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Senior Lender Leadership Dialogue Sessions with ORCF

The Office of Residential Care Facilities (ORCF) has long recognized that the Section 232 Program’s continuous improvement occurs only through engagement with industry stakeholders. We are thus pleased that, for the first time since the Pandemic’s onset, we can host an in-person dialogue session with lenders’ chief Section 232 underwriters and, separately but concurrently, with lenders’ chief Section 232 servicers. The purpose of the dialogue sessions is to seek individual input of the participants, and not a request for participants to come to a consensus.

These sessions will be held from 9:15 a.m. to 11:30 a.m. on June 15, 2022 on the second floor of the Minneapolis Central Library (l300 Nicollet Mall) in Pohlad Hall (Production) and the S-275 RKMC Room (Asset Management). This date and location were selected because many potential participants may already be coming to Minneapolis that week for the Healthcare Mortgagee Advisory Council (HMAC) conference.

These two concurrent sessions will be interactive, as we engage with lenders’ leadership on Production and Servicing topics important to both HUD and Section 232 lenders. Accordingly, each Section 232-approved lender is invited to send only one participant to each session. The designees should be the most senior Section 232 underwriting representative and most senior Section 232 servicing representative available.

To register as a lender’s senior Production or Servicing representative, use this [Registration Form](https://forms.office.com/Pages/ResponsePage.aspx?id=xSRVYekizUuokxGApT_HsjjlwOi7t3xDrs-mnt_GeUFUM0pINkhJNVFZWDE5WUsxVklaM1BZR0NOSS4u) by Friday, May 27, 2022. Also, since in these sessions we will engage in detailed discussions of key topics, please also submit suggested topics/questions to ORCF by Friday, June 3, 2022. Please use this linked form for [Production Topics](https://forms.office.com/Pages/ResponsePage.aspx?id=xSRVYekizUuokxGApT_HsjjlwOi7t3xDrs-mnt_GeUFUOE5TMzlVTFlQR0c5Tk1VTUhSSjhGNFVTNy4u), and this linked form for [Servicing Topics](https://forms.office.com/Pages/ResponsePage.aspx?id=xSRVYekizUuokxGApT_HsjjlwOi7t3xDrs-mnt_GeUFUREE0OTFKRUJVSVZPTklQNjlJQ0JNM1A2Uy4u).

***Keywords:*** *Lender Dialog Meetings*

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Elimination of Hard Copies of Closing Documents Post-Endorsement

HUD has been closing Section 232 residential care loans electronically since March 2020, subject to lenders providing a hard copy of the closing documents when HUD resumed normal operations. ORCF has reconsidered this aspect of the March 2020 Contingency Plan and has determined that effective immediately, submission of hard copies of the documents will no longer be required provided that no changes were made to the document submission that was provided electronically to HUD. Guidance is available ([here](https://www.hud.gov/sites/dfiles/Housing/documents/ORCF_Closing_Documents_Memo_4-6-22.pdf)).

***Keywords:*** *Closings*

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Projects in the Queue

ORCF’s expectation is that an application is ready for review by an underwriter when an application is submitted.  If an application in the queue is not ready for assignment to an underwriter, the Lender should immediately notify ORCF so the project can be placed on temporary hold.  When projects on temporary hold are ready to underwrite, they are placed back into the queue as of the original queue entry date.  ORCF will not allow applications to remain in the queue if they are not ready to underwrite.

As a reminder, below are general criteria for when projects are ready to underwrite:

* The project has at least 1.45 DSCR on the T12 actual NOI including the underwritten reserve for replacement (see the [August 27, 2021 Email Blast](https://www.hud.gov/sites/dfiles/Housing/documents/AugEmailBlast08272021.docx))
* The project is operating at or trending toward the underwritten and appraised metrics, including occupancy, census mix and operating margin, as well as DSCR
* The project has least a 1.45 DSCR in the Stress Test for the most recent three (3) months and in the Test Scenario Average
* Any COVID-19 expense adjustments must be clearly identified and explained in the application.  Per the [February 23, 2022 Email Blast](https://www.hud.gov/sites/dfiles/Housing/documents/FebEmailBlast02232022.docx), note that the industry has adapted to new ways of operating and ORCF therefore expects to see minimal adjustments to underwritten COVID-19 expenses as a result.
* The Lender has proposed mitigation for situations where the operations have been unstable or other risk situations including situations such as short-term turnarounds (situations where the operations have changed and there is less than a 3-year stabilized history) or COVID impacts

Please also note the following recent Email Blast guidance:

* November 15, 2021 Email Blast on Facility Staff Vaccinations (for SNFs)
* October 27, 2021 Email Blast on discussion of staffing shortages
* August 27, 2021 Email Blast addresses handling of recent Medicaid Rate increases in the financial tables
* February 23, 2022 and June 30, 2021 Email Blasts clarify Decision Circuit Financial Tables & NOI and provides Cashflow Stress Test instructions as well as lots of other relevant guidance
* March 24, 2021 Email Blast discusses Ward Beds

As a reminder, ORCF is also seeing a significant number of applications delayed due to environmental issues that should have been raised and/or resolved prior to application submission.  Handbook 4232.1, Section II, Chapter 1.4.D.2 encourages Lenders to contact leanthinking@hud.gov during assembly of applications where there are environmental matters that merit early consultation.  In addition, ORCF provides a [lender environmental checklist tool](https://www.hud.gov/sites/dfiles/Housing/documents/223F_ENVCHECKLIST.xlsx) to assist lenders in evaluating potential environmental issues.

***Keywords:*** *Application Processing, Queues*

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Staffing Turnover and Quality of Care

As noted in the June 30, 2021 Email Blast (here), ORCF has long emphasized the importance of Lenders carefully assessing Operator qualifications for participating in the Section 232 Program. This matter is addressed in multiple locations in the Handbook 4232.1 (See Section II, Chapter 2.5.FF ([here](https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDgsInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMTA2MzAuNDI2MzYzMTEiLCJ1cmwiOiJodHRwczovL3d3dy5odWQuZ292L3NpdGVzL2RvY3VtZW50cy80MjMyMVMyQzJIU0dILlBERj91dG1fbWVkaXVtPWVtYWlsJnV0bV9zb3VyY2U9Z292ZGVsaXZlcnkifQ.FUbhSaZEISZ4PjvFmcTtBTvONAfF5C-fYZb7BtWQeOQ/s/1356290806/br/108658064261-l)) and Chapter 8, Sections 8.1 and 8.4 ([here](https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDksInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMTA2MzAuNDI2MzYzMTEiLCJ1cmwiOiJodHRwczovL3d3dy5odWQuZ292L3NpdGVzL2RvY3VtZW50cy80MjMyMVMyQzhIU0dILlBERj91dG1fbWVkaXVtPWVtYWlsJnV0bV9zb3VyY2U9Z292ZGVsaXZlcnkifQ.3WvIdk2iemNsjAJrCuUKdyrsuPV61DhU5-UKuL5pNuQ/s/1356290806/br/108658064261-l)) and is required in the applicable Lender Narrative. Additionally, numerous Email Blasts (e.g. 2/26/2020 [here](https://lnks.gd/l/eyJhbGciOiJIUzI1NiJ9.eyJidWxsZXRpbl9saW5rX2lkIjoxMDMsInVyaSI6ImJwMjpjbGljayIsImJ1bGxldGluX2lkIjoiMjAyMTA2MzAuNDI2MzYzMTEiLCJ1cmwiOiJodHRwczovL3d3dy5odWQuZ292L3NpdGVzL2RmaWxlcy9Ib3VzaW5nL2RvY3VtZW50cy9GZWJFbWFpbEJsYXN0MDIyNjIwMjAuZG9jeD91dG1fbWVkaXVtPWVtYWlsJnV0bV9zb3VyY2U9Z292ZGVsaXZlcnkifQ.yZ5CmEmjVfrl6oMVzcP_5V98ybew-XLz-ojfkA3BbM4/s/1356290806/br/108658064261-l),12/19/2018 [here](https://www.hud.gov/sites/dfiles/Housing/documents/DecEmailBlast12192018.docx) and 2/29/16 [here](https://www.hud.gov/sites/documents/FebEmailBlast022316.docx)) have emphasized the importance of quality of care.

An established successful track record of and commitment to quality of care in operations of the proposed facility type continue to be critical for successful participation in the Section 232 program.  On January 7, 2022, CMS [here](https://www.cms.gov/medicareprovider-enrollment-and-certificationsurveycertificationgeninfopolicy-and-memos-states-and/nursing-home-staff-turnover-and-weekend-staffing-levels) announced that they would begin publishing data on SNF staffing turnover and weekend staffing levels, in advance of incorporation into the Star Ratings later this year. The data should prove helpful in Lender assessments of Operator performance. ORCF has long known that an Operator’s ability to attract and retain quality staff is key factor in its ability to maintain Operations.  This has been evident with the current industry staffing shortage and recent third-party research directly correlating staffing turnover with Star Ratings.

High staff turnover, particularly when coupled with other Quality of Care concerns could be an indication of an elevated risk to the project, requiring additional mitigation for underwriting.  Therefore, when the Lender’s due diligence uncovers both a staff turnover higher than the State average (per CMS Compare) and a Quality of Care concern (e.g., a star rating of two or below, or a most recent survey having G tags), the Lender Narrative should address the steps the project is taking to improve staff retention in the context of Operator performance.

***Keywords:****Underwriting, Lender Narrative, Quality of Care, Operator and Management Analysis*

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The Clean Air in Buildings Challenge Enactment

To improve ventilation and reduce the spread of COVID-19 in buildings, the Biden-Harris Administration launched the [Clean Air in Buildings Challenge.](https://www.whitehouse.gov/briefing-room/statements-releases/2022/03/17/fact-sheet-biden-administration-launches-effort-to-improve-ventilation-and-reduce-the-spread-of-covid-19-in-buildings/) This Challenge “is a call to action for leaders and building owners and operators of all types to assess their indoor air quality and make ventilation and air filtration improvements to help keep occupants safe.”  As part of the Challenge, the Environmental Protection Agency published a [Best Practices Guide](https://www.epa.gov/indoor-air-quality-iaq/clean-air-buildings-challenge) (developed in collaboration with numerous other Federal agencies) for improving indoor air quality and reducing the risk of spreading dangerous airborne particles.  Published with the Guide is a document providing basic [principles and general actions](https://www.epa.gov/system/files/documents/2022-03/508-cleanairbuildings_factsheet_v5_508.pdf) recommended to reduce the risk of airborne spread of viruses and other contaminants.

To support this initiative, ORCF is encouraging Borrowers and/or Operators to use available resources, such as State and local government funding (which vary significantly by jurisdiction), refinancing within Program requirements, and/or Reserve for Replacement funds (for eligible items, per Handbook 4232.1, Section III, 3.2.2 [here](https://nam10.safelinks.protection.outlook.com/?url=https%3A%2F%2Fwww.hud.gov%2Fsites%2Fdocuments%2F42321S3C3HSGH.PDF&data=04%7C01%7Cmary.saunders%40pgim.com%7C0d3afee850c047eb6aad08d9fad30220%7Cd8fde2f5939242608a030ad01f4746e9%7C0%7C0%7C637816606734129329%7CUnknown%7CTWFpbGZsb3d8eyJWIjoiMC4wLjAwMDAiLCJQIjoiV2luMzIiLCJBTiI6Ik1haWwiLCJXVCI6Mn0%3D%7C3000&sdata=fXNZrH7VXg0W%2FWR2nkOgEQ3VYNtbVLSCHIdpoXHI5vo%3D&reserved=0)).

***Keywords:****Clean Air*

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Intertest Rate Increases and Section 232 Transactions

Section 232 underwriting issues may arise due to the recent, rapid rise in interest rates. Please see reminders below for 223(a)(7) and 223(f) transactions to address some of these issues.

**Section 232/223(a)(7) Transaction Costs**

As a reminder, Handbook Chapter 4232.1, Section II, Chapter 2.10.M requires that the payback period for transaction costs associated with 223(a)(7) loans be 10 years or less.  With interest rates increasing, we are seeing increasing requests for waivers of this requirement.  ORCF does not anticipate approving waivers of this provision unless the Section 223(a)(7) is an essential part of a workout strategy to avert an FHA claim.  In these situations, ORCF would anticipate that the lender would contact Leanthinking@hud.gov ahead of application submission to have a preliminary discussion of the waiver request.

HUD has also been seeing Section 232/223(a)(7) applications where there is no change or there is an increase in interest rate from the current rate.  If you are proposing such a scenario, you will need to justify why the transaction still inures to the benefit of HUD.

For projects in which the underwritten interest rate is no longer attainable, Rate Lock Amendments should be submitted to ORCFcloser@hud.gov and address the following:

1. Indicate that the rate lock is higher than the 223(a)(7) underwritten interest rate.
2. The amendment request should include an indication of financial analysis by the lender and confirm that the DSCR based on the underwritten NOI is greater than 1.11 and include the underwritten Reserve for Replacement deposit amount.
3. The amendment request should include an updated Executive Summary portion of the 223(a)(7) Lender Narrative.
4. The calculation of DSCR needs to be based on the August 27, 2021 email blast, including accounting for the underwritten Replacement Reserve deposit.
5. ORCF anticipates that one-time COVID expenses have significantly diminished given the pandemic has reached the two year mark. If any one-time expenses are removed from the financials, those should be detailed in the amendment request and justification as to why those expenses are truly one-time must be provided.

**Section 232/223(f) Transactions**

As a reminder, Handbook Chapter 4232.1, Section II, Chapter 3.2 requires that projects have a minimum debt service coverage ratio (DSCR) of 1.45 for 223(f) projects and does not anticipate allowing any deviation from this requirement.

Rate Lock Amendments should be submitted to ORCFcloser@hud.gov and address the following:

1. Indicate that the rate lock is higher than the 223(f) underwritten interest rate.
2. **Submit an updated Stress Test for a period ended within 90 days with the amendment request.** The amendment request should include an indication of financial analysis by the lender and confirm that the DSCR for the most recent three months in the Stress Test is greater than 1.45.
3. **Submit updated T12 Decision Circuit financials for a period ended within 90 days of the amendment request (the same T12 period as the Stress Test ends).** The amendment request should include an indication of financial analysis by the lender and confirm that the DSCR for the most recent T12 period is greater than 1.45.
4. The calculation of DSCR needs to be based on the August 27, 2021 email blast, including accounting for the underwritten Replacement Reserve deposit.
5. ORCF anticipates that one-time COVID expenses have significantly diminished given the pandemic has reached the two year mark. If any one-time expenses are removed from the financials, those should be detailed in the amendment request and justification as to why those expenses are truly one-time must be provided.

For 223(f) applications that have been submitted into the queue prior to this Email Blast publication date, pre-screening will occur before applications are assigned to an underwriter. ORCF may request updated T12 financials as confirmation that programmatic DSCR of 1.45 is still being met by the project in the updated T12 period. Additionally, ORCF may seek confirmation from lenders that the most recent three months of performance have not declined and/or that those individual months would meet the threshold of demonstrating DSCR of 1.45, as will be required in a Stress Test submission once the project is processed and ready to proceed to Loan Committee.

***Keywords:*** *223(a)(7), 223(f)*

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Updated State Risk Summary Grid

In the June 28, 2017 ([here](https://www.hud.gov/sites/documents/JuneEmailBlast06282017.docx)) and February 29, 2016 Email Blasts and ([here](http://portal.hud.gov/hudportal/documents/huddoc?id=FebEmailBlast022316.docx)), ORCF provided the industry with an Updated State Risk Summary Grid to provide suggestions on how to address and mitigate funding and regulatory risks.

On March 3, 2022, the Department of Justice notified the State of Colorado that it “is violating the ADA by administering its long-term care system in a way that unnecessarily segregates individuals with physical disabilities in nursing facilities and places others with physical disabilities at serious risk of unnecessary institutionalization” (see the DOJ’s website [here](https://www.ada.gov/olmstead/)).

As the State is enjoined to promptly transition eligible and interested SNF residents to community-based long-term care services, the industry may reasonably expect an impact on SNF occupancy.

In light of this development, ORCF has updated the State Risk Summary Grid (on the ORCF website [here](http://portal.hud.gov/hudportal/documents/huddoc?id=UpdtStRiskGrd.pdf)) to include Colorado in the list of examples of States that have Olmstead Settlement Agreements or pending related litigation.

Please note that the Risk Mitigation to Consider section of the State Risk Summary Grid is not intended to be all-inclusive.  Lenders may propose alternative risk mitigation with supporting rationale for why it would address the potential risk to the same or greater extent as the Risk Mitigation included in this grid.

Additionally, this grid is not meant to limit the extent of the Lender’s inquiries.  As widely reported in industry media, many States have recently budgeted funds for reducing and/or eliminating Medicaid waiver wait lists even absent Olmstead litigation.  ORCF expects Lenders to be conversant in the regulatory risks particular to the project’s State and address as appropriate.

***Keywords:*** *State Risk, State Risk Summary Grid*

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Reminder Regarding Loan Servicing Communication

In Section 232 loan servicing, lenders are reminded to keep clear records regarding their communication with other parties, for the lender’s use in communicating with HUD about risks arising from noncompliance with business agreements. This information is paramount for overall risk management. The information is also vital for ORCF’s use of two particular tools, those being the Active Partners Participation System (APPS) and referrals to the Departmental Enforcement Center (DEC).

ORCF utilizes flags in APPS to assess risk associated with the participants in ORCF programs. Flags are placed when a violation or other circumstance warrants, as outlined in [Housing Notice 2016-15](https://www.hud.gov/sites/documents/16-15HSGN.PDF).  These flags impact a party’s future ability to participate in HUD programs. By contrast, DEC referrals are a key means of promptly taking administrative/enforcement action related to a party’s current activity.

***Keywords:*** *APPS*

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FROM THE CLOSING CORNER

Updated: The HUD Refinance Closing Checklist for Section 223(f) and Section 223(a)(7) Programs

In conjunction with the HUD Office of General Counsel (OGC), and in the spirit of “continuous improvement”, ORCF is proud to release the updated HUD Refinance Closing Checklist for the Section 223(f) and Section 223(a)(7) Programs ([here](https://www.hud.gov/sites/dfiles/Housing/documents/RefiClosingChecklist.docx)).  This ***one*** checklist will replace both the HUD Attorney and Closer Checklists for these programs ***effective April 2022***.  Please use this checklist when submitting draft closing packages to the HUD Attorney and the ORCF Closing Coordinator.

Should you have any questions, please contact your assigned ORCF Closing Coordinator.

***Keywords*** *– Closer Checklist Section 223f, Closer Checklist 223(a)(7), Closing Checklist, Refinance Closing*

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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.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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