**HUD’s Lean 232 Program**

**Office of Residential Care Facilities (ORCF)**

**Update as of November 1, 2019**

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**Guidance on HCBS State Risk Mitigation for Existing Portfolio and New Underwriting**

As a reminder, Handbook 4232.1, Section II, Chapter 5 ([here](https://www.hud.gov/sites/documents/42321S2C5HSGH.PDF)) details that appraisal analyses submitted with ORCF applications need to include a discussion of external or economic obsolescence.

Chapter 5 specifically identifies Medicaid reimbursement issues as a factor which can impact the economic life of a project.  For facilities reliant upon Medicaid waiver revenue, this includes addressing the facility’s continuing eligibility with the Home and Community Based Service (HCBS) Rule ([here](https://www.medicaid.gov/medicaid/hcbs/guidance/hcbs-final-regulation/index.html)).  Of particular concern is a facility in a setting type presumed to have the qualities of an institution and therefore at risk of losing all Medicaid waiver revenue as follows:

• Settings that are located in a building that is also a publicly or privately-operated facility that provides inpatient institutional treatment;

• Settings that are in a building located on the grounds of, or immediately adjacent to, a public institution; and

• Any other settings that have the effect of isolating individuals receiving Medicaid HCBS from the broader community of individuals not receiving Medicaid HCBS.

Per CMS guidance, any setting presumed to have institutional qualities will not sustain Medicaid waiver funding unless CMS determines through “heightened scrutiny” that the state has overcome the rebuttable presumption that the setting has institutional qualities. See CMS additional guidance on “heightened scrutiny” dated March 22, 2019 ([here](https://www.medicaid.gov/federal-policy-guidance/downloads/smd19001.pdf)).  Therefore, if CMS has not yet initially approved the state’s HCBS transition plan or if the State’s *approved* plan calls for the facility to undergo heightened scrutiny, then assuring continued facility specific eligibility may be problematic and should be discussed in the application.

As an additional reminder, Handbook 4232.1, Section III, Chapter 3.10.5 ([here](https://www.hud.gov/sites/documents/42321S3C3HSGH.PDF)) requires Operators to notify HUD of threats to licensure or provider payments.  Therefore, projects placed under “heightened scrutiny” or otherwise identified by the State as ineligible under HCBS need to work with the Lender and Account Executive to address any steps needed to assure compliance with the HCBS Final Rule.

The HCBS Final Rule ([here](https://www.medicaid.gov/medicaid/hcbs/guidance/hcbs-final-regulation/index.html)), established requirements for home and community based settings in Medicaid programs operated under sections 1915(c), 1915(i) and 1915(k) of the Act, which includes Medicaid Waiver programs used by a number of ALFs, SLFs and B & C projects.  The rule provided an initial transition period for compliance, which has since been extended to March 17, 2022.  For additional information, see the State Risk Summary Grid in the June 28, 2017 Email Blast ([here](https://www.hud.gov/sites/documents/JuneEmailBlast06282017.docx)).

***Keywords:*** *Valuation, State Risk, Asset Management*

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**Reminder on Consolidated Certification Review Due Diligence**

Pursuant to the August 29, 2018 Email Blast([here](https://www.hud.gov/sites/dfiles/Housing/documents/AugEmailBlast08292018.docx)), Lenders were reminded to review the Consolidated Certifications for all participants as part of underwriting due diligence. Please note that receiving approval of an APPS submission is ***not*** approval of the overall transaction, and when using a paper submission, it must be on the ORCF Consolidated Certification form (HUD-90013-ORCF through HUD-90017-ORCF) available ([here](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/final_232_documents)).  Applications submitted using the Multifamily Form HUD-2530 will be returned.  See *Housing Notice 2016-15* ([here](https://www.hud.gov/sites/documents/16-15HSGN.PDF)) for further guidance on processing Previous Participation Reviews of Healthcare Programs’ Participants.

***Key Words:*** *Consolidated Certification, APPS*

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**ORCF Guidance on Temporary Underwriting Holds**

Handbook 4232.1, Section II, Chapter 1.4.C provides details for an application received which contains defects or deficiencies. The following guidance is related to applications that are placed on temporary holds:

* A project(s) will be placed on temporary hold status if 60 calendar days have passed since the ORCF review comments were issued and the lender’s response did not adequately address the deficiencies to the point that the project is ready to go to Loan Committee – as determined by the ORCF Workload Manager.   This also applies to situations where the lender is making material updates or changes to an application.  Projects with delays unrelated to an application deficiency or significant update or change are exempt from this 60-day timeframe.  HUD will communicate with lenders via email when a project goes on long-term hold.
* Lenders may request an application’s placement on temporary hold at any point if they determine the underwritten application is not supported as presented, and that a temporary hold would be prudent based on their ongoing assessment of the transaction.
* A project(s) will be placed in temporary hold status for a maximum of 90 calendar days.  If the project(s) is not ready to be underwritten and placed back in the queue for review within 90 days, the project(s) will be rejected by HUD.  For projects that are currently in underwriting or on long-term hold, HUD will review the project’s situation and communicate with the lender on a case-by-case basis.
* When a project(s) exits temporary hold status, the following applies:
  + The Phase I Environmental Site Assessment does not need to be updated.  If the environmental review is already completed, it does not need to be updated unless there is a change in the application that affects an environmental review item.
  + All underwriting documents that need to be updated must be updated prior to ORCF moving the application off temporary hold and placing it back in the queue for review.  HUD will require updated project financials.  If there are concerning material changes in the updated financials, HUD will expect a new appraisal, and an updated appraisal review will be completed by HUD.  Updated documents are to be submitted to the Healthcare Portal.
  + The project will go to the top of the Firm Application queue for assignment when ORCF removes the application from temporary hold.

***Keywords:*** *Application Processing*

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**FROM THE CLOSING CORNER**

**Updated Closer Checklists are HERE!**

ORCF has updated the Closer’s Checklist for Section 223(f) ([here](https://www.hud.gov/sites/dfiles/Housing/documents/Closer_Checklist-f.docx)) and Section 223(a)(7) Closer ([here](https://www.hud.gov/sites/dfiles/Housing/documents/Closer_Checklist-a7.docx)) to include all new forms effective October 3, 2019.  Links to new forms are also included in the checklist for convenience.

***Keywords:*** *Closer Checklist Section 223f; Closer Checklist Section 223(a)(7)*

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**Final Closing Attorney Checklist is HERE!**

The New Construction (NC)/241a/Sub-Rehab Attorney Checklist for Final Closing ([here](https://www.hud.gov/sites/dfiles/Housing/documents/NC_Final_Clsg_Chklst.docx))has been updated!  This Final Closing Checklist includes all new forms effective October 3, 2019.  Links to the new forms are also included in the checklist for convenience.

***Keywords:*** *Attorney Final Closing Checklist*

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**Acceptable Evidence of Title for Final Closing**

Please note that any of the following are acceptable evidence of title at final closing:

1. A new title policy, or
2. A date down endorsement in compliance with the requirements in Handbook 4232.1, Section II, Chapter 9.11.B, or
3. Other evidence of title allowed and/or required by state law and approved by a HUD Office of General Counsel attorney.

***Keywords:*** *Title Review, Final Closing*

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**Reminder – Allow for Three (3) Days to Get Closing Documents Signed!**

As noted in the December 19, 2018 Email Blast ([here](https://www.hud.gov/sites/dfiles/Housing/documents/DecEmailBlast12192018.docx)), a minimum of three days should be anticipated for the closing documents to be signed and returned to the appropriate parties.  *Please plan accordingly.*

***Keywords:*** *Signing Closing Documents*

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**Tips to Avoid Closing Delays When Submitting a Waiver Request**

* To avoid delays at closing, ***all project waivers*** *should be requested and processed during underwriting review.*  If the need for a waiver arises after issuance of a firm commitment, it is the Lender’s responsibility to identify the need early on and submit waiver requests with draft closing documents.   ***Waiver processing must be complete prior to scheduling a closing date.***
* Any waiver justification based on financial hardship needs to be backed by written quotes.
* Instructions for completing Form HUD-2-ORCF – Waiver Request are included in Handbook 4232.1, Section I, Chapter 1.5 ([here](https://www.hud.gov/sites/documents/42321S1C1HSGH.PDF)) and in the Email Blast dated June 24, 2015 ([here](https://www.hud.gov/sites/documents/JuneEmailBlast062415.doc)).  Form HUD-2-ORCF can be find ([here](https://www.hud.gov/sites/dfiles/OCHCO/documents/2_orcf.docx)).

***Keywords:*** *Waiver, Closings*

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**Lender’s Responsibility PRIOR to Submitting NC/241a/Sub-Rehab Cost Certification Packages**

Handbook 4232.1, Section II, Chapter 11.10 sets forth the required forms and documentation for purposes of cost certification. Further clarification was provided in the December 21, 2016 Email Blast. Under the ORCF Section 232 Program, it is the Lender’s responsibility to review the NC/241a/Sub-Rehab Cost Certification packages **prior to** submitting the package to HUD.  It is the Lender’s responsibility to make review comments and affirm that what has been reported by the auditor is applicable. The Lender is also responsible for ensuring that any findings have been addressed and that corrective actions have been taken.

It is crucial the Lender has followed up on any issues commented on by the auditor, including how any recommendation(s) noted by the CPA have been implemented and what evidence will be provided at Final Closing to demonstrate resolution of this issue.  For example, a material finding reported by the CPA, should be discussed by the Lender with separate comments attached to the Lender Certification, form HUD-91129.   *All review comments, modifications, or actions taken should be attached to the Lender Certification, form HUD-91129.*

***Keywords:*** *Cost Certification; Lender Certification, Form HUD-91129*

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**Document Links Included In This Blast**

1. [Home and Community Based Services Final Rule](https://www.medicaid.gov/medicaid/hcbs/guidance/hcbs-final-regulation/index.html)
2. [State Risk Summary Grid](https://www.hud.gov/sites/documents/JuneEmailBlast06282017.docx)
3. [Section 232 Documents Webpage](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/final_232_documents)
4. [Housing Notice 2016-15](https://www.hud.gov/sites/documents/16-15HSGN.PDF)
5. [HUD Closer Checklist Section 232/223(f)](https://www.hud.gov/sites/dfiles/Housing/documents/Closer_Checklist-f.docx)
6. [HUD Closer Checklist Section 232/223(a)(7)](https://www.hud.gov/sites/dfiles/Housing/documents/Closer_Checklist-a7.docx)
7. [HUD Attorney Final Closing Checklist Section 232 – New Construction, Substantial Rehab, 241a or Blended Rate](https://www.hud.gov/sites/dfiles/Housing/documents/NC_Final_Clsg_Chklst.docx)
8. [Form HUD-2-ORCF](https://www.hud.gov/sites/dfiles/OCHCO/documents/2_orcf.docx)

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Past Lean 232 Updates are [available online](http://portal.hud.gov/hudportal/HUD?src=/federal_housing_administration/healthcare_facilities/residential_care/mail_blast_index).

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>.

Have your loan servicing colleagues joined our email list? The Email Blasts contain information relevant to them as well. You might suggest they [Join here](http://portal.hud.gov/hudportal/HUD?src=/subscribe/signup&listname=Lean%20232%20Updates&list=LEAN-232-UPDATES-L).

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