting Borrower’s use of or liability for

the Land) may be listed as exceptions from coverage in Schedule B, subject to ORCF approval, which may require affirmative coverage if available under state law.

- iv. Subordinate Record Exceptions. In most jurisdictions, matters subordinate to the Security Instrument are shown on a Schedule B-II. The Borrower's (and, if applicable, Operator's and Master Tenant's) UCC-1 Financing Statement(s) recorded as a fixture filing in the real estate records of the Property jurisdiction must be shown in Schedule B as subordinate to the Security Instrument. Note: HUD does not require that the UCC-1 Financing Statement filed with the Secretary of State, or legal equivalent, in the Borrower's organizational jurisdiction be shown on Schedule B. The legal punchlist describes other documents to be recorded, including Operator's Regulatory Agreement, Operator's Assignment of Leases and Rents, Master Tenant's Regulatory Agreement, Master Tenant's Assignment of Leases and Rents, etc. All documents that are required to be recorded for the particular transaction (other than the Security Instrument and Borrower's Regulatory Agreement) must be shown on Schedule B-II.

3. Record Exceptions that Appear to Violate Federal Law or the Regulatory Agreement. See Chapter 9.2.D.

4. Affirmative Coverage (Endorsements) and Deletions to the Title Policy. The Title Policy must include the affirmative coverage (coverage added to the standard policy) and deletions listed below, and any other coverage required by the Closer and the HUD Attorney, except where prohibited by applicable state law.

- i. Affirmative Coverage, Endorsements. Affirmative coverage extends the insurance provided through the Title Policy by covering additional risks of loss or damage. Affirmative coverage is added to the Title Policy by annotation (e.g., notation of additional coverage directly on a schedule), or through the title company's issuance of standard form endorsements. The affirmative coverage listed below is generally required. When a specific ALTA endorsement number is listed but not available in the Project jurisdiction, the HUD Attorney may accept a state-approved endorsement bearing a different form number, or alternative affirmative coverage, provided that the coverage is substantially similar. The Closer, HUD Attorney, and Lender are each permitted to require additional affirmative coverage not required by this section based on the specific characteristics of the transaction.
- a. Comprehensive Coverage over Restrictions, Encroachments, and Minerals. ALTA Endorsements 9, 9-06, 9.7-06, 9.10-06 (also known as the Series 9, Comprehensive Endorsement, or Comp 9), as applicable, to provide

- affirmative coverage related to mortgage divestment, and violations of restrictions, encroachments, and minerals. In many jurisdictions, the comprehensive ALTA 9-06 is intended for use with improved residential property but may also be issued for unimproved property (e.g., new construction on vacant land). Other jurisdictions have authorized issuance of a series 9 endorsement specifically for unimproved property. Note: Most of the ALTA series 9 endorsements specifically exclude certain Schedule B matters. For that reason, other affirmative coverage (notation or other endorsement) will be required to extend coverage over such items in Schedule B, as determined necessary by the Closer and HUD Attorney.
- b. Private Rights. ALTA Endorsement 9.6.-06 – Loan Policy, to provide affirmative coverage against loss or damage resulting from options to purchase, rights of first refusal, rights of prior approval, and other private charges or assessments.
- c. Deletion of Arbitration. The Title Policy must provide affirmative coverage that deletes all references and requirements for arbitration. There is no published ALTA form for this endorsement
- d. Zoning. ALTA Endorsements 3.1-06 (completed structure/improved land), or 3.2-06 (construction/unimproved land), as applicable, when Lender elects to use a zoning endorsement as the requisite evidence of zoning compliance. See Instructions to Opinion of Borrower's Counsel (form HUD-91725-ORCF-INST). When the ALTA 3.2-06 is used, the plans and specifications reference must be consistent with the Firm Commitment and the Building Loan Agreement (i.e., the referenced plans and specs must be consistent with the HUD-approved version).
- e. Environmental Protection Lien. ALTA Endorsement 8.1-06, to provide coverage related to lien priority of the Security Instrument vis-à-vis environmental protection liens as defined in the endorsement. "None" should be inserted after the colon (:) in the endorsement paragraph (b). If any environmental protection liens are listed by title in paragraph (b), the HUD Attorney must consult with the assigned HUD Environmental Officer. Note: ALTA Endorsement 8.2-06 is not an acceptable alternative as it applies to commercial property.
- f. Leasehold. ALTA Endorsement 13.1-06 to provide additional coverage when the Borrower's title to the land is via a HUD-approved ground lease.
- g. Access and Entry. ALTA Endorsements 17-06 (direct access), 17.1-06 (easement access), as applicable, to provide affirmative coverage related to property access and entry. The access endorsement must be consistent with the point(s) of access depicted on the Survey.

- h. Tax Parcels. ALTA Endorsement 18-06 (for Land consisting of a single parcel) or 18.1-06 (for Land consisting of multiple tax parcels or Land that includes insured easements), as applicable, to provide affirmative coverage related to tax parceling risk.
- i. Contiguity. ALTA Endorsements 19-06 and 19.1-06, as applicable, to provide additional coverage for Projects consisting of multiple parcels or to insure the Project is contiguous to a necessary easement.
- j. Same as Survey. ALTA Endorsement 25-06 or 25.1-06, as applicable, to provide coverage related to non-objectionable inconsistencies between the record legal description (Land in Schedule A) and the boundaries identified on the Project's survey. The survey reference in the endorsement must be consistent with the date and number revision of the HUD-approved Survey.
- k. Policy Authentication, Electronic Signature. HUD has approved the use of the ALTA 2021 Title Loan Policy which provides for validity of the policy even if the policy or endorsements are issued electronically or lack any signature. Unless this provision of the Title Policy is otherwise changed or superseded by state law, ALTA Endorsement 39 (or equivalent) is no longer required.
- l. Pending Disbursements. ALTA Endorsements 32-06 and 33-06, to provide alternative coverage when the title company will only insure a new construction or substantial rehabilitation loan by deleting Covered Risk 11(a) (mechanic's lien coverage) during the construction of the Project. HUD only permits deletion of Covered Risk 11(a) and pending disbursements title coverage for loans closed as new construction/substantial rehabilitation Insurance of Advances. Pending disbursements coverage is prohibited when HUD insures the total Loan amount at endorsement or where mechanic's liens relate back to the start of construction pursuant to state law.
- m. Easements and Encroachments. ALTA 28 Series Endorsements, as applicable, when easements or encroachments are shown on survey and listed as senior to the Security Instrument in Schedule B.
- n. Minerals and Other Sub-Surface Substances. ALTA Endorsement 35.1-06 (improved land), or ALTA Endorsement 35.3-06 (land under development), as applicable, to provide affirmative coverage over Schedule B exceptions for mineral or other sub-surface substance rights.
- Note: The 35 series endorsements provide additional coverage that is not afforded by the Series 9 comprehensive endorsement(s).
- Other Resource Extraction. Endorsement, such as CLTA Endorsement 103.5-06, to provide affirmative coverage when title or survey show rights of third parties to subsurface resource

- 1082 extraction or surface use of the Land (e.g., mineral or water
1083 extraction, water irrigation, other resource reservations).
1084 o. Utility Access. When required by the Firm Commitment or applicable
1085 closing checklist, ALTA Endorsement 17.2-06 to provide affirmative
1086 coverage related to a Project's access to standard utilities.
1087 ii. Non-Standard Exception Deletions from Policy. The matters listed below
1088 must be resolved prior to closing and deleted from the Title Policy.
1089 Affirmative coverage is not permitted.
1090 a. Taxes. Specific tax liabilities that are not yet due and payable may be
1091 listed on Schedule B. However, all taxes that are liens and payable as
1092 of closing, must be paid prior to closing.
1093 b. Specified Mechanic's Liens. Previously recorded mechanic's liens
1094 shown in Schedule B must be resolved, and the liens removed from the
1095 Title Policy prior to closing.

1096
1097 5. Title Policy Issuance and Escrow Services

- 1098 i. Title Agent Letter of Authority. Where the Title Policy is issued by a title
1099 agent (i.e., not directly by the issuing title company), HUD requires a letter of
1100 authority (aka agency verification letter). The agency verification letter must:
1101 be on the letterhead of the Title Company issuing the Title Policy, be
1102 addressed to HUD and the Lender; include Borrower's name, Project name
1103 and number, policy amount, and title agent's name, and state that the title
1104 agent is in good standing with the title company issuing the Title Policy.
1105 Additionally, the agency verification letter must state that the title agent has
1106 the authority to issue the Title Policy on behalf of the title company for the
1107 project identified in the letter and must be valid as of the date of closing.
1108 Lender's Counsel is responsible for obtaining any necessary updates to the
1109 agency verification letter to ensure compliance with these requirements.
1110 ii. Escrow Services and Closing Protection. HUD generally permits a local title
1111 company branch, title agent, or approved attorney to provide additional
1112 escrow services along with issuance of the Title Policy. The local branch, title
1113 agent, or authorized attorney will close the transaction by ensuring that the
1114 documents are recorded, disbursing the funds to the proper parties, and issuing
1115 the Title Policy.
1116 a. HUD requires a closing protection letter (e.g., ALTA Closing Protection
1117 Letter (ALTA CPL – Single Transactions R-12-01-2015), or an equivalent
1118 form letter authorized by the state regulatory body in the Project
1119 jurisdiction) for all closings where a title agent, approved attorney, or
1120 other individual not directly employed by the issuing title company will

perform escrow services and/or manage original documents required for closing.

b. The title company issuing the Title Policy must issue the CPL to Lender and HUD, as their interest may appear. Any liability limitation stated in the CPL must be equal to or greater than the amount of the HUD-insured Loan.

c. The CPL ensures that the title agent, approved attorney, or other third-party escrow agent is authorized to perform the escrow services on behalf of the title company, and to indemnify the Lender for actual losses caused by certain misconduct of the closing agent (subject to specific exceptions and exclusions therein). The CPL must state that the protection afforded by the CPL is valid as of the date of closing. Lender's Attorney is responsible for obtaining any necessary updates to the CPL to ensure compliance with these requirements.

d. HUD will only accept third-party escrow services and related CPLs when such services and coverage are permitted by state law of the Project jurisdiction.

U. Litigation Disclosure. Litigation docket searches for the Borrower, Operator, and Master Tenant and the general partner, managing member, or similar controlling person(s) or entity(ies) of the Borrower, Operator and Master Tenant, must be conducted in the state, federal district, and bankruptcy courts of the Project jurisdiction and in the jurisdiction of their principal places of business. The required Attorney's Opinion(s) must opine on Docket searches and disclose any litigation or other claim pending in any court or administrative or other governmental body against the Borrower or General Partner/Managing Member, Operator, or the Project in Exhibit F to the Attorney's Opinion. All litigation identified by a required docket search and any other claim threatened in writing and known to Borrower or Borrower's Counsel (including litigation arising after the date of the litigation docket search but prior to closing), must be disclosed to the Closer and HUD Attorney in writing. Searches should be run and analyzed by the Lender no earlier than 30 days before closing and no later than 10 business days before closing. Lenders must disclose newly discovered litigation ("newly" meaning not previously disclosed to ORCF in the Firm application process) no later than 5 business days prior to the scheduled closing. The Lender's analysis of the newly discovered litigation must include the name and a discussion of each newly discovered claim within the lawsuit and the estimated potential liability; whether each newly discovered lawsuit is of the type covered by insurance or whether the lawsuit is for a claim not covered by insurance; the amount of liability insurance available to cover each newly discovered lawsuit and other pending claims and judgements and the estimated potential liability for such lawsuits/judgements; and identify who bears the cost

of defense of each newly discovered lawsuit and whether the insurance company is participating in the defense. ORCF will look to the Lender's Underwriter to provide an opinion that the litigation is mitigated (e.g., covered by insurance) and will have no material impact on the project or the underwriting on which the Firm Commitment was issued. All litigation issues must be cleared by ORCF and the HUD Attorney prior to closing. Prompt disclosure of the newly discovered litigation will minimize the risks of delays in closing.

V. Leases. The operating lease and the master lease, if applicable, must incorporate the appropriate HUD lease addendum. Lease payments must be consistent with the Firm Commitment.

W. Subordination/SNDA.

1. Operating Lease and Master Lease. If there is an operating lease and no master lease, a Subordination Agreement or Subordination Attornment and Non-Disturbance Agreement (SNDA) is required using form HUD-91110-ORCF. If there is a master lease, form HUD-92333-ORCF is required. An SNDA is only permitted if there is no Identity of Interest between the Borrower and Operator or Master Tenant.

2. Commercial Leases. All commercial leases must be subordinate, or subordinated, to the FHA-insured mortgage by its own terms or through a subordination agreement. A lessee at arms-length with the lessor (i.e., a non-IOI relationship) may request the subordination be provided through a subordination, non-disturbance, and attornment ("SNDA") agreement. ORCF to determine if an SNDA is acceptable.

X. Intercreditor Agreement. If there is Accounts Receivable (AR) financing, Lender must provide copies of all AR loan documents listed on the ICA Schedules or referenced in the AR loan agreement. The Intercreditor Agreement (ICA) HUD-92322-ORCF must be consistent with the ORCF-approved AR Terms Memo attached to the Firm Commitment. Any deviations from the AR Terms Memo must be disclosed to ORCF, and the memo amended accordingly, if appropriate.

Y. Special Conditions. The Closer, in conjunction with the HUD Attorney, will ensure that all special conditions in the Firm Commitment are adequately addressed and satisfied. Where a certification is required to satisfy a special condition, the certification must include the required language per 24 CFR 200.62:

"Each signatory below hereby certifies that the statements and representations of fact are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of U.S. Department of Housing and Urban

Development (HUD) in insuring the Loan, and may be relied upon by HUD as a true statement of the facts contained therein.”

“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).”

9.9

PreconstructionPreConstruction **Conference**

A ~~PreconstructionPreConstruction~~ Conference is required prior to the start of construction. The ~~PreconstructionPreConstruction~~ Conference must be scheduled within one week of initial closing. The Lender is responsible for arranging and facilitating the ~~PreconstructionPreConstruction~~ Conference. and will identify a PreConstruction Conference Coordinator (PCCC). See Section II, Production, Chapter 10.3 for additional guidance. The signing of the Plans and Specifications generally occurs at the ~~PreconstructionPreConstruction~~ Conference. (See Section II, Production, Appendix 10.5) The signing may also be conducted ~~at Closing on the day of closing.~~ See Section II, Production, Chapter 10, Construction Period, for more information.

9.10

Tax Credits

A. For more information, see Production, Chapter 12, LIHTC and Other Tax Credit Program Guidance.

Specific to loans involving tax credits, the initial closing documents must include:

1. A final detailed Sources and Uses statement of total development costs, reflecting any revisions to hard and soft costs as reflected on the Firm Commitment’s Maximum Insurable Loan Calculation. If any funding sources have changed, a revised Applicant/Recipient Disclosure/Update Report is also required.
2. All documents must include conflict language giving the HUD documents supremacy over other documents. Documents may not include indemnification provisions, except as otherwise permitted by outstanding HUD guidance.
3. A copy of the tax credit syndicator’s equity and construction schedule milestones must be included at or before initial closing.

B. Tax Credit Equity Contribution:

- 1240
- 1241 1. The required initial equity investment will be reflected in the Firm Commitment as a
- 1242 Special Condition; the initial installment must be advanced at initial closing.
- 1243
- 1244 2. Application for Insurance of Advance Mortgage Proceeds. Approval of costs to be
- 1245 funded will be based on those approved in the Firm Commitment, or, if applicable,
- 1246 approved amended Sources and Uses Statement.
- 1247
- 1248 3. After the first installment of LIHTC Equity is distributed at initial closing, the
- 1249 subsequent contributions must be made at a time and in a manner during construction
- 1250 to ensure that the underwriting requirements in the Firm Commitment are maintained
- 1251 and met for actual costs.
- 1252

1253 C. Tax Credit Equity Bridge Loans:

1254

- 1255 1. Tax credit~~-equity~~ syndicators or investors (with or without an Identity of Interest with
- 1256 the Section 232 Lender) may make equity bridge loans to LIHTC, Historic, or New
- 1257 Markets Tax Credit projects during the construction or substantial rehabilitation
- 1258 period before the property's placed-in-service date. ~~The (See Section II, Production,~~
- 1259 ~~Section 12.2.B.) If the~~ bridge loan ~~is made to the HUD Borrower, it~~ may be
- 1260 evidenced by a promissory note ~~on HUD's form of surplus cash note (Surplus Cash~~
- 1261 ~~Note, Form HUD-92223-ORCF)~~ from the Borrower and may be secured by a pledge
- 1262 of the tax credits or of the limited partnership ~~interest or other equity interests~~ but
- 1263 may not be secured by a lien on the real estate. ~~After the placed-in-service date, the~~
- 1264 ~~bridge loan(See Section II, Production, Section 12.2.B.2.) The pledge of a limited~~
- 1265 ~~partnership or other equity interests~~ must ~~be released and retired by~~include a
- 1266 ~~statement that the pay-in-of pledged interest may not be transferred, nor may the~~
- 1267 ~~investor's equity-transferee exercise any power of attorney over the pledged interest~~
- 1268 ~~without the prior written consent of HUD and compliance with HUD requirements for~~
- 1269 ~~a Change of Participants (CHOP) and previous participation clearance.~~
- 1270
- 1271 2. An equity bridge loan ~~or other sources such as permitted subordinate debt~~ is a means
- 1272 of securing the Borrower's cash contribution that is required to complete construction
- 1273 before ~~all or portions of~~ the tax ~~credits~~~~credit equity and other permitted funding~~
- 1274 ~~sources~~ are available ~~to be claimed by the equity investor.~~ The placed-in-service
- 1275 date is the date when the newly constructed or rehabilitated property has been
- 1276 completed and its units have been occupied by income-qualified tenants. This is also
- 1277 when the tax credits are officially able to be claimed by the equity investor, and, in
- 1278 the case of LIHTCs, -is evidenced by issuance of Low-Income Housing Credit
- 1279 Allocation and Certification (IRS Form 8609). -However, at Final Closing, all funds
- 1280 needed to meet the Borrower's cash contribution must be ~~in the transaction deposited~~
- 1281 so the sources and uses will balance and the ~~tax credit investors will pay in the equity~~
- 1282 ~~to retire the~~ equity bridge loan ~~will be retired from tax credit equity or other permitted~~
- 1283 ~~sources. The equity bridge loan must be retired no later than Final Closing.~~
- 1284
- 1285

Once construction has been completed and the certification of costs has been approved by ORCF, the loan must proceed to final closing. ORCF will issue a Maximum Insurable Mortgage Letter providing the final mortgage determination. Once the letter is issued, immediate preparation for final closing must begin. Final closing documents are to be submitted within 30 days of the date of the Maximum Insurable Mortgage Letter. Not submitting closing documents timely can lead to delays in final closing. See Production, Chapter 11, Cost Certification, for complete information on cost certifications.

See Appendix 9.1 for the references to the checklist of required documents for a final closing. Note: there is only one checklist for both the Closer and the HUD Attorney.

A. **Deposit Account Control Agreement (DACA) and Deposit Account Instructions Service Agreement (DAISA).** For all Insurance of Advances projects where the DACA and/or the DAISA were not approved by HUD prior to initial closing, the final ~~and~~-executed DACA and/or the DAISA must be submitted to the Closer and the HUD Attorney when the project reaches 70% construction completion. The final and executed documents must be approved prior to HUD's approval of the Permission to Occupy. Copies of the final HUD approved DACA and DAISA must be included in the document submission for Final Endorsement.

B. **Title Evidence at Final ~~Endorsement~~Closing.**

Prior to ~~final-endorsement~~Final Closing, the Lender must provide HUD with a new title policy, or, if approved by the HUD Attorney, a title endorsement covering the following matters:

1. Showing what, if any, matters have ~~gone on record~~been recorded against the property since the initial closing;
2. Changing Amend the effective date of the ~~title policy~~Title Policy (Date of Policy) to the ~~daydate~~ of final ~~closing; endorsement of the Note.~~
3. If a Modification Agreement or Supplemental Mortgage and Consolidation Agreement are used, ~~insuring~~ensuring that the mortgage, as modified, or as supplemented and consolidated, remains in a first lien position. (For mortgages insured under Section 241, the title endorsement must show that the modified mortgage retains its lien priority, with the Section 241 lien being subordinate to the senior FHA-insured mortgage.) Should the title insurance company be unable to provide such endorsement, or should the endorsement show any lien intervening between the recordation of the original insured mortgage and the Supplemental Mortgage, ORCF will not endorse the mortgage for insurance at the increased amount;
4. Deleting the pending disbursements clause; and

5. Increasing the amount of title coverage insurance if the mortgage amount increased.

6. ORCF will examine any exception to title, not shown in the title evidence accepted at initial closing, to determine whether or not it affects the value and/or marketability of the project. Any exception which affects the value and/or marketability of the project as determined by ORCF must be removed from the title policy or its effect insured against by the appropriate endorsement to the title policy, at ORCF's discretion.

C. **Labor Standards and Enforcement Clearance.** The Office of Davis-Bacon and Labor Standards ~~and Enforcement~~ must confirm that all Davis-Bacon ~~requirement~~requirements have been satisfied. The Closer will request clearance for closing from the Office of Davis-Bacon and Labor Standards ~~and Enforcement~~. If there are outstanding Davis-Bacon violations, the Labor Standards ~~and Enforcement~~ Specialist will inform the General Contractor, the Closer, and the ORCF Construction Manager that deposits to the U.S. Treasury must be established as a condition of closing to ensure payment of wages. Final closing cannot proceed until the violations have been cleared, or the required deposit is funded. The Office of Davis-Bacon and Labor Standards ~~and Enforcement~~ will provide approval to proceed to final closing. See Appendix 4.1, Labor Standards and Enforcement Protocol, for more information.

D. **Incomplete On-site Facilities.**

1. Conditions for Approval. It is ~~desirable~~required that all on-site construction be 100% complete before approval of a final advance of mortgage proceeds. However, there may be circumstances where it is necessary that approval of a final advance be given before 100% completion of on-site construction. An itemized list of incomplete items must be attached to the Escrow Agreement of Incomplete Construction (Form HUD-92456-ORCF).

a. Approval of a final advance where minor items of on-site construction are incomplete will be given only in cases in which funds are placed in escrow to assure completion of such minor items, as provided in the Certificate of Mortgage Insurance in the Application for Insurance of Advance Mortgage Proceeds, and in the footnote on Request for Final Endorsement (Form HUD-92023-ORCF).

b. Approval of a final advance of mortgage proceeds will be given only in those cases in which:

i. The items of delayed completion are acceptable to the HUD Construction Manager; and

ii. The aggregate estimated cost of completing the items does not exceed 2% of the principal amount of the mortgage.

iii. Funds must be placed in escrow for the completion of minor items when immediate completion is inadvisable or impossible, due to weather or other conditions beyond control.

2. Escrow for Completion. With respect to all incomplete items, the amount held in

escrow for completion must be at least 1.5 times the estimated cost of completion. The amount of any escrow must be sufficient to assure an incentive to complete the work, taking into consideration a possible rise in cost. Such escrow will be held by the Lender in accordance with the terms of the Escrow Agreement for Incomplete Construction (Form HUD-92456-ORCF), and ORCF will ascertain that the items to be completed are properly identified by attachment to the Application for Insurance of Advance of Mortgage Proceeds. See Production, Chapter 10.8.I for additional information.

E. Incomplete Off-Site Facilities.

1. Approval of a final advance of mortgage proceeds will be given only in those cases in which: All off-site utilities such as sewer, water, electrical, and gas facilities are installed and connected, and the buildings are served by safe and adequate all-weather facilities, either permanent or temporary, for the ingress and egress of pedestrian and vehicular traffic, including fire apparatus, and all other construction requirements have been acceptably accomplished ~~or acceptably assured~~ and accepted by the local authorities.
2. Completion of Off-Site Utilities. Until all off-site facilities are completely installed and connected, as applicable, and the required ingress and egress is provided, HUD will not process a request for the final advance. In such cases:
 - a. Any Application for Insurance of Advance of Mortgage Proceeds submitted for processing will not be treated as approval of a final advance, nor will the submission of Request for Final Endorsement. Instead, the Application for Insurance of Advance of Mortgage Proceeds may be treated as an ordinary application for advance of mortgage proceeds and may be approved in an amount which, when added to previous advances of mortgage proceeds, will equal 90% of the total advances to which the Borrower will be entitled at 100% completion.
 - b. Following 100% completion of all off-site facilities, ORCF will require submission of a new Application for Insurance of Advance of Mortgage Proceeds for approval of the final advance and subsequent submission of an updated Request for Final Endorsement.

F. Security and Start of Amortization.

1. Non-Realty Items. All non-realty items must be covered by the mortgage lien or security agreement, or both, whether or not paid for with mortgage proceeds, ~~so long as such items are reasonably necessary to operate the project for the Approved Use.~~ Any items not secured at initial Closing must be secured at final closing.
2. Start of Amortization. Whether construction has been completed or not, amortization must start on the date specified in the Note, unless a deferment has been

recommended by the Lender and approved in advance by ORCF. If the loan is collateral for a Ginnie Mae mortgage-backed security, then Ginnie Mae's written acknowledgement that it is acceptable to delay principal payments via a loan modification is required. Any request for deferment of amortization must include a copy of the request submitted to Ginnie Mae and will be reviewed by the Closer, ORCF Account Executive, and the HUD Attorney.

G. Change in Mortgage Amount.

1. Decrease in Mortgage Amount.

- a. Modification Agreement. If there is a mortgage decrease based upon HUD's final mortgage determination, a draft Modification Agreement must be submitted prior to final closing. The Modification Agreement must amend the Security Instrument and set forth the new mortgage amount. HUD will endorse the ~~HealthCare~~Healthcare Facility Note for the decreased mortgage amount.

- i. The following provision must be included in the Modification Agreement:

"Nothing in this Agreement shall waive, compromise, impair or prejudice any right HUD may have to seek ~~judicial~~ recourse of any breach of that certain Regulatory Agreement executed by the parties hereto, recorded on even date with the Security Instrument, which breach may have occurred prior to or may occur subsequent to the date of this Agreement. In the event that HUD initiates an action for breach of said Regulatory Agreement and recovers funds, either on HUD's own behalf or on behalf of the Project or the Borrower, those funds may be applied, at the discretion of HUD, to payment of the delinquent amounts due under the ~~HealthCare~~Healthcare Facility Note or the Security Instrument or as a partial prepayment of the Healthcare Facility Note."

~~Prior to final endorsement,~~"Nothing in this Agreement in any way impairs the Note or the Security Instrument or any other security now held for the indebtedness evidenced by the Note, as amended, and secured by the Security Instrument, or alters, waives, annuls, varies, or affects any provision, conditions or covenants therein, nor affects or impairs any rights, powers or remedies under the Note, Security Instrument, or Regulatory Agreement, nor changes the priority of the lien created by the Security Instrument or the encumbrance of the Regulatory Agreement, except as specifically provided herein, it being the intent of the parties that the terms and provisions of the Note, Security Instrument, and the Regulatory Agreement continue in full force and effect except as modified hereby."

- i.ii. The Modification Agreement must be properly executed ~~and prior to final closing and must be~~ recorded in the real property records of the county in which the project is located. HUD requires recordation prior to or on the day of closing but may authorize deviation from this

1467 standard on a case-by-case basis in jurisdictions where pre-recording
1468 or contemporaneous recording on the date of closing is not possible.
1469 Borrower and Lender assume all risk related thereto.

- 1470 b. The Healthcare Facility Note ~~may~~shall be modified, with an allonge or rider,
1471 to set forth the decreased mortgage amount and the new amortization
1472 schedule. ~~Any such~~Such modifications are subject to HUD approval.
1473 c. HUD must approve appropriate title evidence related to the modification(s), as
1474 set forth above.
1475

- 1476 2. Increase in Mortgage Amount. If ORCF approves an increase in the mortgage
1477 amount, the following documents must be submitted to HUD for approval prior to
1478 final ~~endorsement~~closing:

- 1479 a. Supplemental ~~HealthCare~~Healthcare Facility Note.
1480 i. The Lender must prepare a Supplemental ~~HealthCare~~Healthcare
1481 Facility Note acceptable to HUD, entitled “Supplemental
1482 ~~HealthCare~~Healthcare Facility Note.”
1483 ii. This document must contain a cross-default provision with the original
1484 ~~HealthCare~~Healthcare Facility Note.
1485 iii. The principal amount of the Supplemental ~~HealthCare~~Healthcare
1486 Facility Note must be for the amount of the increase to the mortgage,
1487 not for the new total mortgage amount.
1488 iv. The amount of the payments to principal must be sufficient to amortize
1489 the increase amount over the mortgage term.
1490 b. Supplemental Security Instrument.
1491 i. The Lender must prepare a Security Instrument acceptable to HUD,
1492 entitled “Supplemental Security Instrument.”
1493 ii. This document must contain a cross-default provision with the original
1494 Security Instrument.
1495 iii. The Supplemental Security Instrument must encumber the entire
1496 project and must secure repayment of the Supplemental
1497 ~~HealthCare~~Healthcare Facility Note.
1498 c. Modification and Consolidation Agreement.
1499 The Lender must prepare a Modification and Consolidation Agreement,
1500 acceptable to HUD, to be recorded in the real property records in the property
1501 jurisdiction. Such documents must evidence the following:
1502 i. The original Healthcare Facility Note and the Supplemental Healthcare
1503 Facility Note will be deemed one indebtedness; and
1504 ii. The original Security Instrument and the Supplemental Security
1505 Instrument will be deemed to secure one indebtedness.
1506 iii. The original Security Instrument shall be modified to provide for
1507 cross-default with the Supplemental Security Instrument.
1508 iv. The original Healthcare Facility Note shall be modified to provide for
1509 cross-default with the Supplemental Healthcare Facility Note.
1510 d. Borrower’s Attorney’s Opinion. The Borrower’s Attorney must give an
1511 opinion, in a format approved by HUD, with respect to the documents
1512 evidencing the increased mortgage amount. The Borrower’s Attorney opinion

specifically supplements the opinion given at Initial Closing and addresses any modifications to the Loan documents that the HUD Closing Attorney has found to warrant an updated opinion, including without limitation, the following:

- i. The enforceability of the documents evidencing any modification to the insured Loan's terms, including a modification agreement, consolidation agreement, supplemental note, supplemental security instrument, supplemental UCC-1 Financing Statement, or any and all of the foregoing, and the continued first-priority position of the insured Loan's lien;
 - ii. Any land use restrictive agreements or extended use agreements, or any other restrictive covenants, that have been placed on the property since Initial Closing, including those connected with LIHTC, if not covered in the initial opinion; and
 - iii. Disclosure of any material modifications to the documents covered by the opinion given at Initial Closing, including any amendments or changes to the legal description.
- e. Title evidence approved by HUD.

H. Application for Insurance of Advance of Mortgage Proceeds. For the contractor's remaining retainage and any outstanding costs to be paid at final closing, the Borrower and Lender must execute this form. The form must be accompanied by a completed Contractor's Requisition (Form HUD-92448-ORCF), signed by the contractor ~~and the architect~~.

1. If no items of on-site construction are incomplete, enter "None" in the space provided for the amount of the escrow deposit on the form.
2. If items of on-site construction are incomplete and an escrow deposit is required; ~~attach an itemized list of incomplete items and~~ enter the amount of the escrow deposit required.
3. The Closer will determine if:
 - a. any items of on-site construction are incomplete;
 - b. any off-site facilities are incomplete;
 - c. any revisions are required in connection with hazard insurance; and ~~if~~
 - d. ~~if~~ the necessary non-realty items have been ~~submitted~~purchased.
4. The Closer will obtain ORCF approval signatures on the Application for Insurance of Advance of Mortgage Proceeds and the Contractor's Requisition. Electronic copies will be forwarded to the HUD Attorney and the Lender.

I. As Built Survey. The final as-built survey must be dated within 120 days of closing. The term "dated" means the surveyor's certification must show that the survey was made "on the ground" within 120 days prior to closing. The survey ~~accompanying this request~~ must show the exact location of all buildings, water, sewer, gas and electric mains, and all easements for such existing utilities. The survey must be prepared, signed, and sealed by a licensed

surveyor and must include a certification in the format set out in the ~~Survey Instructions and Owner's Certification~~ Minimum Standard Detail Requirements for ALTA/NSPS Land Title Surveys.

- J. **Permits, Licenses and Approvals.** All building permits and other applicable permits, licenses, and governmental approvals required to own and operate the project must be provided for HUD review and approval including, but not limited to, the Certificate of Occupancy ~~and the Certificate of Need~~ or similar documentation, such as Certificate of Completion, is required for each building permit issued for the project; there should be no open building permits on the date of final closing.
- K. **Lender Letter of Loan Status.** The Lender must submit a letter, on company letterhead dated the day of final closing, stating that the loan is current. This may be combined with the Current Payment Letter.
- L. **Request for Final Endorsement.** An updated and fully executed Request for Final Endorsement (HUD Form-92023-ORCF) must be submitted and reflect any material change made from the time of cost certification.
- M. **Insurances.** Proof of acceptable insurances for professional liability, property, and fidelity must be provided.
- N. **Request for Release of Escrows.** To release any escrow for a change order, minor moveables, or working capital, submit a Request for Approval Advance of Escrow Funds (Form HUD-92464-ORCF).
- O. **Facility License.** The facility license must be current ~~with the correct~~. The number of beds/units shown on the license must be for, at a minimum, the number of beds approved in the Borrower Regulatory Agreement executed at Initial Closing and the name on the license must be the entity name(s) approved as the licensees in the Firm Commitment underwriting. If the facility license is set to expire within 30 days after final closing, evidence must be provided, and found satisfactory to the Closer and HUD Attorney, that a request to extend/renew such license has been submitted to the licensing authority.
- P. **Current Payment Letter.** The Lender must provide ~~evidence~~ a certification from the Lender addressed to HUD on company letterhead that all impound payments, such as for debt service, Reserve for Replacements, and taxes and insurances, are current.
- Q. **Secondary Financing.** If any secondary financing sources are utilized, the source and amount will be verified against what was approved in the approved cost certification. (See Production, Chapter 3.15).
- R. **Lease.** The operating lease and master lease (if applicable) must be executed and meet all ORCF lease requirements. The Lender must also demonstrate that the amount of the lease payment conforms to ORCF's requirements. (See Production, Chapter 8.6).

1605 S. **Counsel Opinion.** A Supplemental Opinion of Borrower, Operator, and/or Master Tenant
1606 Counsel, as applicable, addressing any items deferred at initial closing (e.g., facility license,
1607 DACA, DAISA) is required at Final Closing, even if there is no increase or decrease in the
1608 mortgage loan amount.

1610 **T. Updated Organizational Documents.**

1612 1. A Borrower, Operator, and Master Tenant, as applicable, must provide a signed
1613 certification as to incumbency that:

- 1614 a. confirms that no changes have been made to the entity's organizational
1615 documents, including incumbency, delivered to HUD at initial closing, or
1616 b. identifies any changes made to the entity's organizational documents that were
1617 delivered to HUD at initial closing and attaches copies of the amendments or
1618 other documents affecting such changes.

1620 2. Current authorizing resolution, if required, or certification by an appropriate officer of
1621 the entity that the authorizing resolution given at Initial Closing covers the Final Closing
1622 and is still in effect (including any increase in the Loan amount).

1624 **9.12**

**Insurance Upon Completion – New
Construction, Substantial Rehabilitation
and Section 241(a)**

1625
1626 Section 232 New Construction, Substantial Rehabilitation and 241(a) projects that are Insurance
1627 Upon Completion only have a final closing, which is addressed in Section 9.11 above.

1629 **9.13**

**Closing Section 223(d) Operating Loss
Loans and Section 232(i) Fire Safety
Equipment Loan Insurance Programs**

1630 A loan insured under Section 223(d) is an Operating Loss Loan provided to a project
1631 ~~owner~~Borrower with a current FHA-insured loan. To be eligible, a project must have
1632 experienced operating losses incurred during the first two years after project completion, or any
1633 other 2-year period within the first 10 years after completion. ~~A credit subsidy is required for~~
1634 ~~this type of loan. After the acceptance of the Firm Commitment, ORCF will request HUD~~
1635 ~~obligate a credit subsidy. If HUD so obligates, the Firm Commitment will be extended 60 days~~
1636 ~~after the date of obligation.~~

Section 232(i) sets forth the requirements for the Fire Safety Equipment Loan Insurance Program. This type of loan insurance is provided for nursing homes, skilled nursing facilities-assisted living facilities and intermediate care facilities to purchase and install fire safety equipment, ~~primarily fire sprinkler systems~~. Qualified loans must be secured by a lien that may be superior or inferior to other liens.

For both these types of loans, see Production, Chapter 2, Eligible Section 232 Mortgage Insurance Programs, and Chapter 3, Loan Sizing, for more details. ~~Consult with the Closer for closing document requirements.~~ Loans under 223(d) and 232(i) will require the use of the “supplemental” ORCF OMB forms. The insured loan will be subordinate to the senior FHA-insured loan.