



Requests to Release or Modify Original Loan Collateral

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Asset Management

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Introduction

ORCF strives to work in partnership with the Lender/Servicer to ensure each FHA-insured 232 mortgage is financially and operationally strong, that each property provides a safe, quality place of residence, and that each loan remains viable for the term of the mortgage.



Introduction

(continued)

Occasionally, the collateral securing these mortgages needs to be modified or released, in transactions, for example, that include:

- Reduction, addition, or sale of beds
- Easements, eminent domain, or sale of land or other security
- Remodeling portions of the mortgaged property
- Adding to, subtracting from, reconstructing, or demolishing portions of the mortgaged property.

Introduction

(continued)

The various forms of the Regulatory Agreements provide language requiring prior HUD approval when the collateral securing a FHA-insured mortgage needs to be modified (see *Section 232 Handbook 4232.1, Section III Asset Management, Chapter 3.4 Request to Release or Modify Original Loan Collateral* for further description of these requirements).



To clarify....

***“Remodeling”** is defined for these purposes as repairs/improvements that constitute*



***“Substantial Rehabilitation,”** as defined in the Section 232 Handbook 4232.1, Section II Production, Chapter 2.6.B*

More clarification....

*A project qualifies as “**Substantial Rehabilitation**” when:*

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

{OR}

- Two or more major building components are being substantially replaced. The component must be significant to the building and its use, normally expected to last the useful life of the structure, and not minor or cosmetic.*

And still more clarification....

Substantially replaced means that at least 50% of the component must be replaced. Examples of major building components are: roof structures, wall or floor structures, foundations, plumbing systems, central heating systems, air conditioning systems, and electrical systems.



What's required....



Borrowers/Operators, working closely with their Lender/Service, are required to obtain written approval from HUD before undertaking any action to

release or modify the original loan security or collateral of the FHA-insured 232 mortgage.

What are the risks without prior HUD approval?

The FHA-insured loan may be jeopardized by changes in the collateral of projects in our portfolio many reasons, including, but not limited to, the following:

- The FHA loan documents, including the survey, are no longer accurate
- Mechanic, contractor, and vendor liens may be placed against the project
- There may be other violations of laws/rules (i.e., environmental, FHEO, federal accessibility laws (UFAS, ADA, FHAA), local rules, state licensing, etc.)



What are the risks...?

(continued)

- In cases where an addition is on new land, the entire project is no longer covered by the title insurance policy, and the FHA lender and HUD's lien priority is at risk



- In cases where the unauthorized addition is built upon new land, the Owner is in violation of the single-asset entity (SAE) requirement because the addition and supplemental land are not encumbered by our mortgage or regulatory agreements (see *Section 232 Handbook 4232.1, Section II Production, Chapter 2.5 General Section 232 Requirements* for further description of these requirements).
- The FHA-insured loan is now secured by only a portion of a building so that any enforcement action and/or foreclosure may be problematic

HUD's Recourse After Violation

A recent letter (dated May 31, 2018 from Roger Lewis, Director of the Office of Residential Care Facilities), Borrowers, Operators, and Lenders/Service providers were reminded of the notification requirements outlined in various Borrower and Operator Regulatory Agreements.

Failure to obtain HUD approval prior to changes to collateral is a violation of the Regulatory Agreement and subject to the following punitive actions:

- Enforcement action against Owner and Operator (i.e. civil money penalties)
- Flags in the Active Partners Performance System (APPS) against all parties
- Other: Default/Note Sale/Foreclosure

Application Documents: Current State

Loan Servicing Guidance Home Page

Please Note: Handbook 4232.1 REV-1 Effective January 19, 2017

Welcome to the Loan Servicing Guidance page! The links below identify specific tools used by lenders and HUD for the management of 232 assets.

- **New Document Implementation Matrix**

- ▶ **Account Executive Facility Assignments - Contact Listing** (Aug,8, 2017)
- ▶ **Accounts Receivable Financing**
 - ▶ **Accounts Receivable Financing Certification**
 - ▶ **Accounts Receivable Checklist**
 - ▶ **Accounts Receivable Financing**
 - ▶ **AR Narrative Template**
 - ▶ **Intercreditor Agreement** (for AR Financed Projects)
- ▶ **Capital Improvements**
 - ▶ **Lender Narrative, Capital Improvements - OPTIONAL**
 - ▶ **Capital Improvements Application Checklist**

Application Documents: Current State

(continued)

- Applicants are required to submit the information requested on the *Capital Improvements and Requests to Release or Modify Original Loan Collateral Checklist* found on the ORCF Loan Servicing website.
- Use of the corresponding *OPTIONAL Lender Narrative* is not required. However, we strongly encourage use of these documents as it will shorten the review process.



Application Documents: Current State

(continued)

The posted application checklist was designed with the future state documents in mind; it requires Lenders/Servicers to identify the type of transaction submitted to improve clarity for the AE reviewer.

Transaction Type: Please check all that apply.

Change in Beds	Change in Land	Change in Collateral
<input type="checkbox"/> Reduction of beds <input type="checkbox"/> Addition of beds <input type="checkbox"/> Sale of beds	<input type="checkbox"/> Easements <input type="checkbox"/> Eminent domain <input type="checkbox"/> Sale of land or other security	<input type="checkbox"/> Remodeling* <input type="checkbox"/> Adding to property <input type="checkbox"/> Reconstructing <input type="checkbox"/> Demolishing portions

*See first page of Checklist for "remodeling" definition.

Submission Checklist

Capital Improvements and Requests to Release or Modify Original Loan Collateral Checklist

Section 232

U.S. Department of Housing
and Urban Development
Office of Residential Care Facilities

Warning: HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802)

Project Name:

Project Number:

Applicant Name:

The Regulatory Agreement provides language requiring prior HUD approval when the collateral securing a FHA-insured mortgage needs to be modified (see *Section 232 Handbook 4232.1, Section III Asset Management, Chapter 3.4 Request to Release or Modify Original Loan Collateral* for further description of these requirements). This form should be used if the subject transaction is for revision to the security or collateral, which includes the following:



Submission Checklist

(continued)

The checklist will indicate when there are specific documents required for a particular type of transaction such as adding new beds.

No.	Item	Incl.	N/A
7.	HUD-935.2A, Affirmative Fair Housing Marketing Plan <i>Applicable if adding new beds or units</i>	<input type="checkbox"/>	<input type="checkbox"/>
8.	Assurance of Completion <ul style="list-style-type: none"> • Commitment Letter from Surety/Performance Bond {OR} • Commitment Letter from Bank for Letter of Credit 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
9.	Owner-Architect Agreement on ALA Form B108 and HUD-92408-ORCF, HUD Amendment to B108 <i>(Required only if an Architect is involved.)</i> <ul style="list-style-type: none"> A. Design and Supervisory Architect B. Design Architect only 	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

Application Documents: Future State

(continued)

Unfortunately, until the revised ***Requests to Release or Modify Original Loan Collateral Lender Narrative*** documents have completed the PRA review process and we receive approval for their use, we are likely to continue to have some confusion when processing these transactions.



Lender Narrative: Future State

**Lender Narrative –
Requests to Release or
Modify Original Loan
Collateral
Section 232**

**U.S. Department of Housing
and Urban Development**
Office of Residential
Care Facilities

OMB Approval No. 2502-0605
(exp. 06/30/2017)

Public reporting burden for this collection of information is estimated to average 3.0 hours. This includes the time for collecting, reviewing, and reporting the data. The information is being collected to obtain the supportive documentation that must be submitted to HUD for approval, and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form unless it displays a currently valid OMB control number.

Warning: Any person who knowingly presents a false, fictitious, or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions.

Privacy Act Notice: The Department of Housing and Urban Development, Federal Housing Administration, is authorized to collect the information requested in this form by virtue of: The National Housing Act, 12 USC 1701 et seq. and the regulations at 24 CFR 5.212 and 24 CFR 200.6; and the Housing and Community Development Act of 1987, 42 USC 3543(a). The information requested is mandatory to receive the mortgage insurance benefits to be derived from the National Housing Act Section 232 Healthcare Facility Insurance Program. No confidentiality is assured.

Form HUD-90030-ORCF (06/2014)



Lender Narrative: Future State

(continued)

The Lender Narrative is formatted so that the Lender/Service is only required to respond to sections of document that are relevant to the proposed transaction.

Reduction, Addition, or Sale of Beds

☐ Please check box if this section is not applicable, then click [here](#) to skip this section

Key Questions

- | | Yes | No |
|--|--------------------------|--------------------------|
| 1. Does the transaction involve an increase or reduction in the number of beds at the project? | <input type="checkbox"/> | <input type="checkbox"/> |

Lender Narrative: Current & Future State

Key Questions

	Yes	No
1. Does the transaction involve a change in the current use (e.g., bed type, change in commercial space, or care level) of any portion of the project?	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the project have any open HUD or state compliance issues?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the Borrower currently delinquent or has the Borrower previously been delinquent on its mortgage loan payments?	<input type="checkbox"/>	<input type="checkbox"/>
4. Have 10 or more years passed since a Physical Condition Needs Assessment (PCNA) was provided to HUD? <i>(If yes, a PCNA is required with this submission.)</i>	<input type="checkbox"/>	<input type="checkbox"/>
5. Will the current tenants of the subject project be impacted in any way by the proposed transaction?	<input type="checkbox"/>	<input type="checkbox"/>
6. Will the proposal require relocation of any residents?	<input type="checkbox"/>	<input type="checkbox"/>
7. Does the proposed transaction involve any significant ground disturbance (digging)?	<input type="checkbox"/>	<input type="checkbox"/>
8. Does the proposal involve any collateral that was in place to mitigate an environmental condition?.....	<input type="checkbox"/>	<input type="checkbox"/>
9. Are there any waivers proposed for this transaction?	<input type="checkbox"/>	<input type="checkbox"/>

<<For each "yes" answer above, provide a narrative discussion regarding the topic. As applicable, discuss the issue and its effect on the project. Describe any potential risks and the mitigants.>>

Application Considerations

The following issues will be considered by ORCF when processing requests for major capital additions or reductions of the mortgage security:

- Financial and physical condition of the project.
- Open ORCF and state compliance issues.
- Project's Physical Condition and Needs Assessment (PCNA). If the latest PCNA is more than 10 years old, ORCF will require a new PCNA.



Application Considerations

(continued)

- The value of the remaining project after approval of the transaction. Will it be unaffected by the major capital addition or reduction or will the value still be sufficient to cover the remaining balance of the insured mortgage?
- Are beds to be sold, put on hold, transferred to another property, or returned to the state?
- ORCF will engage the services of HUD Office of General Counsel (OGC) and, if needed, the Office of Healthcare Programs (OHP) Architecture & Engineering, and/or Appraisal teams to review all legal and technical issues.

Application Considerations

(continued)

- In processing release of collateral requests where funds are being received for the sale or transfer of beds, ORCF will expect to receive market value for the released collateral and the funds will be directly applied to the mortgage balance. Any deviation from this must be expressly approved by ORCF.



- Other relevant issues, information, or documents as determined by ORCF.

Early Submission Requirements

Please note the early submission requirements from the checklist that relate to the environmental requirements. Failure to do so may result in significant application processing delays...

- Adding to, subtracting from, reconstructing, or demolishing portions of the mortgaged property. ***See important Early Submission Requirements below for these transactions.***

EARLY SUBMISSION REQUIREMENTS:

A consultation with federally-recognized tribes may be required for activities that include ground disturbance (digging), installation of an underground tank, installation of utility lines, construction, etc. Tribal consultation must be initiated by HUD and the activity must not begin before HUD completes its environmental review. **If tribal consultation is required, the ORCF Account Executive should be notified as early as possible or upon submission of your request for this transaction so that a Tribal Consultation can be initiated by HUD.** The documentation required for this early submission, outlined in Exhibit 23 of this checklist, should be sent to the following email address: OHPTribeNotice@hud.gov.

Early Submission Requirements

(continued)

It is also very important to provide a detailed project description with the early submission that includes the type and purpose of project, proposed activities/site work, the current condition of the site (e.g., what is on the site now), and the estimated cost of the proposed activities.

No.	Item	Incl.	N/A
25.	Tribal Notification Information ORCF must complete the Tribal Notification process, please review the Lender's Environmental Checklist for activities that may require Tribal consultation, including ground disturbance (digging), installation of an underground tank, installation of utility lines, construction, etc.. Tribal consultation must be initiated by HUD and the activity must not begin before HUD completes its environmental review. If tribal consultation is required, the ORCF Account Executive should be notified as early as possible or upon submission of your request for approval of capital improvements so a Tribal Consultation can be initiated by HUD. The documentation required for this early submission should be sent to the following email address: OHPTribeNotice@hud.gov . To assist ORCF with this process, please provide the following.	<input type="checkbox"/>	<input type="checkbox"/>
	A. Project description (Provide a very detailed description of the type of project, purpose of the project, the proposed activities/site work, the current condition of the site [e.g., what is on the site now], and the estimated cost of the proposed activities)	<input type="checkbox"/>	
	B. Maps (Location map, aerial view, site layout map and topographic map)	<input type="checkbox"/>	

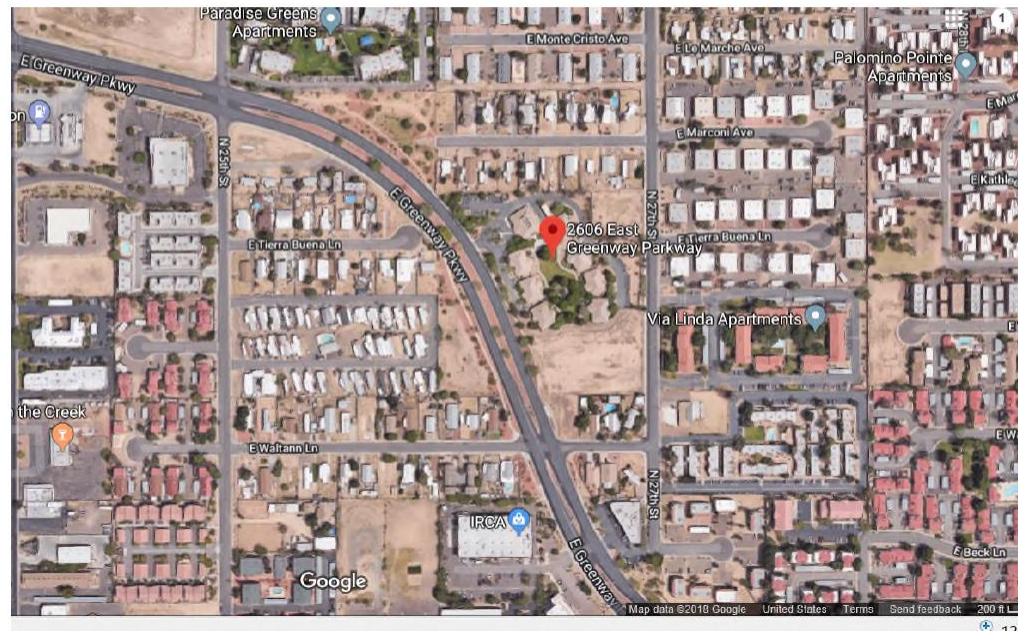
Early Submission Requirements

(continued)

It is critically important that you include the following maps with your early submissions:

- Location Map
- Aerial View
- Site Location Map
- Topographic Map

Aerial View



Environmental Requirements

ENVIRONMENTAL REQUIREMENTS			
23.	<p>Environmental A new Phase I ESA in accordance with ASTM E 1527-13 (or the most recent edition) is required if the activity being approved involves: (1) significant ground disturbance (digging) or construction not contemplated in the original application; (2) a change in land use not contemplated by the original risk-based mitigation conducted on the site (i.e., from commercial to residential; (3) site expansion or addition; and/or (4) any other activities that may result in contaminant exposure pathways or activities not contemplated in the original application.</p> <p>A. Phase I Environmental Report B. Draft HUD-4128 and additional reports (as applicable) C. Phase II Environmental Report (if applicable) D. Biological Assessment (if applicable) E. Standard Flood Hazard Determination Form, FEMA No. 086-0-32 F. Other (if applicable): <i>[describe]</i></p>	<input type="checkbox"/>	<input type="checkbox"/>
24.	<p>State Historic Preservation Office letter/requirements Provide all information that was sent to the SHPO and any response received.</p>	<input type="checkbox"/>	<input type="checkbox"/>
25.	<p>Tribal Notification Information ORCF must complete the Tribal Notification process, please review the Lender's Environmental Checklist for activities that may require Tribal consultation, including ground disturbance (digging), installation of an underground tank, installation of utility lines, construction, etc.. Tribal consultation must be initiated by HUD and the activity must not begin before HUD completes its environmental review. If tribal consultation is required, the ORCF Account Executive should be notified as early as possible or upon submission of your request for approval of capital improvements so a Tribal Consultation can be initiated by HUD. The documentation required for this early submission should be sent to the following email address: OHPTribeNotice@hud.gov. To assist ORCF with this process, please provide the following.</p>	<input type="checkbox"/>	<input type="checkbox"/>

Environmental Requirements

(continued)

To summarize, every Change in Collateral application must satisfy the environmental review requirement.

An environmental review will be conducted on any proposal for remodeling, adding to, subtracting from, reconstructing, or demolishing a portion of the mortgaged project.

A HUD official must sign the environmental review document to grant final approval.



Environmental Requirements

(continued)

The CPD memorandum on *Guidance for Categorizing an Activity as Maintenance for Compliance with HUD Environmental Regulations*, includes the following:

1. Cleaning activities;
2. Protective or preventative measures to keep a building, its systems, and its grounds in working order;
3. Replacement of appliances that are not permanently affixed to the building;
4. Periodic replacement of a limited number of component parts of a building feature or system that are subject to normal wear tear;
5. Replacement of a damaged or malfunctioning component part of a building feature or system.

However, this only applies when making a determination regarding environmental review for refinance transactions in Production.



Environmental Requirements

(continued)

It is the Lender's responsibility to review the Phase I, if required, and all other environmental documentation to ensure that all environmental requirements are met. Many federal agencies require contact directly from HUD. This list includes, but is not limited to, State Coastal Zone Management councils, U.S. Fish and Wildlife Service, and local/regional Native American tribes.

In this instance, please contact the ORCF Asset Management environmental review staff directly at OHPTribeNotice@hud.gov in **advance of the application submission.**



Environmental Reviews

- Required by law (24 CFR Part 50)
- Helps avoid litigation that could stop project
- Secures the value of public investment
- Results in higher quality projects
- Avoids or mitigates environmental impacts that harm our beneficiaries, our projects, and the surrounding environment
- Documents HUD's analysis and decisions



Environmental Reviews

(continued)

An environmental review must be completed by ORCF staff using **HEROS**, which is the HUD Environmental Review Online System.

HEROS is a new HUD system that replaces the paper-based environmental review process (including the 4128) with a consistent, comprehensive online tool.

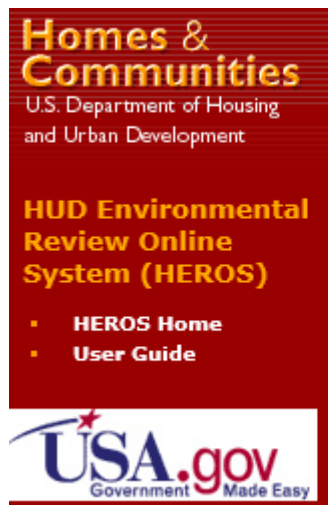
We must have all of the documents listed in the environmental section of the submission checklist before we can start the environmental review.

Environmental Reviews

(continued)

HEROS can be used by everyone involved in the environmental review process including:

- ✓ HUD staff
- ✓ Local, state, and tribal governments
- ✓ Consultants and Contractors



Community Planning & Development

HEROS Login

Enter your Username (C*****, B***** or H*****) and Password:

Username:

Password:

Environmental Reviews

(continued)

Environmental reviews completed in **HEROS** will be archived on the HUD Exchange for 1 year for standard reviews. This allows transparency with federal laws and other state and local entities, lenders, and borrowers.



Online environmental reviews can be found at www.hudexchange.com.

Purpose of Conducting Environmental Reviews

Assurance that HUD projects are decent, safe, and sanitary.

- Analysis of the impact of a project on the surrounding environment and the impact the surrounding environment will have on a project
- Documentation of compliance with up to 17 federal environmental laws and authorities
- Public documents that encourages public participation

Environmental Review Not Required

For permanent improvements that do not alter environmental conditions and are limited to protection, repair or restoration activities necessary only to control or arrest the effects from disasters or imminent threats or public safety including those resulting from physical deterioration (e.g., replacing an existing deteriorated parking lot or dilapidated garage).

*HUD Protection and Enhancement of
Environmental Quality 24 CFR 50.19 (4)(10)*



Questions