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December 16, 2021

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Management Agent Role Clarification

On February 28, 2018, ORCF issued an Email Blast article that clarified the role of the Management Agent.  If an Asset Management transaction involving a party currently identified as a Management Agent is being submitted to ORCF, Lenders should first review the 2018 Email Blast ([here](https://www.hud.gov/sites/dfiles/Housing/documents/FebEmailBlast022818.docx)) to ensure the Agent is functioning in a management agent role as clarified. If upon review it is determined that the party is not functioning in a management agent role, the Lender should inform the program participants and send a letter to HUD via the 232 Healthcare Portal (under “Management Agent Certification – 9839”) indicating the intent to terminate the existing Management Certification (HUD-9839-ORCF) and Management Agreement with the intended termination date. Following the termination date, the proposed oversight entity could serve as a contractor and be paid a reasonable rate from project funds, as noted in the last section of the February 2018 Email Blast.  No further HUD ORCF approval is required under these circumstances. Once in receipt, the ORCF Account Executive will review and acknowledge the termination and ORCF internal databases will be updated.

***Keywords:*** *Management Agent*

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New Environmental Resources and Case Study Now Available On HUD Exchange

New resources have been developed to help responsible entities, recipients, applicants, and partners prepare their environmental assessments. Learn more about these resources on the HUD Exchange website ([here](https://www.hudexchange.info/news/environmental-assessment-guide-and-resources/)). These resources include a New Environmental Assessment eGuide, Resources and a Case Study. The new resources provide guidance on the factors that should be considered before a project begins and explain how to assess the environmental impact from and on the project.

***Keywords:*** *Environmental, HUD Exchange*

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Phase I Environmental Assessment Standard ASTM E1527

ASTM recently approved an update to their E1527 standard, ASTM E1527-21.  However, HUD will not adopt the new ASTM standard until EPA determines via rulemaking that it meets its All Appropriate Inquiries rule. Until EPA approves the new standard, applicants should continue to use the ASTM E1527-13 standard.  HUD will formally announce when the ASTM E1527-21 standard is required for applications, including any grace periods and treatment of applications already submitted.

***Keywords:*** *Environmental, ASTM E1527*

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Processing Escrow Draw Requests Pursuant to COVID-Related Supplemental Loans

As outlined in Mortgagee Letter 21-01 ([here](https://www.hud.gov/sites/dfiles/OCHCO/documents/2021-01hsgml.pdf)), HUD implemented temporary statutory authority to insure operating loss loans under Section 223(d) of the National Housing Act to mitigate healthcare facilities’ COVID-related temporary revenue reductions. Section 223(d) firm commitments issued on or before September 30, 2021 will be able to close on these loans, which can be used to cover temporary losses or additional expenses incurred during the 24-month timeframe of January 1, 2020 to December 31, 2021 as a result of the COVID-19 pandemic. The loan proceeds will be placed in a restricted Long-Term Debt Service Reserve Escrow account, memorialized with an executed Form HUD-92476C-ORCF and applicable addendums.

In administrating the proceeds, HUD requires that other available funds will be used first. Moreover, the priority use for such funds will be making mortgage payments where net operating income is temporarily insufficient. In the event that the Borrower-Operator relationship is that of lessor-lessee and the Borrower’s mortgage delinquency is due to the Operator’s lease delinquency, HUD will require repayment to the escrow of those funds when the Borrower eventually recoups the Operator’s delinquent lease payments.

The method of disbursement from the operating loss loan escrow is as follows and is consistent with Handbook 4232.1, Section II, Chapter 2.11:

1. Monthly income and expense statements signed by a Principal of the Borrower entity and approved by the Lender. The owner's monthly statements must contain the following acknowledgement:

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).

1. Quarterly and year-to-date financial statements submitted by the licensed operator and covering the project operations, including:
   1. Profit and Loss Statement
   2. Balance Sheet
   3. Accounts Payable Aging
   4. Accounts Receivable Aging
   5. Census
   6. Cash Flow Statement
2. The statements must be submitted within 30 days of the end of each quarter. The statements may, at the Operator’s option, be Operator-certified rather than audited provided; however, if ORCF determines that a particular Operator’s certified statements are inadequate, unreliable, or not presented in a manner that is as consistent as feasible with Generally Accepted Accounting Principles, then ORCF may, on a case-by-case basis, require more detailed and/or audited financial statements from the Operator. This requirement will continue until all losses have been substantiated as actual losses by an audited statement. This must be a condition of the Commitment. If the Borrower has not submitted the quarterly statement by the due date, ORCF will withhold approval of the disbursement until the statements are submitted. ORCF will review the certified annual statement against the uncertified statements submitted by the Borrower and make necessary adjustments in future disbursements.
3. Operating loss loan funds must be held in escrow and can only be used to offset current losses until it is evident the project is on sound footing.

At the ORCF Account Executive’s discretion, or if already currently being required, Monthly Accounting Reports (MARs) from the Borrower may be an acceptable submission for #1 above.

As it relates to operator financial statements, the Account Executive may also require updated year-to-date financial statements covering project operations for each draw request from the Operating Loss Loan escrow, as, for example, when the previously approved draw was less than 90 days prior to the current draw request, at the Account Executive’s request.

Consistent with the June 26, 2020 Email Blast article ([here](https://www.hud.gov/sites/dfiles/Housing/documents/JunEmailBlast06262020.docx)), “All Asset Management Transactions Must Be Submitted Through the Healthcare Portal Beginning September 1, 2020,” the Borrower will submit the aforementioned documents to the Servicing Lender, who in turn must submit the documents, accompanied with a signed Request for Approval of Advance, Release of Escrow Funds (Form HUD-92464-ORCF), via the Section 232 Healthcare Portal as an “Other” Project Action.

If the facility’s revenue is so low as to be insufficient even to meet operating expenses, HUD will evaluate the overall risk to the FHA insurance fund before approving the advance of escrowed loan proceeds for operating expenses. Moreover, the existence of a lessor-lessee relationship between Borrower and Operator will be relevant. Since the Borrower entity is the entity for which the loan proceeds are intended, it is the Borrower entity’s obligations to which the released escrow funds must be put. This is true regardless of any identity-of-interest between the Borrower and lessee Operator and is a matter that HUD would expect to be addressed contractually between the Borrower and Operator.

If the borrower does not provide sufficient documentation demonstrating the need for funds to pay the mortgage, the withdrawal request may not be approved.

***Keywords:*** *COVID-19, Operating Loss Loans, Asset Management - Processing*

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FROM THE CLOSING CORNER

Change in Timing of HUD OGC Attorney Assignment for Section 223(f) and 223(a)(7) Closings

Effective immediately, ORCF will request the assignment of the designated HUD OGC Attorney at the time a Section 223(f) or Section 223(a)(7) Closing Package is submitted to the ORCF Closing Coordinator. The ORCF Closing Coordinator will notify the Lender’s Team once assignment is made and will provide specific contact information for the HUD OGC Attorney assigned to the transaction. Please wait to receive notification of assignment from the ORCF Closing Coordinator before submitting legal closing packages to HUD.

Please contact the assigned ORCF Closing Coordinator directly if you have any questions.

***Keywords:*** *HUD OGC Attorney, Closings - Package, Legal – Legal Package*

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| Past Lean 232 Updates are [available online](https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDEsInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMTAxMDQuMzI3OTIyMzEiLCJ1cmwiOiJodHRwczovL3d3dy5odWQuZ292L2ZlZGVyYWxfaG91c2luZ19hZG1pbmlzdHJhdGlvbi9oZWFsdGhjYXJlX2ZhY2lsaXRpZXMvcmVzaWRlbnRpYWxfY2FyZS9tYWlsX2JsYXN0X2luZGV4P3V0bV9tZWRpdW09ZW1haWwmdXRtX3NvdXJjZT1nb3ZkZWxpdmVyeSJ9.wD_kyOelsVj0O18oGZ6vB1qZQYtIH2lojk5kd633DYc/s/1356292409/br/92636915983-l).  Have questions about the Lean 232 Program? Please contact [LeanThinking@hud.gov](mailto:LeanThinking@hud.gov).  For more information on the Lean 232 Program, check out: [http://www.hud.gov/healthcare](https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDIsInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMTAxMDQuMzI3OTIyMzEiLCJ1cmwiOiJodHRwOi8vd3d3Lmh1ZC5nb3YvaGVhbHRoY2FyZT91dG1fbWVkaXVtPWVtYWlsJnV0bV9zb3VyY2U9Z292ZGVsaXZlcnkifQ.1u0SLtDtXsU62834yVCK0A042fLMrX4ZfmVsijRPzQI/s/1356292409/br/92636915983-l).    Stay Connected with the Office of Housing and the Federal Housing Administration: |
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