

CHAPTER 9. CONSTRUCTION CHANGES: PAPERWORK AND
FINANCIAL REQUIREMENTS

9-1. CONSTRUCTION CHANGES - GENERAL. The inherent complexity in planning and constructing a multifamily project may require changes in the contract drawings and specifications during construction.

A. All on-site construction changes are submitted on Form HUD-92437, Request for Construction Changes - Project Mortgages.

1. The contractor, architect, mortgagor and mortgagee must approve the proposed change before it is submitted to HUD for acceptance.

2. The Form is used when a change:

a. Increases or decreases cost.

b. Affects the design concept, construction quality or the cost of maintenance.

c. Extends construction period.

3. This Form must be submitted to and approved by HUD before the actual start of construction changes.

B. Offsite construction changes are not to be submitted on Form HUD-92437. A letter detailing the change and cost involved, using Form HUD-92437 as a guide, is to be submitted.

C. The contingency reserve is included in the replacement cost of substantial rehabilitation projects.

1. Use the contingency reserve for:

a. Unforeseen costs of necessary changes approved by the Field office.

b. Unanticipated soft costs associated with extension of time change orders approved by the Field Office.

2. Changes classified as betterments by the A, E & C Branch are ineligible for funding.

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(9-1) 3. Do not use the contingency reserve to give additional profits and/or fees to the architect, attorney, or other development team members.

4. The A, E & C Branch indicates on Form HUD-92437 the cost of necessity construction change items that qualify for funding from the contingency reserve.

5. Requests for disbursement of contingency reserve funds for completed change order items are made on Form HUD-92403. All requests:

a. Must be accompanied by a certification by the supervisory architect and the HUD inspecting architect that all the work covered by the change order has been acceptably completed in accordance with contract documents.

b. Must include the mortgagor/Borrower's certification relative to payment to the contractor contained on Form HUD-92464, Request for Approval of Advance of Escrow Funds.

c. Must include the criminal certification contained on Form HUD-92464 for certifications made in paragraphs a and b above.

d. Are subject to a 10 percent holdback.

D. If the mortgagor's or contractor's estimate for the change order exceeds HUD's estimate, the difference must be escrowed with the mortgagee. Excess mortgage proceeds, if available, may be used to satisfy this requirement. (See paragraph 9-4.F.1.) Conversely, that portion of HUD's estimate which exceeds the mortgagor's or contractor's estimate must be restricted and held until final endorsement to ensure funds to complete the project.

E. Process the Cost and Valuation findings and show the cumulative effect on cost of all approved change items.

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(9-1) F. Make sure the special condition for all "Management

or Sales Type Cooperative Mortgagors and Nonprofit Mortgagors/Borrowers" on Form HUD-92437 regarding the responsibility for the cost of the change has been completed.

9-2.CHANGE ORDER SUMMARY SHEET showing cumulative cost of all executed change orders should contain, at least:

- A. The date the change order was signed by the mortgagor.
- B. The date the Field Office received the change order.
- C. The date Mortgage Credit processed the change order.
- D. The mortgagor's or contractors estimate of cost for the change order.
- E. HUD's estimate of cost for the change order.
- F. The amount of change orders to be funded from contingency reserve or excess mortgage proceeds.
- G. The required cash escrow deposit, if any.
- H. The HUD percentage of cost increase or decrease.

9-3.MINUS CUMULATIVE EFFECT OF CONSTRUCTION CHANGES. If the net effect of acceptable changes decreases the HUD estimate of construction cost by:

- A. Two and one-half percent or more, show the decrease in item 7 of the Contractor's Requisition, Form HUD-92448. once this procedure has been started, deduct from contractor's requisitions all reductions in cost regardless of whether they are equal to, less, or more than 2-1/2 percent of cost.
- B. At cost certification, the amount of a net decrease in cost may result in a reduction to the original committed mortgage.
- C. If the cumulative effect never exceeds 2-1/2 percent, cut the contractor's final requisition.

9-4.POSITIVE CUMULATIVE EFFECT OF CONSTRUCTION CHANGES

- A. An increase of less than \$5,000 does not require the deposit of additional funds.

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(9-4) B. An increase of \$5,000 or more requires a cash

deposit

with the mortgagee to cover the greater of HUD's or the mortgagee's estimate of the cost increase. Once this procedure has been started, it must be continued for all increases, regardless of the amount involved.

C. When a cash deposit is required:

1. The Field Office may authorize the mortgagee to accept a letter of credit provided:

a. Mortgagee submits a written request to the Field Office.

b. Mortgagee agrees to provide the cash equivalent if demand under the letter of credit is not immediately met.

2. Future advances from mortgage proceeds may not be approved until the mortgagee notifies the Field Office that it has received the deposit.

3. The mortgagee's statement on Form HUD-92437 must include the amount on deposit and the number of the request requiring a deposit. If the mortgagee fails to complete the statement either:

a. Return the change order request; or

b. Obtain written verification of compliance with the deposit requirement.

D. Written consent of the surety is required before approving changes that increase cost 10 percent or more for those cases where the assurance of completion requirements were satisfied with a payment and performance bond.

E. Releasing Cash Deposit. The mortgagor submits through the mortgagee Form HUD-92464 when construction covered by a cash deposit is complete and acceptable to HUD.

1. The supervisory architect and HUD inspecting architect must certify on Form HUD-92464 that all work and materials covered by the change order are satisfactory and consistent with contract drawings.

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(9-4) 2. If construction costs were paid in full with other than the cash escrow or excess mortgage proceeds before submitting the disbursement request to HUD for approval, the mortgagor must submit a receipt of payment signed by the general contractor.

3. If construction costs will be paid after HUD's approval for the release of the funds deposited for the construction change, before the next Form HUD-92403 is submitted, the mortgagor must submit a receipt of payment signed by the general contractor.

4. Keep a copy of the approved Form in the payment record file.

F. Change orders funded from excess mortgage proceeds. Excess mortgage proceeds may be used to fund either necessity or betterment change orders.

1. These funds may be used to fund HUD's estimate of increased costs as well as any portion of the contractor's estimate which exceeds the HUD estimate. The portion which exceeds HUD's estimate must be restricted until final endorsement.

2. Refer to paragraph 8-8.D.1.g for instructions relative to funding the change order.

3. Funds are released in the same manner as contingency reserve funds. Refer to paragraph 9-1.C.5.

9-5. EXTENSIONS OF TIME. The mortgagor, contractor and mortgagee may request to amend the construction contract completion date.

A. Filing for an extension.

1. Must be submitted on Form HUD-92437, and signed by the mortgagor, contractor, mortgagor's inspecting architect and the mortgagee.

2. Requests for extensions must be filed separately from requests for construction changes.

(9-5) B. Required Action.

1. The A, E & C Branch is responsible for determining whether the delay was beyond the contractor's control and, if so, the length of the approved time extension.

2. Calculate the cost increase due to the extension:

a. Compute daily rate for interest, taxes and insurance by using estimates in Section G of Form HUD-92264 and multiply these rates by the approved time extension.

b. An additional year of MIP will be required if the approved time extension, when added to the estimated construction term plus the 2 months included in Section G of Form HUD-92264 plus previously approved time extensions, will require an additional MIP payment during the construction period.

c. Add the additional general requirements, if any, noted by the A, E & C Branch on the change order request.

NOTE: Only item c above amends the construction contract price on Form HUD-92437.

3. Determine the source of funds for any increase due to the extension, i.e., cash, excess mortgage proceeds or contingency reserve funds.

4. Requests for release of excess mortgage proceeds or contingency reserve funds set aside to fund time extensions are submitted on Form HUD-92403.

5. Releases from a cash deposit are made using Form HUD-92464.

6. These funds may be released only after the account for the soft cost item(s) being requested have been exhausted on Form HUD-92451, Financial Record of Mortgage Loan Transaction.

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9-6.CHANGE ORDERS THAT ADVERSELY EFFECT NET INCOME.

Recalculate the maximum insurable mortgage when any approved construction change or changes adversely affect

net income, e.g., a change that causes and increase in operating costs.

A. Valuation completes a Trial Form HUD-92264 with an updated income and expense analysis.

B. Redetermine the maximum insurable mortgage.

C. If the redetermined mortgage is lower than the original mortgage amount, as a condition of approval of the change order, indicate in item 3b of Form HUD-92437 that subsequent Contractor's Requisitions, Form HUD-92448, must be reduced by the greater of:

1. The difference in mortgage amounts.

2. The net decrease in costs resulting from acceptable construction changes.

D. In processing subsequent change order requests, be careful not to duplicate reductions. For all subsequent requests, as a condition of approval, require the reduction of the greater of paragraph C.1 or C.2 on future contractor's requisitions.