
CHAPTER 12. CLOSING

- 12-1. PRE-ENDORSEMENT REVIEW. The first three applications for mortgages to be coinsured under the 223(f) program for each lender will be subject to review and approval by HUD prior to issuance of the firm commitment.
- a. The three cases may be submitted individually or simultaneously. Regardless of the manner of submission, each case must be packaged separately and with full documentation be submitted, in three (3) copies, to:
- Department of Housing and Urban Development
Office of Multifamily Housing Development
Room 6128
Washington, DC 20410
- b. To facilitate HUD's review, documentation relative to architectural, cost, valuation, market analysis, mortgage credit and management aspects of the mortgagor's application should be separated and identified by discipline. All data, worksheets, forms, etc., utilized in arriving at underwriting decisions are to be included in the package. Among other things, this must include all required processing forms, together with the 2530 Previous Participation Clearance and copies of appraisals, income and expense analysis, financial statements and analysis, credit reports, engineering and cost studies, analysis of repair requirements and reserve for replacements, and a draft copy of the proposed firm commitment.
- c. A narrative summary, evaluating the various underwriting aspects of the project, prepared and signed by the person(s) responsible for the overall underwriting decision, must accompany each case. This narrative must provide an analysis of the underwriting aspects of the project and highlight the significant factors, both positive and negative, which were considered in making the decision to coinsure the loan under Section 223(f).
- d. HUD will review the documentation and will advise the lender of its findings. If HUD's findings differ substantially from those of the lender, a firm commitment may not be issued until the deficiencies are resolved. Otherwise the lender will be advised that the processing is acceptable, although comments may be made or certain adjustments required or recommended, and that after such adjustments the mortgage may proceed to closing.

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- (12-1)e. Upon demonstration of the lender's ability to underwrite 223(f) coinsurance project mortgages in a quality manner consistent with outstanding procedures and instructions, it will be granted, in writing, full underwriting authority and be advised that no further pre-commitment review will be required. However, not until a minimum of three projects have been successfully reviewed by HUD will the pre-commitment review requirement be satisfied.
- 12-2. CLOSING SITE. Execution of the various documents and endorsement of the credit instrument affecting closing of the transaction as between the mortgagor and lender may take place at such site as the parties may agree. However, HUD Area/Service Office facilities may not be utilized for this purpose.
- 12-3. REVISION OF FORMS. The HUD and FHA Forms discussed in this chapter may be changed or altered as desired by the lender, subject to the requirements discussed below. Any form may be reprinted on the lender's letterhead. However, since the lender is an agent for HUD, it must at all times adhere to the HUD requirements in the coinsurance regulations (24 CFR Part 255) and in this handbook. Sound underwriting principles must be exercised at all times and HUD's interests must not be adversely affected by any changes made to the documents.
- 12-4. CLOSING DOCUMENTATION. At the time of closing, the lender shall collect an original and one conformed copy of each of the documents listed in Appendix 29. A discussion of some of those documents follows:
- a. Lease. See Form FHA-2070 for language which must be included in all leases.
 - b. Surveyors Plat. Shall be certified to in the manner described on the back of the Form FHA-2457 (Surveyors Certificate) and must be dated, signed and sealed within 90 days of the closing.
 - c. Surveyors Certificate. Shall be signed within 30 days of the closing by a licensed professional and must bear the surveyor's professional seal.
 - d. Note. Shall be on an FHA Form or a substitute approved by HUD for use in the jurisdiction in which the property is situated. The Note shall have a maturity of not less than 10 years nor more than the lesser of 35 years or 75 percent of the estimated remaining economic life of the physical improvements. The maximum term may be increased to 40 years or 100 percent of remaining economic life if the

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- (12-4) project meets the eligibility requirements of 24 CFR 207.32a(1). The Form shall not be changed without the prior written approval of HUD, except for the following:
- (1) The Note may establish such reasonable conditions or penalties for prepayment as may be agreed upon by the lender and mortgagor, taking into account the required language of subparagraph (3) below.
 - (2) The Note may provide for the collection by the lender of a late charge not to exceed \$.04 per \$1.00 for each payment to interest and principal more than 15 days in arrears (or such other charge as may be agreed to by the mortgagee and HUD). Late charges shall be separately charged to and collected from the mortgagor and shall not be deducted from any aggregate monthly payment.
 - (3) The following language must be added to the Note indicating either the five or twenty year prohibition:

"The debt evidenced by this Note may not be prepaid either in whole or in part for a period of (five) (twenty) years from the date of endorsement hereof except in cases where the prior written approval of the Federal Housing Commissioner is obtained and such written approval is expressly based upon the existence of one of the following:

 - (i) The mortgagor has entered into an agreement with the Commissioner to maintain the property as rental housing for the remainder of the specified (five) (twenty) year period;
 - (ii) The Commissioner has determined that the conversion of the property to cooperative or condominium ownership is sponsored by a bona fide tenants' organization representing a majority of the households in the project;
 - (iii) The Commissioner has determined that continuation of the property as rental housing is unnecessary to assure adequate rental housing opportunity for low and moderate income people in the community; or
 - (iv) The Commissioner has determined that continuation of the property as rental housing would have an undesirable and deleterious effect on the surrounding neighborhood."
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(12-4) (Note: The twenty year prohibition is applicable only in those cases in which the mortgage is purchased by GNMA under its tandem authority, in all other cases the five year prohibition applies.)

e. Mortgage or Deed of Trust.

(1) Shall be on an FHA or HUD Form or a substitute approved in writing by HUD for use in the jurisdiction in which the property is situated. The Form shall not be changed without the prior written approval of HUD.

(2) Shall be a first lien on the property and shall cover the entire property included in the housing project.

f. Coinsurance Regulatory Agreement. The requirements set out in Appendix 33 must be added as a separate Regulatory Agreement and must be incorporated by reference into the mortgage. The lender may regulate and restrict the mortgagor on such additional matters as it deems desirable and which do not conflict with the HUD requirements as evidenced by the prior written approval of HUD.

g. Mortgagors' Attorney's Opinion. Must be on the letterhead of the mortgagor's attorney and must contain the following certification:

"To: (Insert name of lender)

"I am the attorney for the mortgagor and have prepared or reviewed all of the documents in connection with the organization of the mortgagor entity; together with the note, mortgage (deed of trust), regulatory agreement and other collateral documents which have been submitted to you.

"It is my opinion that

"1. The mortgagor is a valid existing legal entity; it has authority to engage in the business contemplated by this transaction; all incorporation fees and taxes have been paid; all pertinent security requirements have been met; the note, mortgage (deed of trust), regulatory agreement and other collateral documents required by the lender to be executed by the mortgagor have been executed by the person(s) authorized to execute the same and are instruments legally binding on the mortgagor; and the mortgage (deed of trust) constitutes a valid lien on the property therein described.

- (12-4) "2. The building permit(s) (if any) has (have) been legally issued and repairs in accordance with the plans and specifications are authorized by the said permit(s).
- "3. The building and the proposed repairs comply with all applicable zoning laws and requirements. There is no legal action pending and, to the best of my knowledge, there is no threatened legal action or proposed changes in zoning which would affect this transaction in any manner.
- "4. I hereby certify that satisfactory arrangements have been made for payment of my fees for legal services and that I will assert no claim or lien by reason of such services against the mortgaged premises, mortgage proceeds or income from said premises."

- h. Hazard Insurance Policy. All insurance policies shall have attached thereto a clause making loss payable to the lender and HUD as their interest may appear.
- i. Title Policy. The lender shall determine that marketable title to the property is vested in the mortgagor as of the date the mortgage is filed for record. The mortgagor shall furnish to the lender a policy of title insurance issued by a company and in a form satisfactory to the lender. The policy shall name as the insured the lender and the Secretary of Housing and Urban Development as their interests may appear. The policy shall provide that upon acquisition of title by the lender, it will become an owners' policy running to the lender. If, for reasons the lender deems satisfactory, title insurance cannot be furnished, the mortgagor shall furnish such alternative evidence of title as set out in 24 CFR Section 255.231.

- 12-5. HUD ENDORSEMENT. The lender shall submit the credit instrument for endorsement to the HUD Office having multifamily jurisdiction in the area in which the project is located. The request from the lender for endorsement should be contained in letter form certifying that the loan has been processed, underwritten and closed in accordance with and complies fully with all requirements of the program; that the repairs and improvements have been completed and inspected; that all parties requiring clearance under HUD's Previous Participation procedures have received clearance; and that all of the conditions of the commitment have been satisfied.

- (12-5) The cover letter signed by an authorized Official identified as required in paragraph 2-2k must be accompanied by a copy of the letter from HUD Headquarters approving the lender as a coinsurer and indicating that all pre-commitment review requirements have been satisfied, a copy of the commitment with signed copies of Forms HUD-92264 and 92264A attached, a Mortgagee's Certificate (Appendix 31), a Mortgagee's Attorney's Opinion (Appendix 32), and the lender's check in an amount equal to 1 percent of the face amount of the mortgage, in payment of the initial MIP. In addition, certified copies of the mortgage or deed of trust (with attached Regulatory Agreement) and the note and a duplicate original of the title policy shall be provided. (Where the local HUD Office determines that recorder certified copies cannot be obtained in time for the HUD endorsement, copies certified by the title company may be accepted.) These documents will be retained by HUD.
- 12-6. DOCKET PREPARATION. After endorsement, the lender must compile a separate docket for each coinsured mortgage. This docket must be retained in the lender's files and must contain the original signed or (if an original is unavailable because of filing or recordation requirements) a completely legible copy of all documents and correspondence concerning the project, all processing, internal memoranda, etc. Each document should be filed in dated order.