

Section III Asset Management

Chapter 9 New or Modification of Master Lease Structure

9.1

Introduction

As indicated in Production, Chapter 13, HUD has worked diligently to ensure that its insurance fund remains stable by addressing the concentration of credit within the same ownership and/or operating structures. ~~In 2001, HUD issued new processing procedures for multiple facility applications.~~ Although each facility is ~~still~~ evaluated individually, borrowers and operators face increased scrutiny when they seek financing for multiple facilities ~~within an 18-month timeframe.~~ Additional guidance ~~was also provided in Mortgage Letter 2014-06 regarding and criteria for a Master Lease and Portfolio transactions are set forth in Production, Chapter 13.4.~~

~~Criteria for a master lease and/or an addendum to a master lease are set forth in Production, Chapter 13.4.~~

The ~~master lease~~ Master Lease structure allows for any rental deficiencies at one facility to be supported by income from other facilities included in the ~~master lease~~ Master Lease. A ~~master lease~~ Master Lease does not, however, pool the assets of all facilities for underwriting a single mortgage loan for multiple facilities. Each individual loan must meet HUD's underwriting standards on its own merit.

This Chapter is applicable to all applications to modify an existing Master Lease structure or any requests for a new Master Lease structure for existing FHA-insured facilities. Production, Chapter 13 is applicable to Master Leases in connection with FHA-insured loan applications.

The ~~Mortgagee/Service~~ Lender must notify HUD ~~anytime~~ any time one or more properties which are part of a Master Lease are encountering rental deficiencies. The ~~Mortgagee/Service~~ Lender must inform HUD of how the situation will be handled when the remaining facilities are unable to make up the rental deficiencies of the failing facilities.

9.2

Program Considerations

In addition to the key provisions identified in Production, Chapter 13.3, ORCF will review the following conditions for approval of an application with a Master Lease structure:

- A. Each loan will have a separate note for each borrower and each note will be secured by its own security instrument. The Master Tenant and Operators shall not engage in any other businesses or activity, including the operation of any other rental project, or incur any liability or obligation except as may be permitted by HUD in connection with the project.
- B. The Master Tenant and Operators shall execute the applicable HUD Regulatory Agreements, to address various ownership and operational responsibilities with respect to the mortgaged property.
- C. The Master Lease and all subleases (sometimes collectively referred to herein as “Leases”) shall be subordinate to the FHA-Insured Security Instrument/Mortgage/Deed of Trust (Form HUD-94000-ORCF) (“Security Instrument”) and must be approved by HUD prior to execution. The Leases may not be modified or amended without the prior written consent of HUD and, unless there is a qualified non-disturbance agreement in place, they may be terminated by HUD, at HUD’s election once in the event that HUD takes title to the project. If requested timely by Borrower/Lessor and included in the documentation for the transaction, HUD will agree to allow an amendment to the Security Instrument providing that notice of such default be given to the Master Tenant contemporaneously with the giving of notice to the Borrower/Lessor.
- D. HUD will also consider the financial and physical condition of the facilities, and whether the facilities are in compliance with State and HUD requirements.

9.3

Documents for Submission and Review

- A. **New Application.** For new Master Lease structure applications submitted by existing FHA-insured facilities, see the submission requirements in Production, Chapter 13. If a new master lease transaction is being submitted in conjunction with a CHOP, please follow CHOP process detailed in Asset Management Chapter 7.6.
- ~~B. **Modification Applications.** For modifications to an existing HUD-approved Master Lease, the Modified Master Lease Checklist (available on the Section 232 Program website) should be followed.~~

~~C. **Requests for Release.** For the release of individual projects from an existing HUD-approved Master Lease, the required procedures please follow prepayment or CHOP processes detailed in the Asset Management Chapter 3.3 and documentation must be provided, and approved by ORCF. Guidance will be made available on the Section 232 Program website.~~

~~D.B. An application for a new master lease structure or the modification to (or release from) an existing master lease structure must be assembled, reviewed for completeness, accuracy and eligibility, and submitted by the Mortgagee/Servicer to ORCF with a recommendation for approval. A checklist of the required application exhibits as well as the instructions for submitting the application will be posted on the Section 232 Program websiteChapter 7.6.~~

9.4

Pre-Application Conference

It is recommended that all parties participate in a pre-application conference prior to the submission of a formal application for modification of an existing Master Lease. The following information or issues should be discussed during this meeting or conference:

- The details of the application;
- ~~• The requirements on the Submission Checklist – Section 232 New or Modification of Master Lease;~~
- ~~• The appropriate checklist to utilize for the specific transaction~~
- The existing Master Lease Structure and the proposed modification thereof;
- The layers of financing and necessary documentation related thereto; and
- The names and financial interest of all principals, as defined in 24 CFR Part 200, including, but not limited to the Borrower(s), Master Tenant and operators.

9.5

Master Lease Release

ORCF will only consider releases from a Master Lease or Limited Guaranty and Security Agreement (LGSA) if there is a prepayment or a Change of Participants. To be considered for a release from a Master Lease or LGSA, the projects remaining on the Master Lease or LGSA must have a 1.45 lease coverage ratio. If the remaining projects in the Master Lease or LGSA do not meet 1.45 lease coverage release threshold, acceptable risk mitigation strategies, such as a Debt Service Escrow and joining another Master Lease or LGSA, will be required.

The parties' ability to have a project released from an existing Master Lease also depends upon the terms of the Master Lease documents themselves. In particular, the Master Lease Subordination, Non-Disturbance and Attornment Agreement (Form HUD 92333-ORCF) speaks

119 to this, at Section 5 thereof, “Master Lease Release.” Additionally, the processes for obtaining
120 such a release, set forth in [Asset Management Chapter 3.3.2 – Prepayment Procedures] would
121 apply. If approved for release, the Operator of the project being removed from an existing Master
122 Lease will be required to amend the Master Lease documents remaining in effect to reflect the
123 correct composition of the Master Lease portfolio, and to terminate all agreements with the
124 Master Tenant. All Asset Management checklists are available on the Section 232 Program
125 website. Participants should discuss with Asset Management which checklist is appropriate to
126 use.

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