

Department of Housing and Urban Development

**Federal Housing Administration
Multifamily Program Closing Guide**

September 1, 2011

Part 1: Procedures for Closing

Part 2: Loan Documents

Part 3: Diligence and Other Closing Requirements

Part 4: Checklists

Part 5: Sample Language and Certifications

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Part 1: Procedures for Closing

1.1 Objective of this Closing Guide

A. Objective. This Guide is intended to:

1. Cover both Multifamily Accelerated Processing (MAP) as well as traditionally processed (TAP) closings for all multifamily rental projects for which a Firm Commitment has been issued on or after September 1, 2011. Guidance relating to Section 242 Hospital and Section 232 Assisted Living, Intermediate Care, and Nursing Home programs is not set forth in this Closing Guide. Other HUD programs are not intended to be covered by this guide.
2. Provide procedures and protocols to Lender, Borrower, HUD Closing Attorney, HUD Multifamily Hub Director (Hub Director), and other HUD staff in preparing and reviewing documents for the initial closing, initial/final closing, and final closing of projects with loans insured by FHA.
3. Ensure uniformity in the closing requirements and procedures in the various HUD field offices nationwide. No supplemental riders, language, or requirements, other than those set forth in this Closing Guide, shall be used. If the specifics of a deal or jurisdiction necessitate supplemental language, riders, or other requirements not set forth in the revised loan documents or this Closing Guide, the HUD Closing Attorney shall contact the Assistant General Counsel for the Multifamily Mortgage Division for authorization to use such additional requirements.

B. Authority.

1. Administrative policy determinations shall be consistent with Program Obligations, as defined below, including without limitation the current Multifamily Accelerated Processing Guide (MAP Guide).
2. With regard to any project insured by FHA (the Project), Program Obligations means (1) all applicable statutes and any regulations issued by the Secretary pursuant thereto that apply to the Project, including all amendments to such statutes and regulations, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and (2) all current requirements in HUD handbooks and guides, notices, and Mortgagee letters that apply to the Project, and all future updates, changes and amendments thereto, as they become effective, except that changes subject to notice and comment rulemaking shall become effective only upon completion of the rulemaking process, and provided that such future updates, changes and amendments shall be applicable to the Project only to the extent that they interpret, clarify and implement terms in the applicable closing document rather than add or delete provisions from such document. Handbooks, guides, notices, and Mortgagee letters are available on HUD's official website:

<http://www.hud.gov/offices/adm/hudclips/index.cfm>, or a successor location to that site.

3. The Hub Director (which term, wherever used in this closing guide, shall be deemed to include the Hub Director's designee, the Program Center Director for closings processed in a Program Center and any Field Office Housing Staff to whom closing tasks are delegated, as appropriate) is the organizational position with delegated authority pursuant to delegations of authority published in the Federal Register and current administrative notices for making administrative policy determinations with respect to insuring an FHA loan for multifamily rental projects, in accordance with Program Obligations.

1.2 Responsibilities for Closing

A. Hub Director Responsibilities. The Hub Director is responsible for:

1. Ensuring that all conditions of the HUD Firm Commitment have been met and advising the HUD Closing Attorney in an administrative memo prior to closing that:
 - a. All conditions including special conditions have been satisfied.
 - b. All required documents have been reviewed.
 - c. All documents are on HUD approved forms and/or changes have been approved (form HUD-2, Request for Waiver of Housing Directive, approving waivers and material changes to forms will be attached to the administrative memo).
 - d. All administrative requirements have been met.
 - e. Contents of the documents are programmatically accurate and consistent with the Firm Commitment.
2. Reviewing Closing Documents. Both the program office staff and HUD Closing Attorney shall review each document submitted, and the primary responsibility for reviewing substantive business terms of each document submitted is the Hub Director's, including without limitation the business implications litigation, UCC filings, and title encumbrances. As such, the Hub Director must ensure that the documents submitted comply with Program Obligations, including the underwriting requirements set forth in the MAP Guide. Note, however, that program office staff is not required to review HUD-91725M, Opinion of Borrower's Counsel.
3. Establishing the financial requirements for closing and confirming that the Lender will comply with the financial requirements.
4. Establishing processing priorities and start of construction target dates and monitoring construction schedules.
5. Arranging the pre-construction conference in accord with HUD protocols.
6. Directing all activities essential to the insurance of mortgage loans, including approval of:

- a. Findings of acceptability with respect to program policy and eligibility criteria.
 - b. Staff's preliminary underwriting determinations supporting insurance endorsements.
 - c. Form HUD-2530, *Previous Participation Certification*, of Borrower and its principals and other participants.
 - d. Eligibility statements.
7. Coordinating the place for the closing, following consultation with the HUD Closing Attorney and Lender; and notifying the Lender and Borrower of the closing date, time and location. If the local HUD Field Office's protocols so dictate, the Hub Director (or Closing Coordinator or other designee), shall set the closing date; otherwise the closing date will be set by the HUD Closing Attorney.
 8. Ensuring that at least one representative from the Office of Multifamily Housing with knowledge of the project being closed and signature authority to make decisions is available for the entire closing, along with the HUD Closing Attorney. This representative will be designated and provided with an appropriate delegation of authority in the administrative memorandum. The Hub Director shall ensure that if the primary HUD representative with signature authority will be unavailable for part or all of the scheduled closing, an alternate representative will be delegated signature authority, as necessary or appropriate.
 9. Coordinating crosscutting office support activities required for multifamily rental projects.
 10. Requesting Headquarters' approval of any credit subsidy and form HUD-9807, *Insurance Termination Request for Multifamily Mortgage Insurance*, where required.
 11. Collecting the MIP, inspection fee and additional examination fee, if any, and submitting the same to HUD Headquarters.
 12. Obtaining the payoff of any HUD-held loans (Section 202/811, Mark-to-Market, purchase money and Section 221(g) loans).
 13. Endorsing the Note (as defined in Section 2.4 herein) for insurance.
 14. Preparing and submitting the Washington Docket and the local HUD office closing dockets.
 15. Issuing Firm Commitment amendments, re-issuance, and extensions in a timely manner.
- B. HUD Closing Attorney Responsibilities. The HUD Closing Attorney is responsible for:
1. Reviewing Closing Documents. Except as otherwise indicated, both the program office staff and HUD Closing Attorney will review each document submitted, and the primary responsibility for reviewing the legal sufficiency of each document submitted and advising the Hub Director accordingly is the HUD Closing

Attorney's. Legal sufficiency means that all closing documents include all required provisions and comply with applicable statutory and regulatory requirements.

2. Setting date and time of closing after consultation with the Hub Director, Lender, and Borrower, and reviewing and approving the closing documents submitted by Lender. If the local HUD Field Office's protocols so dictate, the Hub Director (or Closing Coordinator or other designee), shall set the closing date; otherwise the closing date will be set by the HUD Closing Attorney.
3. Conducting the closing and collecting the appropriate closing documents, pursuant to the Firm Commitment.

C. Lender's Responsibilities. Lender and its attorney are responsible for:

1. Preparing closing documents. Except as otherwise provided, Lender and Borrower are responsible for completing the closing documents, reviewing them, and submitting them, including any closing documents prepared by third parties and recorded documents after recording, to the Hub Director and HUD Closing Attorney, in accordance with the following procedures:
2. Submitting closing packages to the Hub Director.
 - a. Unless otherwise specified, three full sets of documents shall be submitted: one for the HUD Closing Attorney and two for the Multifamily staff. The Hub Director or HUD Closing Attorney may request a different number of closing packages to be submitted.
 - b. HUD encourages the HUD Closing Attorney and Hub Director to permit, except for one original set of documents, documents to be submitted in electronic form. Documents shall be submitted as hard copies unless the Hub Director and the HUD Closing Attorney permit email or electronic versions of documents.
 - c. Draft closing documents shall be submitted early enough for HUD to complete its review, to distribute written comments and to review if necessary one additional submission of draft closing documents prior to the requested date of the closing. HUD's goal shall be to complete this review in 15 days, but Lender shall discuss the schedule with HUD Closing Attorney to determine whether additional time for review may be necessary.
 - d. Lender should take into consideration holidays, GNMA delivery schedule, bond closings, tax credit funding and events that may affect the closing date.
 - e. Lender shall notify the HUD Closing Attorney of any material changes made to the closing documents after the initial drafts are submitted, which changes may affect the closing date.

D. Standards of Acceptable Closing Review Package.

1. For HUD to accept the draft closing package for review:
 - a. Provided that time-sensitive documents such as certificates of good

standing (also referred to herein as status certificates) may be submitted separately if necessary to preserve timeliness, all documents must be submitted at one time, including but not limited to, a survey, surveyor's report, Borrower's counsel's opinion and *pro forma* title policy (including legible copies of all exception documents).

- b. The closing package shall include the applicable HUD closing checklist, and the documents in the closing package shall be tabbed and in the same order as listed on the checklist.
 - c. All forms and exhibits must be completed (or as complete as possible, provided that non-substantive information such as dates and recording information may be finalized at initial closing) and in substantially final form.
2. Lender and its counsel shall ensure that documents are completed as completely and accurately as possible, and shall not submit incomplete or inadequately completed documents to HUD. HUD reserves the right to return incomplete or inadequately completed submittals and to wait for complete and acceptable documents prior to commencing its review. Multifamily Housing will advise the Lender and its counsel of any rejected closing packages.
 3. The closing shall not be scheduled until a complete set of documents have been reviewed and approved by Multifamily Housing and the HUD Closing Attorney. It is imperative that closing documents not be reviewed for the first time during the closing.

1.3 Closing Arrangements

- A. Location of Closing. The Hub Director is responsible for arranging accommodations for the closing, if the closing is held at HUD. In determining the location for the closing, the Hub Director will take into consideration project remoteness, e.g., where an office has multiple-state jurisdiction, and whether a particular Field Office will have an individual present who is authorized to make decisions for HUD and to endorse the Note. The closing may be held at a location other than a HUD office if the Lender, Borrower and Hub Director all agree that it is appropriate to do so. If the closing is held at a non-HUD location, the Lender and/or Borrower will be responsible for arranging and paying for the cost of any closing facilities.
- B. Recordation and Dating of Documents.
 1. To the extent possible, all closing documents must be dated with the same date, which may be prior to the date the Note is endorsed by HUD for insurance, except for the following items, which must be dated the day of endorsement (whether initial, initial/final, or final endorsement, as applicable):
 - a. Title insurance policy.
 - b. Form HUD-91725M, Opinion of Borrower's Counsel
 - c. Form HUD-92434M, Lender's Certificate.
 - d. Form HUD-92455M, Request for Endorsement of Credit Instrument and Certificate of Borrower, Lender and General Contractor.

2. The documents need not (but if the HUD Closing Attorney allows for pre-recording of documents) may be recorded prior to the date of endorsement, provided that Borrower and Lender assume all risks associated with the recording or execution of any documents prior to the date of the endorsement of the Note by HUD.
3. Prior to recording:
 - a. Final loan documents must be reviewed and approved by the HUD Closing Attorney.
 - b. The Regulatory Agreement must be executed by a HUD official and acknowledged before a notary public (or other official authorized by the local jurisdiction to witness acknowledgments). Provided that the Regulatory Agreement may be signed in counterparts, HUD shall hold its signature pages in trust and shall not release its signature pages until Borrower has executed the Regulatory Agreement and released its signature pages.
 - c. All the recordable documents must be reviewed by the title company or its designee for recording purposes, to ensure compliance with local enforceability and recording requirements.
4. In addition to the unrecorded executed documents collected at closing, unless otherwise agreed by the HUD Closing Attorney, three copies of all filed or recorded documents with recording information (except in the case of the Regulatory Agreement, for which HUD shall receive the original), shall be submitted to HUD as soon as possible after recording or filing, but no later than 5 days after receipt from the applicable recording or filing office. To the extent original recorded documents may not be available in a jurisdiction, because of electronic recording practices or otherwise, or to the extent that Ginnie Mae requires retention of the recorded originals for its custodial file, HUD shall accept, for the Washington Docket and other HUD purposes, copies of the recorded documents certified by either the title company or recorder's office as true and complete copies of the recorded documents. Except that one original or certified hard copy of each document is required for the Washington Docket, the HUD Closing Attorney and/or HUD Field Office may accept electronic versions of documents instead of hard copies.

C. Closing by Mail.

1. General Policy. It is HUD's preference and general practice that closings shall be attended by all parties. However, closings also may be conducted by mail, at the request of the Borrower and Lender, and at the discretion of the HUD Closing Attorney, if the HUD Closing Attorney determines such closing is appropriate under the circumstances of the particular loan. Factors the HUD Closing Attorney will consider include, without limitation, the quality of the closing package; responsiveness of Lender's Counsel and other parties in the transaction; whether last minute changes continue to be made to documents in the package; the HUD Closing Attorney's previous experience with the parties to the transaction; the complexity of the transaction; the proximity of the parties to

the HUD office; time constraints (i.e., is there a delivery deadline); and other factors.

2. Procedures for Closing by Mail. If a closing by mail is approved by the HUD Closing Attorney, the following procedures must be followed:
 - a. Package Format. All final, complete, and executed documents for the closing shall arrive in one package 2 business days (morning delivery) before the closing day, unless otherwise agreed by the HUD Closing Attorney. HUD permits separate delivery of the title policy and recorded copies of pre-recorded documents on closing day (morning delivery required) as long as such documents are unchanged from the draft policy and documents previously approved by HUD. The documents must be accompanied by a checklist and must be in the order indicated on the checklist. Packages shall include the sufficient number of originals and copies (unless otherwise specified by the HUD Closing Attorney, three sets of documents). HUD will not make copies or correct errors on documents submitted. In addition, a pre-addressed, pre-paid envelope and an appropriate cover letter must be provided for return delivery of the endorsed Note, unless Lender makes alternate arrangements, as approved by HUD, to pick up the endorsed Note on the day of closing.
 - b. Availability by Telephone. All parties to the transaction must be available by phone and email on closing day in case there is a question or issue. It is not acceptable for some parties to be unavailable.
 - c. Failure to Close by Mail on Desired Day. Escrow and mail closing shall be completed by the date approved by HUD. If there are problems with the closing (including, without limitation: the documents do not arrive on time, there are errors on the documents, documents are missing, the closing is taking an unreasonably long time), the HUD Closing Attorney will contact Lender's Counsel and indicate that the closing will be delayed. HUD may ask Lender's Counsel to correct problems and resubmit certain documents, may send the entire package back to Lender's Counsel, and/or may schedule a live closing on another day.
3. Endorsement of Note. HUD shall not endorse the Note for insurance until all of the documents are presented to, and approved by, the Hub Director. Documents for a mail closing shall comply with all requirements, including date requirements (e.g., for surveys, surveyor's reports, good standing certificates, UCC and docket searches, etc.).
4. Alternative to Closing by Mail – Skeleton Closing. If requested by Lender and Borrower and as an alternative to a closing by mail, in some situations HUD will approve a "skeleton closing," attended by only some of the parties traditionally required at a HUD closing. With prior notice to the Hub Director and HUD Closing Attorney, Lender or its Counsel may decide whose attendance is necessary to complete closing, provided that if the absence of a necessary party prohibits the completion of the closing, the HUD Closing Attorney shall reschedule the closing at a time and in a manner as the HUD Closing Attorney's

schedule allows. The representative(s) will deliver all documents (the same way that they are delivered in a “traditional closing”) and will be available, if necessary, to make the documents acceptable to HUD. Whether or not to approve a skeleton closing is at the discretion of the HUD Closing Attorney, if the HUD Closing Attorney determines such closing is appropriate under the circumstances of the particular loan. In making such determination, the HUD Closing Attorney will weigh factors similar to those considered for requests to close by mail.

1.4 Handling of Initial Closing Documents

- A. Retention and Processing of Closing Documents. Unless otherwise specified by the HUD Closing Attorney, the HUD Field Office shall receive three sets of closing documents: one retained for the HUD Field Office, one for the Office of Counsel, and one for the Washington Docket. HUD encourages electronic retention of documents, to the extent possible. To that end, although one original set of hard copy documents shall be collected for the Washington Docket, in accordance with the procedures set forth in the MAP Guide, HUD encourages the Hub Director, HUD Closing Attorney, Lender, and Borrower to consider retaining electronic versions of closing dockets instead of hard copy versions. Hard copies remain the default requirement unless otherwise requested by the HUD Closing Attorney.
- B. Multifamily Insurance System. In connection with the Multifamily Insurance System (MFIS), the Hub Director must:
1. Complete the following items:
 - a. Form HUD-27038, *Official Receipt*.
 - b. Form HUD-3416, Schedule of Project Collections.
 - c. Form HUD-290, Closing Memorandum
 2. Within 5 days of a project’s initial closing, mail each of these to the address below:

U.S. Dept. of HUD
Multifamily Insurance Operations Branch
P.O. Box 44124
Washington, D.C. 20026-4124

1.5 Initial Endorsement Activities

- A. Initial Endorsement of Note. The Hub Director is authorized to initially endorse the Note after ensuring that all requirements for closing have been met, including the receipt of the first year’s Mortgage Insurance Premium and Inspection Fee. Except to the extent endorsement of the Note at closing is not feasible, the Note may not be endorsed prior to the closing date. If the Note is endorsed prior to the closing, it shall be held in trust by the HUD Closing Attorney (with the endorsement date left blank) until the completion of the closing, and the HUD Closing Attorney will insert the endorsement date upon closing.

- B. Revision of Closing Forms and Documents Restricted. After closing and initial endorsement of the Note, the closing forms and documents may not be revised or amended without the prior written approval of the Hub Director, unless otherwise permitted by the Program Obligations.
- C. Pre-Construction Conference. The pre-construction conference may be held prior to or concurrently with the initial closing, and must be held before the start of construction. Instructions for conducting the pre-construction conference are in MAP Guide §12.2.
- D. Initial Draw of Loan Proceeds. Initial draw of loan proceeds may be made on the day of closing, provided that no draw may occur until the Note is endorsed, the Security Instrument is recorded, the UCC-1 Financing Statements are filed, and the Hub Director has received satisfactory evidence that the insured mortgage loan constitutes a first priority lien on the mortgaged property. With the HUD Closing Attorney's approval and if the title insurance has become effective to insure the first priority lien position of the HUD-insured loan, including during any gap period prior to recording, recording of the Security Instrument and/or filing of the UCC-1 Financing Statements may occur after endorsement and funding. See MAP Guide §12.7 for information regarding form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds.

1.6 Coordination with Office of Labor Relations (OLR)

- A. Multifamily Housing and OLR Procedures for Initial Closings.
 - 1. Housing shall provide OLR staff with a copy of each application for Firm Commitment (the first four pages of form HUD-92013 or comparable application form will suffice).
 - 2. OLR staff shall provide the Hub Director and HUD Closing Attorney with a copy of the current wage determination and form HUD-92554M, Supplementary Conditions of the Contract for Construction and, subsequently, shall provide any updates to the wage determination prior to initial closing.
 - 3. Housing shall forward the wage determination and form HUD-92554M to the parties to the loan transaction in accordance with Housing's internal protocols and will keep OLR updated on the status of all pending projects.
 - 4. The Hub Director shall provide notification by email to all OLR staff of upcoming closings approximately 3 to 5 days in advance of all closings. OLR shall provide the current wage determination.
 - 5. Depending upon whether OLR staff is located in the same or another HUD office as the Housing staff, either OLR shall review the closing documents and specifications to ensure that the correct and current wage decision and HUD-92554M are included in the project's specifications, or where OLR and Housing are in different offices, OLR will perform the review by telephone conference with Housing staff. OLR will provide initial closing clearance in writing (e.g., email) to the Hub Director and HUD Closing Attorney.

6. Housing shall provide information to OLR needed for contacting the general contractor so that OLR can provide technical support regarding Davis-Bacon requirements.
- B. Housing and OLR Procedures for Final Closings: Prior to final endorsement, OLR staff must ensure that any labor standards issues are resolved or that provisions are made to ensure the payment of any due wage restitution.
1. The Hub Director must notify OLR of a pending final endorsement no later than upon completion of the Hub Director's review of the cost certification and completion of the form HUD-92580, Maximum Insurable Mortgage, with the final mortgage loan amount.
 2. OLR shall conduct such reviews as are needed to determine whether any labor standards issues that may have arisen have been resolved.
 3. OLR shall provide written or email clearance to the Hub Director and HUD Closing Attorney and, if necessary, shall provide the following additional items:
 - a. If the clearance is conditioned, notification of what, if any, documents must be provided or actions taken in order to obtain clearance for final endorsement; and
 - b. If issues remain that cannot be resolved in advance of final closing, OLR shall also do the following prior to final closing:
 - i. Require a deposit to the U.S. Treasury of an amount equal to the amount of any wage restitution and any other labor standards liabilities that have been found due; and
 - ii. Provide Housing with a completed deposit agreement (form HUD-4732), a schedule for the deposit, and wire transfer instructions for the depositor's financial institution.
- C. Housing Actions for All Closings. Prior to any endorsement of any Note, the Hub Director must ensure both that (a) the Hub Director has received OLR's clearance, and (b) if applicable, any conditions of the OLR clearance have been fully satisfied.

1.7 Early Start Procedures

- A. General Requirements. Construction may not start before initial endorsement and recordation of the security instrument, except with the prior written approval of the Hub Director. Except as otherwise acknowledged in writing by the Hub Director, any work performed, including clearing, grading or other preliminary work, constitutes the start of construction. The foregoing notwithstanding, unless the project documents, Hub Director or HUD Closing Attorney indicate otherwise, demolition, environmental remediation, and off-site work do not constitute the start of construction.
- B. Early Start Date: This is the date of HUD's approval of the early start, and it will be used instead of the initial closing date as, or for calculation of, the date of the following: the completion date to be entered in the construction contract; the date of the first amortized payment; and the completion date in the Building Loan Agreement. If HUD has approved an early start, the construction contract and

payment and performance bonds must be dated no later than the Early Start Date.

- C. Conditions. The following are mandatory conditions for approval of an early start of construction:
1. Firm Commitment. There must be a valid Firm Commitment, including a HUD approved set of contract drawings and specifications on file with HUD. See Handbook 4460.1 REV-1 for required Firm Commitment contract drawings and specifications.
 2. Valid Basis for Early Start. The Hub Director must document the file fully defining the rationale and providing a compelling reason for granting an early start, after determining, in his or her discretion, that:
 - a. Circumstances do not allow for an immediate closing, but there is reasonable evidence and assurance that closing will occur in the near future.
 - b. There is a compelling need to start construction before the anticipated closing date.
 - c. An early start of construction will not be detrimental to HUD's interests.
 - d. HUD has no insurance obligation or liability for costs incurred during an early start if the project does not reach endorsement.
 3. Form HUD-92415, Request for Permission to Commence Construction Prior to Initial Endorsement for Mortgage Insurance, must be executed without change by the contractor, Borrower and Lender. Prior to the Hub Director's execution of the HUD-92415, the HUD Closing Attorney shall review and approve the form and the documents required by and submitted with the form.
 4. The Preconstruction Conference must be held before the start of any construction.
- D. Violations of Early Start Criteria must be referred to the Hub Director for a determination as to whether the project may proceed to initial endorsement.

1.8 Completion of Project

- A. Completion Defined. Completion, for the purpose of final closing, means that:
1. The project has been completed in accordance with the drawings and specifications as indicated by the final form HUD-95379, HUD Representative's Trip Report, except for approved items of delayed completion covered by form HUD-92456M, Escrow Agreement for Incomplete Construction.
 2. The entire project has been accepted for occupancy by the local authorities having jurisdiction, by Lender, and by HUD.
- B. Assurance of Completion. See Section 3.5 of this Closing Guide for the diligence HUD may require to assure project completion.
- C. Commencement of Preparation for Closing. Upon the earlier of HUD's determination that an advance of mortgage loan funds is, or will be, the last advance

prior to disbursement of the contract retainage or that the project has achieved substantial completion, preparation for final closing and final endorsement of the credit instrument should begin.

1.9 Preparing for Final Closing When On-Site Facilities are Incomplete

- A. Conditions for Approval of the Final Advance of Mortgage Loan Proceeds. It is desirable that all on-site construction be 100% complete before approval of a final advance of mortgage loan proceeds. There may, however, be circumstances in which it is desirable that approval of a final advance be given before 100% completion of on-site construction.
- B. Exceptions to General Rule. When the completion and installation of on-site facilities is adequately assured in the discretion of the Hub Director, and the Hub Director believes the Borrower will diligently pursue the completion of the on-site facilities, the Hub Director may approve the final advance of mortgage loan proceeds, if:
1. All on-site sewer, water, electrical, and gas facilities are completely installed and connected.
 2. Other on-site facilities such as streets, walks, curbs, and gutters are useable and safe, if incomplete and all buildings have all weather vehicular and pedestrian access.
 3. Adequate facilities for ingress and egress are provided.
 4. All applicable escrow agreements remain in force until the completion of the facilities.
- C. Form HUD-92403, *Application for Insurance of Advance of Mortgage Proceeds.* This form is used both during the course of construction and at the conclusion of construction for the final advance. When construction is not yet complete, any form HUD-92403 submitted for processing will not be treated as approval of a final advance, nor will the submission of form HUD-92023M, *Request for Final Endorsement of Credit Instrument*, be in order. Instead, form HUD-92403 may be treated as an ordinary application for advance of mortgage loan proceeds and may be approved in an amount which, when added to previous advances of mortgage loan proceeds, will equal 90% of the total advances to which the Borrower will be entitled at 100% completion (or such greater percentage as may be permitted pursuant to any Retainage Reduction Rider attached to the Building Loan Agreement).
- D. Approval of a Final Advance. If minor items of on-site construction are incomplete, approval of a final advance will be given only in cases in which:
1. All on-site items in the entire project are completed, based on the final form HUD-95379, HUD Representatives Trip Report, except those which qualify as items of delayed completion because:
 - a. They are minor; and

- b. The Hub Director determines that immediate completion is inadvisable or impossible, due to weather or other conditions beyond control of the contractor.
 2. Funds are placed in escrow to assure completion of such minor items as provided in the certificate of mortgage loan insurance on form HUD-92403, and in the footnote on form HUD-92023M, *Request for Final Endorsement of Credit Instrument*; and
 3. All off-site utilities such as sewer, water, electrical, and gas facilities are installed and connected, and the buildings are served by safe and adequate all-weather facilities (either permanent or temporary) for the ingress and egress of pedestrians and vehicular traffic, including fire apparatus, and all other construction requirements have been acceptably accomplished or acceptably assured; and
 4. The aggregate estimated cost of completing the above items not including the items described in sub-section (F), below, relating to escrows for unit painting does not exceed 2% of the principal amount of the mortgage loan.
- E. Escrow for Completion. With respect to all incomplete items, the amount held in escrow for completion must be at least one and one-half (1 ½) times the estimated cost of completion. The amount of any escrow shall be sufficient to assure an incentive to complete the work, taking into consideration a possible rise in cost. Such escrow will be held by Lender in accordance with the terms of form HUD-92456M, *Escrow Agreement for Incomplete Construction*, and the Hub Director will ascertain that the items to be completed are properly identified by attachment to form HUD-92456M.
- F. Escrow for Unit Painting. In order to enhance marketability, it may be desirable for incoming tenants to select color schemes. If acceptable to the Hub Director, an escrow may be established to cover the cost of final interior painting of apartments without regard to the usual 2% of the principal mortgage loan amount limitations on escrows described in sub-section (D) above. This is conditioned upon the builder being bound to complete all work covered by the approved plans and specifications within a fixed period of time (not in excess of one year from the date of final endorsement for mortgage loan insurance) and without any additional charge either to the Borrower or to the incoming tenants.

1.10 Preparing for Final Closing when Off-site Facilities are Incomplete

- A. General Rule: Unless all off-site utilities and facilities are completely installed and connected, as applicable, and the required ingress and egress is provided, HUD will not process a request for the final advance of mortgage loan proceeds. In such cases, the Hub Director will invoke the provisions of the building loan agreement and construction contract wherein it is provided that the required holdback will be retained until 100% completion of facilities, including off-site facilities, and will endeavor to obtain completion at the earliest possible time.

- B. Exception to General Rule. When the completion and installation of off-site facilities is adequately assured in the discretion of the Hub Director (see Section 3.5 of this Closing Guide), the Hub Director may approve the final advance of mortgage loan proceeds, if the Hub Director diligently pursues the completion of off-site facilities and if the following conditions are met:
1. All off-site sewer, water, electrical, and gas facilities are completely installed and connected.
 2. Other off-site facilities such as streets, walks, curbs, and gutters are useable and safe, if incomplete and that all buildings have all weather vehicular and pedestrian access.
 3. Adequate facilities for ingress and egress are provided.
 4. All applicable escrow agreements remain in force until the completion of the facilities.
- C. Submission of Forms. Following 100% completion of all off-site facilities, the Hub Director will require submission of a new form HUD-92403, *Application for Insurance of Advance of Mortgage Proceeds*, for approval of the final advance, and subsequent submission of form HUD-92023M, *Request for Final Endorsement of Credit Instrument*.

1.11 Security Instrument Modifications Prior to Final Endorsement

- A. Hub Director's Authority. Under current re-delegations of authority, a Hub Director is authorized to approve modifications of the mortgage instruments for projects in development (*i.e.*, at or prior to final closing) where necessary to reduce the interest rate, reduce the mortgage loan amount, correct the legal description, and for other purposes.
- B. HUD Closing Attorney's Role. The HUD Closing Attorney shall review proposed modification documents and provide a written statement, which may be via e-mail, confirming the legal sufficiency and acceptability thereof.

1.12 Amortization and Mandatory Prepayments

- A. Advance Amortization Requirements. "Advance amortization" is the requirement that, to the extent that the project generates net operating income during the Accountability Period (defined in the next paragraph), HUD may require Borrower, prior to final endorsement, to make, or to agree to make, a prepayment to principal in the amount of such net operating income, all as discussed more fully in subsection (C) below. In order for the Hub Director to determine whether or not advance amortization is required, Borrower must account for all operating income for the period ending three months prior to the originally scheduled date of the first principal payment under the mortgage loan (*e.g.*, through June 30 if first principal payment is scheduled for October 1).
- B. Income and Expense Statement Requirement. In connection with cost certification, Borrower will already have reported the results of occupancy during the cost

certification period. Therefore, when more than three months intervene between the cost certification period and the first principal payment as originally scheduled, the Hub Director will require an income and expense statement covering the period beginning at the end of the cost certification period and ending three months prior to the date of the first principal payment under the mortgage loan as originally scheduled (the "Accountability Period").

1. Agreement of Borrower. When final closing is scheduled to occur before the expiration of the Accountability Period, Borrower must agree in writing, as an inducement to the Commissioner to approve the final disbursement of mortgage loan proceeds prior to the expiration of the Accountability Period, to:
 - a. Furnish an income and expense statement for the required period within 30 days after its expiration, and
 - b. Immediately apply, as a mandatory prepayment to the mortgage loan, such portion of the net operating income as the Commissioner may require.
2. When final closing is scheduled to occur after the close of the Accountability Period, the income and expense statement shall be submitted prior to final closing.
3. Treatment of Items in Statement. In the preparation of the income and expense statement, Borrower must include as income all rents received, exclusive of security deposits. All expenses for operation, including taxes, insurance, HUD-FHA mortgage loan insurance premium (MIP), interest and reasonable management fees (but not officers' salaries or depreciation), may be deducted in determining net income for this purpose. If the cost certification reveals an excess of expense over income, such excess (to the extent recognized by the Commissioner) may be carried forward to the statement required by this paragraph as "unrecovered expense prior period."

C. Amount of Required Prepayment. The amount and handling of the prepayment required is subject to the following:

1. In no case shall the required prepayment exceed the amount which would have been due in cumulative principal payments if the first scheduled payment had been on the first of the month in which the Accountability Period started.
2. Prepayment will be required only to the extent that the amount of the net income permits payment of one or more full monthly principal payments as scheduled.
3. If the circumstances are such that the operating statement is submitted before final endorsement, Lender and Borrower may elect to have the mortgage loan endorsed for less than the face amount by a sum equal to that which would have been required as mandatory prepayment.

D. Excess (Unused) Mortgage Loan Proceeds.

1. There is a remote possibility that the cash paid out for completion of a project may be less than the mortgage loan proceeds. In such circumstances, the Hub Director shall require that any part of the mortgage loan proceeds that have not been expended to pay necessary costs of completing the project shall be

deposited in a special account of Borrower, from which disbursements may be made only with the prior written consent of the Hub Director. This requirement is stated in form HUD-93305M, Agreement and Certification, at paragraph (3). There will be no obligation for the investment of such funds in obligations of, or fully guaranteed as to principal by, the United States of America, or for their deposit in institutions whose accounts are insured by the United States.

2. The establishment of the fund can be avoided by an immediate reduction of the mortgage loan at closing, before establishment of the amortization schedule.
3. The Hub Director will approve or disapprove the use of the funds for purposes other than reduction of the mortgage loan.
4. If the mortgage loan proceeds exceed the cash paid out for completion solely because there is a difference between the purchase price of land for a period of years and its "fair market value" in fee simple and "as is", as determined by HUD, the Hub Director may waive this requirement. The request for waiver shall be accompanied by full information as to the date of purchase and the purchase price of the land and normally will be approved in situations such as the case of an individual Borrower who obviously cannot "buy" the land from himself, as contrasted with a corporate Borrower, which could buy land from its sole or majority stockholder.

1.13 Confirmation of Final Loan Amount

A. Preparation of form HUD-92580, *Maximum Insurable Mortgage*.

1. Prior to Final Endorsement, the Hub Director shall execute form HUD-92580, Maximum Insurable Mortgage, for the purpose of indicating to Lender and Borrower whether or not a reduction in the original amount of the Loan is necessary, based either upon the cost certification or upon a request by Lender for a principal increase. The Hub Director will receive, review, and accept certificates of actual cost and form HUD-95379, Final HUD Representative's Trip Report, prior to completing form HUD-92580.
2. If there is any change in the loan amount, form HUD-92580 also will recite the revised amount of the Level Annuity Monthly Payment (LAMP).
3. Upon execution of form HUD-92580, the original shall be forwarded to Lender and an executed copy shall be forwarded to Borrower. One copy shall be placed in the Washington Docket with copies of the cost certification exhibits and one copy, unless stored electronically, will be placed in the field office docket.
4. Copies of both form HUD-92580 and form HUD-95379 also shall be forwarded to the HUD Closing Attorney for use in preparing for final endorsement.

B. Decrease in Loan Amount:

1. If HUD's review of the cost certification results in a decrease in the Loan amount, which decrease would be set forth in form HUD-92580, Lender must, subject to local practice, prepare and submit the following items to HUD, prior to final endorsement, to modify the Security Instrument amount and the LAMP amount

accordingly:

- a. A proposed Modification Agreement, in a form acceptable to HUD (see requirements in Part 2 of the Closing Guide) and,
 - b. As applicable, a proposed Allonge, in a form acceptable to HUD (see requirements in Part 2 of the Closing Guide).
2. The final endorsement for insurance shall be in the lesser loan amount.
 3. If a small loan decrease is involved, and Borrower does not request a change of amortization, a notation may be made on the Note indicating that the mortgage loan amount is reduced without a change in amortization. In this case, the finally-endorsed amount will reflect the reduced principal balance.
 4. Any reduction in the original principal amount of the loan that may be required by HUD as a result of cost certification shall not be construed as a prepayment of the mortgage loan.

C. Increase in Loan Amount.

1. If the Hub Director approves an increase in the mortgage loan amount, as reflected in form HUD-92580, Lender must include the following items in the package of draft closing documents submitted to HUD for final endorsement to evidence the obligation to repay the amount of the increase and to consolidate the initial and supplemental documents:
 - a. Supplemental Note.
 - b. Supplemental Security Instrument.
 - c. Modification and Consolidation Agreement.
 - d. Supplemental Borrower's Attorney's Opinion (as to the foregoing three documents).
 - e. Increase in title policy insurance amount.
2. The requirements for these documents are discussed in Part 2 of the Closing Guide.

D. Statement of Status of Escrows. Form HUD-92580 shall also:

1. Show the status of all escrow accounts that were established by Borrower at initial closing; and
2. Indicate whether, based on the final form HUD-95379, HUD Representative's Trip Report, an escrow for unpaid construction costs appears necessary. See discussion below concerning incomplete facilities, at Section 1.9 and Section 1.10, above.

E. Borrower's Investment.

1. The amount of Borrower's initial equity investment is to be determined by the Program Staff in accordance with the MAP Guide. Once this determination has been made, the Hub Director will immediately notify Borrower in writing as to the amount of the initial equity investment. A copy of such determination shall be

attached to each copy of form HUD-92580. For New Construction and Substantial Rehabilitation projects, equity is determined by subtracting the finally-endorsed mortgage loan amount from the amount on line 6, form HUD-92580.

2. To the base amount of the final mortgage loan, as determined above, there may be added certain cash outlays for furnishings, equipment, or other betterments essential to the operation of the project. The nature and extent of such outlays shall be substantiated by a supporting schedule in a manner satisfactory to the Hub Director. The schedule shall set forth the vendor's name, a description of the item or items purchased, the total price, and the cash paid on account of the price. The schedule shall be signed by an authorized representative of Borrower.

1.14 Preparation for Final Closing

- A. Prerequisites for Final Closing. The Hub Director will advise the Lender and HUD Closing Attorney of his or her findings and readiness for final closing, at which HUD will endorse the Note for insurance in the amount set forth in form HUD-92580, *Maximum Insurable Mortgage*, but only after the following have occurred:
 1. Construction has been completed (except as otherwise provided in this Closing Guide).
 2. Certification of costs has been presented to and approved by Multifamily Housing Development Staff.
 3. The appropriate diligence required by the HUD Closing Attorney's Final Closing Checklist has been submitted to and reviewed by the HUD Closing Attorney, including without limitation, evidence of updated title insurance and an as-built survey.
 4. HUD has issued Form HUD-92580 to Lender.
 5. If applicable, HUD has received Borrower's agreement regarding income and expense during the Accountability Period, described at Section 1.12, above.
- B. Final Closing Date. A Final Closing date acceptable to all parties shall be set, contingent upon the parties' prior submission to HUD of all required items and HUD's approval of same. The Lender must be represented at final closing by legal counsel. Should final closing be held in person, the parties will consult with the HUD Closing Attorney as to which parties shall be required to attend, provided that, unless there are outstanding issues to resolve, such closing may be treated as a skeleton closing.
- C. Internal Closing Forms. The following items are prepared within HUD and shall be provided to the HUD Closing Attorney for use in preparing for closing:
 1. Form HUD-95379, HUD Representative's Trip Report. The most recent inspection shall state whether or not there are items of delayed completion and, if so, the amount of funds that must be escrowed for their completion.
 2. Form HUD-92580, Maximum Insurable Mortgage. Included in this document, as described below, is whether specific escrows must be established or funds disbursed from existing escrows.

3. Evidence of clearance from the Office of Labor Relations (as discussed more fully above).

1.15 Final Endorsement

- A. Request for Final Endorsement of Credit Instrument. To request approval of a final advance, the Lender shall prepare form HUD-92023M, *Request for Final Endorsement of Credit Instrument*.
 1. Upon receipt, Housing staff will check Form HUD-92023M against each previously approved form HUD-92403, Application for Insurance of Advance of Mortgage Proceeds, to determine that the amount of each advance is correctly stated and that the total shown on the form HUD-92023M equals the total of all advances. If any error is found, the form will be returned to Lender with an explanation of the correction required. The inclusion of an amount advanced by Lender to Borrower from escrow funds required for completion of the project is a common source of error, and it is important that such amounts be excluded from form HUD-92023M. When reviewing this form, the Hub Director shall examine the title evidence submitted prior to final closing to confirm the certification by Borrower as to items of outstanding indebtedness.
 2. Particular attention is directed to the required certifications by Borrower and the general contractor with respect to their obligations and to the penalty provided by law for misstatements. Form HUD-92023M requires in every case a full disclosure by both Borrower and the general contractor of all outstanding unpaid obligations. Sufficient funds from the final advance of mortgage loan proceeds shall be placed in escrow with Lender or an escrow agent approved by HUD. Such funds are to be released from escrow only upon Lender or escrow agent being furnished with simultaneous acknowledgment of payment by the general contractor and/or appropriate subcontractor or materialmen. However, in all cases the Hub Director shall proceed as follows:
 - a. Borrowers shall be advised that all unpaid obligations contracted in connection with the acquisition of land, purchase of property, construction of the project, or the mortgage loan transaction shall without exception be reported on form HUD-92023M as required by the Certificate of the Borrower. Likewise, general contractors shall be advised that all unpaid obligations contracted in connection with the construction contract shall be reported on form HUD-92023M as required by the Certificate of General Contractor.
 - b. The unpaid obligations of Borrower listed in form HUD-92023M under subparagraphs 2.b. and 2.c of the Certificate of the Borrower shall not exceed the amount of the final advance of mortgage loan proceeds. In the event that a form HUD-92023M is received showing such an excess, unless Borrower deposits with the Lender or other escrow agent approved by HUD amounts sufficient to fund such excess prior to final endorsement, it shall be returned to Borrower with the advice that the differences must be liquidated by cash payment or other acceptable assurance of payment, in the

discretion of the Hub Director. A corrected form HUD-92023M must then be submitted. If a promissory note is used, it must be on the proper HUD prescribed note form and no change in substance shall be permitted. A hard copy of such notes shall be obtained for filing in the Washington Docket and another copy, in electronic form or hard copy, as requested by the HUD Closing Attorney, shall be retained by the HUD Field Office.

- c. In any case where the amount of the unpaid obligations certified by the general contractor exceeds the amount certified as due the general contractor by Borrower, the Hub Director shall urge the prompt payment of such excess obligation. If there is an identity of interest between Borrower and the general contractor, the Hub Director shall immediately notify Borrower that final endorsement will be withheld until evidence is furnished that sufficient cash is available to pay all outstanding obligations in full.
- B. Endorsement. When these forms are satisfactorily completed and submitted, the final closing may proceed. The date of final endorsement will be the date the Hub Director affixes his or her signature to the credit instrument. The credit instrument will be finally endorsed in an amount equal to the full amount of all insured advances to Borrower, as shown by the applicable form HUD-92023M, regardless of whether the final endorsement occurs before or after the commencement of amortization of the insured mortgage loan. The original of form HUD-92023M and a copy of form HUD-92456M, *Escrow Agreement for Incomplete Construction*, will be filed in the Washington Docket, and a conformed copy of each will be filed in the Field Office docket.
- C. Receipt for Payments. Paragraph 3 of the Certificates of Borrower and of General Contractor on Form HUD-92023M requires the submission of receipts for the payment of the reported unpaid obligations within prescribed time limits. Borrower's and the general contractor's certifications as to this requirement are made under penalty of prosecution for false claims or statements, including criminal or civil penalties.
1. If the receipts for reported unpaid obligations are not received by the deadline, it is the responsibility of the Hub Director to immediately make appropriate inquiry in writing.
 2. If the receipts for the payment of the reported unpaid obligations are not received within two weeks from the date of such inquiry, the Hub Director shall take appropriate action.
- D. Release of Working Capital Deposit. The balance of the working capital deposit attributable to the Construction Contingency Amount (as that term is defined in form HUD-92412M, *Escrow Agreement for Working Capital*), if any, may be released to the Borrower at final endorsement upon Borrower's request. Terms for the release of that portion of the working capital deposit attributable to the Working Capital Amount are set forth in form HUD-92412M, *Escrow Agreement for Working Capital*, paragraph 4.
- E. Final Closings By Mail. Final closings may be conducted by escrow or by mail, at

the request of Lender, unless the HUD Closing Attorney reasonably determines such closing to be inappropriate due to the circumstances of the particular case or requirements of state or local law or practice. If by mail, Lender must submit copies of all closing requirements in advance of the closing day in a form that meets HUD's requirements, to ensure that the originals, when executed and submitted for closing, fully comply with HUD's requirements. Lender must arrange for the original Note to be delivered to HUD for endorsement and for the original title policy or title endorsement to be delivered to HUD, in addition to all other closing requirements. This may require arranging for the title company to send the policy or endorsement the day before, by overnight delivery, bearing the date of the expected endorsement. In addition, escrow or mail closings must comply with the requirements of closing by mail for initial closings, as described above.

- F. Revision of Instruments. After final closing, the closing forms and documents may not be revised or amended without the prior written approval of the Hub Director.

1.16 Final Advance

- A. Requirements for Final Advance: Upon ascertaining that the advance will be the final advance of mortgage loan proceeds, the Hub Director will determine the following and will provide instruction in accordance with his/her findings, pursuant to the relevant sections of this Closing Guide:
1. Whether any items of on-site construction are incomplete.
 2. Whether any off-site facilities are incomplete.
 3. Whether any revisions are required in connection with hazard insurance.
 4. Whether the insured loan maintains a first priority lien over the entirety of the Mortgaged Property.
- B. Form HUD-92403, *Application for Insurance of Advance of Mortgage Proceeds*. When the final advance is in order, Lender and Borrower will execute the completed form HUD-92403.
1. If no items of on-site construction are incomplete, type the word "None" in the Certificate of Mortgage Insurance on form HUD-92403, in the space provided for the amount of the escrow deposit.
 2. If there are incomplete items of on-site construction, an escrow deposit may be in order, in accordance with form HUD-92456M, Escrow Agreement for Incomplete Construction. In addition, an itemized list of incomplete items shall be attached to form HUD-92456M and the amount of the escrow deposit required for completion of incomplete items shall be typed into the Certificate of Mortgage Insurance portion of the form HUD-92403 in the space provided.
- C. Handling of Form HUD-92403. Following execution of form HUD-92403, the Hub Director will deliver the executed original(s) to Lender at final closing, with necessary attachments, listing incomplete items, if any. An executed copy will be filed in the Washington Docket, and one copy will be retained by the Hub Director.
- D. When Mortgage Insurance is Effective. If form HUD-92403 is for final advance of

mortgage loan proceeds, at the time the Hub Director returns form HUD-92403 to Lender, Lender's attention must be called to the proviso in the "Certificate" section of the form concerning the fact that this last advance shall not be considered insured until the occurrence of the events set forth in such proviso, which events are:

1. Submission of form HUD-92023M, Request for Final Endorsement of Credit Instrument, and
2. Establishment, if necessary, of an escrow for incomplete items of construction.

1.17 Final Closing Procedures when Owner and Contractor are in Dispute

- A. Disputes. Occasionally, Borrower and the general contractor may have disputes regarding change orders, the quality or cost of the construction work, or the timing of payments therefore. This may delay final closing. In the most difficult of such cases, it may be impossible to reach agreement in order to complete final closing. If Borrower and the general contractor enter into arbitration or litigation, or both, the delay may be excessive. Such delays may cause Lender and Borrower to ask HUD to finally endorse the Note even without the full participation of the general contractor, because of the cost of continuing to incur extension or other fees and Lender's need to convert the underlying financing of the mortgage loan to permanent status.
- B. Closing Without General Contractor. If both the Hub Director and HUD Closing Attorney, each in his or her own discretion, agree, the parties may proceed to final closing without the participation of the general contractor if the following conditions are met:
1. Cost certification must have been satisfactorily completed by all parties required subject to this requirement.
 2. The remaining mortgage loan proceeds must be placed in escrow pending the outcome of the dispute.
 3. The title company must issue affirmative title insurance coverage over any liens that are in place due to the dispute.
 4. There must be a mechanism in place for eventual resolution of the dispute or termination of the escrow that is satisfactory to HUD, such as litigation that does not involve HUD.
- C. Issues to Consider. The following issues are among those that should be considered when a dispute is delaying final endorsement:
1. *Has cost certification been completed?* If not, it is unlikely that a final endorsement can occur, because:
 - a. HUD will be unable to ensure that the mortgage loan does not exceed the statutory limit and to comply with the statutory cost certification provisions of the National Housing Act, and
 - b. Cost certification may provide the only basis for determining what

outstanding obligations remain, without which HUD cannot ensure that sufficient funds exist and have been put under Lender's control to pay those obligations.

2. *Has the general contractor submitted final closing documents, or drafts thereof?* These, too, offer some indication of what outstanding obligations remain. It is important to know what outstanding obligations remain so that HUD can ensure that Borrower will have sufficient funds at the time of closing to cover them.
3. *Have any liens been filed?*
 - a. If no liens have been filed, has the statutory period for filing liens expired, or is it possible that liens could yet be filed?
 - b. If liens have been filed, will the remaining mortgage loan proceeds be sufficient to pay such liens?
 - i. If not sufficient, Borrower must furnish additional funds or other assurances acceptable to the Hub Director at closing to cover any liens and other outstanding obligations.
 - ii. If sufficient, will it be possible to escrow the mortgage loan proceeds with the title company in order to obtain a title endorsement bringing the effective date of the policy forward to final endorsement with no liens shown as exceptions to title, or with any mechanic's liens as exceptions, but with affirmative coverage against those liens, in order to make it clear from the policy that the title company was aware of the existence of the liens when it provided the date-down endorsement or replacement title policy for final closing?
4. *Is it possible for Borrower to bond over the liens, if any, or the litigation, if any, in order to free the project from the effects thereof and clear title to the project?* (See, e.g., Colorado Revised Statutes § 38-22-131: other states may have similar procedures.)
5. *Are there state laws that affect the process?* For example, some states have statutes under which a claimant can force the disburser of funds either to pay the claimed amount or hold all undisbursed mortgage loan proceeds in escrow pending the outcome of the dispute. (See, e.g., Colorado Revised Statutes § 38-22-126.) If so, does state law provide or permit a process that is consistent with HUD's requirements and objectives?
6. *To what extent can Borrower and Lender meet HUD's requirements for final endorsement without the participation of the general contractor?* If HUD proceeds to final endorsement, certain requirements of MAP Guide §12.7.G (requirements for the final advance) will not be met. The Hub Directors have the authority to waive any non-statutory and non-regulatory requirements in an appropriate case. The specific provisions that should be considered are as follows:
 - a. Regulations at 24 C.F.R. § 200.96 and MAP Guide §12.7.G.1 require cost certification and determination of the maximum insurable mortgage loan.

No final endorsement may occur without completion of these requirements.

- b. MAP Guide §12.7.G.2 requires the general contractor to execute form HUD-92448, *Contractor's Requisition and Contractor's Prevailing Wage Certificate*.
 - i. HUD's files may contain original forms HUD-92448 from previous, approved draws that contain the prevailing wage certification.
 - ii. If the Office of Housing or the HUD Closing Attorney also has received the customary letter or memorandum from the Office of Labor Relations stating that the project is in substantial compliance with labor standards and may be closed, such receipt could offer some assurance on this subject.
 - c. MAP Guide §12.7.G.3 requires that the sum to be approved for advance is the balance of the mortgage loan proceeds, based on form HUD-92580, and should be followed here as in final closing.
 - d. MAP Guide §12.7.G.4 requires an escrow for items of delayed completion (discussed more fully above, at Section 2-5). This escrow is required whenever there are items of delayed completion, but depending upon the nature of the dispute that is preventing the normal closing procedure, its terms may need further consideration.
 - e. MAP Guide §12.7.G.5 requires the general contractor to execute form HUD-92023M (discussed more fully in Section 1.15(C), above). This includes the contractor's certification as to its outstanding obligations. If the contractor has submitted a cost certification or a draft copy of this form, these may provide a list of the outstanding obligations to subcontractors, although it may include items that were subsequently paid (an unlikely event in cases involving disputes).
 - f. (Note that the regulations at 24 C.F.R. § 200.101 require Borrower to certify, among other matters, as to "all unpaid obligations in connection with the mortgage loan transaction, the purchase of the Mortgaged Property, the construction or rehabilitation of the project or the purchase of the equipment financed with mortgage loan proceeds.")
7. *How will contractor's retainage (holdback) be handled?* MAP Guide §12.15.D, concerning early release of the contractor's 10 percent holdback, provides some additional guidance relevant here, as it specifies, at paragraph D.3.h(2), that HUD must retain an adequate amount for any owed or contested amounts indicated by mechanic's liens.
 8. *Will the parties' actions in closing without the contractor trigger a lawsuit?* Is it possible for Borrower to notify the contractor of what is planned? This communication might either gain the contractor's cooperation and permit the parties to proceed with a normal closing or assure the contractor that funds are being held pending the outcome of the dispute and avoid an unnecessary lawsuit.

D. Closing Documents Required.

1. All customary final closing documents are required, except as otherwise noted.
2. Additional title endorsements insuring over liens may be required, as discussed above.
3. Waivers may be required for certain handbook requirements that cannot be satisfied due to the general contractor's absence.
4. An escrow agreement may be required to assure the availability of funds to pay outstanding obligations:
 - a. By providing a mechanism for the title company to pay all undisputed obligations, such as amounts owed subcontractors, upon receipt of proper lien waivers;
 - b. By providing a mechanism for the remaining funds in escrow to be disbursed upon the happening of specified events, such as resolution of the dispute, or upon a designated future date; and
 - c. By providing, as necessary, for a supplemental cost certification following disbursement of the remaining funds to ensure that the mortgage loan amount needs no further adjustment.

1.18 223(f) Transactions

- A. Introduction. Acquisition of an existing project or refinance of existing indebtedness may be achieved through HUD's Section 223(f) program and may involve limited repairs and improvements to the project. All existing structures must be at least three years old unless otherwise permitted under the Program Obligations. Except as otherwise provided and except to the extent such requirements apply exclusively to the insurance of construction advances, the procedures set forth above apply to Section 223(f) transactions. (See MAP Guide §3.9 for an overview of the Section 223(f) program.)
- B. Endorsement of Note. In a section 223(f) closing, HUD is not insuring advances from a construction loan, so there is no "initial closing" endorsement of the Note. Instead, there is one closing at which FHA endorses only the "total sum" portion of the panel on the Note. Therefore, when endorsing the note, the Hub Director shall strike the first "By" and "Date" lines, enter the total sum, and sign the second set of "By" and "Date" lines.

1.19 Section 223(a)(7) Closings

- A. General. Section 223(a)(7) of the National Housing Act is intended to provide a process for refinancing for projects that have an active HUD insured loan. The process can be used to reduce the interest rate, provide funds for repairs, or extend the term of the loan. The rationale for the latter two objectives must be documented by HUD.
- B. Types of Projects. This process is available for:

1. Multifamily housing projects.
 2. Coinsurance projects with financing that has converted to full insurance.
 3. Housing with Section 8 assistance is eligible, but must be processed in accordance with special instructions from Headquarters concerning rents and Net Operating Income.
- C. Prepayment Issue. Parties shall be advised that, although projects with financing insured under Section 223(f) are eligible for refinancing under Section 223(a)(7), if the project's statutory 5-year prepayment lockout period has not expired at the time of such refinance, it may be necessary for the Borrower to enter into a Rental Use Agreement using form HUD-93150 in order for HUD to permit the prepayment of the Section 223(f) mortgage loan in connection with closing of the new Section 223(a)(7) mortgage loan.
- D. HUD Guidance. Attorneys assigned to close a Section 223(a)(7) loan should become familiar with the following processing guides.
1. Housing Handbook 4567.1, Refinancing of Insured Multifamily Projects Pursuant to Section 223(a)(7). Note that this Handbook cross-references other Multifamily Handbooks for technical guidance in various areas. Section 5-1 of this handbook describes the format of the Commitment.
 2. Notice H 93-89, Expedited Section 223(a)(7) Processing Instructions. These instructions supersede inconsistent provisions of the Handbook for those projects eligible for expedited processing. Attachment 4 provides a sample letter format for the Commitment.
 3. Notice H 94-56, Expedited Section 223(a)(7) Processing Instructions for Coinsured Projects.
 4. Mortgagee Letter 93-39, Refinancing of Existing Insured Mortgages Pursuant to Section 223(a)(7) of the National Housing Act.
 5. Mortgagee Letter 94-17, Refinancing of Insured Mortgages Pursuant to Section 223(a)(7) of the National Housing Act – Questions and Answers.
 6. Mortgagee Letter 06-03, Refinancing of FHA Insured Multifamily Project Mortgages Pursuant to Section 223(a)(7).
- E. Mortgage Modifications. If the proposal is solely for a reduction in interest rate, as agreed between Borrower and Lender, it may be handled by a modification of the Mortgage and Note rather than by using Section 223(a)(7). Modifications must be approved by the Hub Director. See Handbook 4567.1, ¶ 1-2
- F. Refinances of Second Mortgages. Note that Section 223(a)(7) may be used to refinance a HUD-insured subordinate mortgage. See Handbook 4567.1, ¶ 2-2.D (e.g., mortgages insured under Section 241 of the National Housing Act). For projects with HUD-insured first, and one or more subordinate mortgages, HUD will permit the refinancing of two or more such loans with a single Section 223(a)(7) loan.
- G. Procedures Distinguished from Section 223(f) Procedures. Generally, underwriting

and closing of the Section 223(a)(7) loan is similar to the procedures used for Section 223(f). (See the checklist for closing Section 223(a)(7) loans, Closing Guide Part 4.) Closing procedures for Section 223(a)(7) loans that differ from Section 223(f) loans are discussed below.

1. Previous Participation Clearance using form HUD-2530, Previous Participation Certification, is not required for existing principals and affiliates who have already obtained clearance. New principals and affiliates must obtain the 2530 clearance.
2. A new project number is assigned to the Section 223(a)(7) project.
3. Standards for the maximum mortgage and the mortgage term are set out in Notice 93-89, Sections II.B and C. Note that if expenses exceed those allowed for Section 223(a)(7) underwriting, the application must be converted to a Section 223(f) loan or, for substantial rehabilitation, a Section 221 loan.
4. Use form HUD-92476.1M when establishing an Escrow for Deferred Repairs, and require a 110% deposit (i.e. the required Additional Deposit Amount is to be 10% of the estimated cost of the Repair Work).
5. A new Regulatory Agreement must be executed at closing, referencing the same Section of the Act as the original loan.
6. The Section 223(a)(7) program is based upon the premise that the original insurance obligation is transferred to the new Section 223(a)(7) loan. Therefore, just as in a 223(f) transaction, when endorsing the note, the Hub Director shall strike the first "By" and "Date" lines, enter the total sum, and sign the second set of "By" and "Date" lines. The portion of the endorsement panel relating to the transfer of the Contract for Insurance must also be completed.
7. The Borrower's current organizational documents shall be submitted and updated to comply with HUD's requirements, if necessary.
8. Notwithstanding the other provisions of this Closing Guide relating to survey requirements, it is customary to waive the requirements for a survey and surveyor's report when the title company will issue the policy with no survey exceptions, a copy of an as-built survey is available in the original file, and no changes have been made to the land or buildings since the original survey was filed. The HUD Closing Attorney may accept an Owner's Survey Affidavit certifying to no material change, in a format similar to that attached hereto in Closing Guide Part 5 to document the lack of changes. The HUD Closing Attorney shall include in the new file a copy of the survey from the originally insured case file for ease of access in the future.
9. On bond financed projects, the insured project loan interest rate may be higher than the interest rate on the bond obligations, and the resulting spread may be used to finance a variety of costs associated with closing the new loan. (See Handbook 4470.1, ¶ 15-2.A.2, Loan Rates.) HUD has adopted a policy to allow use of the interest rate premium to finance prepayment penalties associated with existing insured loans. Refer to the foregoing to adapt and evaluate closing

documents when an interest rate premium is approved by the Hub Director.

1.20 Section 241 and 223(d) Closings. Notwithstanding anything else in this Closing Guide, a loan insured pursuant to Section 241 or 223(d) may be a subordinate loan and need not be secured by first priority encumbrances. Wherever this Closing Guide requires a first-priority lien or otherwise requires or refers to the HUD-insured as being in first priority position, such references and requirements shall be interpreted for Section 241 and 223(d) transactions to mean the appropriate HUD-approved subordinate position.

1.21 Insurance Upon Completion Closings

- A. Preparation for Insurance Upon Completion Closings: (See MAP Guide §8.12 for details of requirements.) Closing occurs after completion of construction and cost certification. Additional requirements are found in MAP Guide §12.16.
- B. Cost Certification. The owner's cost certification is reviewed by the HUD Cost Analyst and Mortgage Credit Analyst, who will prepare form HUD-92580, *Maximum Insurable Mortgage*, for the Hub Director's signature, which form determines the amount of the insured mortgage loan. See MAP Guide §13.
- C. Form FHA 2453-MM, *Commitment for Insurance Upon Completion* must be issued prior to commencement of construction. Note that the Firm Commitment requires that a Master Set of the Drawings and Specifications of the Project, which has been signed by all necessary parties, together with certain other related items, be filed with HUD, and an additional three copies thereof, at the time of issuance of the Firm Commitment.
- D. Construction Requirements.
 - 1. Prior to commencement of construction, Borrower must establish that the project complies with applicable zoning laws and regulations.
 - 2. Borrower and contractor must enter into a construction contract and execute form HUD-93306M, Agreement and Certification. The parties may, but need not, use form HUD-92442M, but all attachments required by form HUD-92442M are required as attachments to the form of construction contract used.
 - 3. The contractor must comply with applicable labor standards, which may include Davis-Bacon wage rates and procedures, so the parties shall participate in a pre-construction conference with HUD staff to go over those matters.
 - 4. Form HUD-92441M, Building Loan Agreement, is not required for Insurance Upon Completion Closings.
 - 5. Borrower's assurance of completion is not required. A latent defects escrow will be required at closing.
- E. Subordination of Restrictive Covenants. HUD has specific requirements concerning restrictive covenants resulting from tax-exempt bond financing and low-income housing tax credit financing. Borrower and Lender shall be advised that, regardless

of the timing of recordation of such covenants and related documents, HUD will require that they meet HUD requirements before endorsement of the note for insurance, even if they must be amended. Consequently, Borrower and Lender shall ensure that these documents, if applicable, meet HUD requirements before commencement of construction.

F. Endorsement of Note.

1. Conditions for Endorsing Note: The Hub Director may consult with other HUD staff, including the HUD Closing Attorney, prior to endorsing the Note. The Hub Director, however, is fully authorized, pursuant to current delegations of authority, to endorse the Note after receiving the first year's mortgage insurance premium and inspection fee and concluding that all requirements for closing have been met. In no event shall the Hub Director endorse the Note for an amount greater than the principal balance of the mortgage loan that would have been outstanding if all payments to principal due before the date of endorsement (including required advance amortization payments if any) had been paid. Nor shall the Hub Director endorse for insurance on a date after the first principal payment is due until the Hub Director has determined that all principal payments due have actually been made and the mortgage loan otherwise is current.
2. Completion of Note Endorsement Panel. Since HUD is not insuring the Note until construction completion, there is only one closing at which FHA endorses only the "total sum" portion of the panel on the Note. Therefore, when endorsing the note, the Hub Director shall strike the first "By" and "Date" lines, enter the total sum, and sign the second set of "By" and "Date" lines.

1.22 Assignments Prior to Final Endorsement

- A. HUD Approval Needed. Lender must notify HUD of any assignment of an insured loan, and provide HUD with appropriate evidence of assignment as set forth below. Under HB 4435.1 (Handbook for *Project Construction and Servicing Before Final Closing*), paragraph 1-33, HUD must approve in writing any assignment of an insured mortgage loan if the mortgage loan has not been fully disbursed.
- B. Document Review. In those circumstances where the insured loan is assigned prior to full disbursement of the insured loan, the HUD Closing Attorney must review, and advise as to the acceptability of, the instruments submitted in connection with such an assignment including the:
 1. Note endorsement;
 2. Assignment of the Security Instrument;
 3. Assignment of the Building Loan Agreement;
 4. Assignment of the assurance of completion;
 5. Assignment of the assurance of installation of offsite facilities;
 6. Transfer for deposit with the assignee of the working capital deposit, funds required for completion of the project and all other escrows held by the insured Lender;

7. Assumption by the assignee of all obligations under the contract of mortgage insurance and of the terms and conditions pertaining to all documents, funds and escrow deposits required in connection therewith;
8. Opinion of the assignee's counsel as to the validity of the assignment transaction and of the documents executed and delivered in connection therewith;
9. Title policy endorsement from the title insurer reflecting the assignment of the mortgage loan and of any other recorded documents;
10. Any other documents required under local law.

1.23 Workout Restructuring and Interim Closing

- A. Introduction. When problems occur during construction necessitating a workout or restructuring of a Project, an Interim Closing may be called for.
1. HB 4435.1 and MAP Guide §12 provide guidance for issues and procedures during a project's construction period. Normally the HUD Closing Attorney has a limited role during this period. However, when problems arise during construction the HUD Closing Attorney will be placed in the middle of what is usually a very complicated and contentious situation.
 2. HB 4435.1, Chapter 4, and MAP Guide Appendix §12D present general guidance and procedures for resolving the various problems. One of the most difficult problems is the complete default and abandonment of the job by the general contractor. Regardless of why or how the abandonment occurs, there will probably be a lengthy time period of negotiations and litigation among and between the various project participants, especially the surety. This will result in additional costs and significant alterations to the development financial plan and construction plan put in place at initial closing.
 3. If the negotiations are successful, there will be workout and settlement agreements among the parties. Implementing those agreements will require amendments of documents and agreements entered into at initial closing. An Interim Closing may be necessary.
- B. Interim Closing Issues. Since every case has unique details, the following is not intended to be exhaustive or a mandatory checklist, but rather a list of suggestions that should be considered.
1. Closing Guide Part 4 (Checklists) contains a guide to issues that should be considered for an Interim Closing, and should be tailored for project specifics. It is not a checklist of mandatory documents.
 2. Some of the documents listed may not require amendment.
 3. Specific guidance as to some necessary amendments and revisions will be found in this Guide, in the MAP Guide or in Handbook 4435.1; for example, this guide describes the proper documentation of a mortgage loan increase.
 4. If additional mortgage loan funds are to be advanced, HUD will require that documentation necessary to establish or confirm the subordination of any

existing secondary financing be re-subordinated to the mortgage loan, as increased, and other HUD loan documents, as amended.

5. If litigation has been filed or is threatened, the HUD Closing Attorney shall confer with the appropriate HUD litigation attorney. A litigation hold may be necessary.

Part 2: Loan Documents

2.1 General Requirements for Form Loan Closing Documents

- A. Use of HUD Forms Required. Closing forms and documents are listed in the Closing Checklists included as Part 4 of this Closing Guide, and must be used in all closings for programs covered by the MAP Guide unless a substitute has been approved in writing by the Assistant General Counsel for Multifamily Mortgage Insurance. Local Field Offices are not authorized to modify the closing list except to meet the requirements of local law or custom or to meet the unique requirements of a particular case. The HUD Closing Attorney will inform Lender's counsel of any modifications to the closing list in the above Checklists.
- B. Form Changes.
1. The Hub Director may approve administrative changes to any form, if the changes are required by local law or custom or the unique requirements of the particular case, except those items specifically listed in MAP Guide §11.2.F. All such material changes must be noted in the Administrative Memorandum and form HUD-2, Request for Waiver of Housing Directive.
 2. The HUD Closing Attorney may approve legal changes to any form, if the changes are required by local law or custom or the unique requirements of the particular case. All such material changes must be identified in the Administrative Memorandum and form HUD-2.
 3. Lender must identify changes and modifications to the forms (other than the Opinion of Borrower's Counsel and accompanying Certification of Borrower) in a memorandum attached to form HUD-92434M, Lender's Certificate, except for filling in blanks, attaching exhibits or riders, deleting inapplicable provisions or making changes permitted by Program Obligations and not requiring HUD approval. Lender shall attach to the memorandum an electronically-generated comparison identifying all changes.
 4. In rendering the Opinion of Borrower's Counsel, Borrower's counsel must identify any deviations from form HUD-91725M, *Guide for Opinion of Borrower's Counsel*. Borrower's counsel shall attach an electronically-generated comparison identifying all changes to the form HUD-91725M to the opinion letter.

2.2 Security Instrument

- A. General Requirements. Form HUD-94000M, Multifamily (Mortgage, Deed of Trust, Deed to Secure Debt, or Other Designation as Appropriate in Jurisdiction), Assignment of Rents and Security Agreement (Security Instrument) must be used to secure the insured loan and grant a first lien on the entirety of the Mortgaged Property, as that term is defined in the Security Instrument. The title of the document shall be revised as appropriate to reflect the appropriate designation in the project jurisdiction.
- B. Modifications for Compliance with State-Specific Requirements. The Security Instrument shall be modified to comply with local requirements relating to recording

practices and enforceability. Attach a HUD-approved addendum, if applicable, and/or recording cover sheet, if necessary. The state-specific modifications can be found with the Multifamily loan documents, on HUD clips.

- C. Ground Lease. When all or part of the Mortgaged Property consists of a leasehold estate, the Ground Lease shall include the provisions set forth in form HUD-92070M, Instructions for Leasehold Projects (Ground Lease Addendum). The Ground Lease Addendum provisions must be attached to the Ground Lease and incorporated into the Ground Lease by reference prior to the execution of the Ground Lease, or if such incorporation by reference is not possible, must be separately executed by the Landlord and Tenant. A rider to the Security Instrument is not required.

2.3 UCC-1 Financing Statements

A. General Requirements

1. As set forth in the Security Instrument, Borrower shall grant Lender a first lien security interest in all of the Mortgaged Property, including the personalty associated with the project. The Lender shall take any and all measures that are necessary, including the filing of appropriate UCC financing statements, to ensure that it has a valid and enforceable first lien security interest under the Uniform Commercial Code in all of the Mortgaged Property at the time of closing and for the duration of the insured project loan. The Lender certifies that these requirements have been met in form HUD-92434M, Lender's Certificate (see paragraph 40).
2. Additional UCC-1 Financing Statements and a separate legal opinion may be required if the construction advances will include offsite storage of building components.
3. The real property, and any non-realty equipment, furnishings, and all other collateral covered by the Security Instrument, must be free and clear of all liens other than the insured mortgage loan, liens for taxes and assessments that are not yet due and payable, and any other liens that HUD approves in writing prior to the closing.
4. The legal description for the real property must be identical with that used in the Regulatory Agreement, Building Loan Agreement, Security Instrument, title policy and survey, and in all other closing documents, provided that minor differences, such as differences in abbreviations or other minor stylistic differences, are allowed.
5. The address for notice to HUD in the Security Instrument and in the UCC-1 Financing Statements shall be the Office of Housing in the local HUD Field Office.

B. Description of Collateral

1. Attach to the UCC-1 Financing Statement a description of tangible and intangible Mortgaged Property, which shall include all Mortgaged Property, as defined in the Security Instrument, except for the realty. The description of the personalty

in the UCC-1 Financing Statement may need to differ from the language used in the definition of Mortgaged Property in the Security Instrument, depending on the jurisdiction's rules regarding the specificity required for enforceability. The Lender is responsible for ensuring that the description of such property in the UCC-1 Financing Statement is adequate to create an enforceable first priority lien, as it certifies to in the Lender's Certificate.

2. Appropriate after-acquired property and proceeds clauses shall be included in the description of collateral.

2.4 Promissory Note

A. General Requirements.

1. Form HUD 94001M, Note (Multistate) (Note), must be used to evidence the insured loan. Any changes to the form must be approved by the Hub Director or HUD Closing Attorney, as set forth in Section 2.1. The section of the Act under which the mortgage loan is insured must be identified in the endorsement panel of the Note.
2. Terms. The terms of the Note must be consistent with the Firm Commitment.

B. Prepayment Provisions. The Note includes alternative provisions for prepayment, including lockout provisions relating to Section 223(f) transactions. The applicable provisions shall be used, as set forth in the Note.

C. Endorsement Panel for Section 223(a)(7). The Endorsement Panel of the Note includes alternate language that shall be used for a Section 223(a)(7) transaction.

D. Late Charge Provisions. Lender may collect a late charge for the cost of handling delinquent payments, subject to the following:

1. Charges must not exceed two cents per dollar of unpaid principal and interest that is more than 10 days in arrears.
2. Late charges must be separately charged to and collected from Borrower and cannot be deducted from any total monthly mortgage payment, or collected from any reserve escrow, residual receipts funds, or from any interest accruals thereto.

E. Changes to Loan Interest Rates. Any change to the interest rate prior to initial endorsement requires an amendment to the Firm Commitment.

1. Amendment for Rate Reduction. If the construction interest rate is reduced before initial endorsement and it is not feasible to reprocess the project, the Firm Commitment must be amended to state the proper interest rate and contain the following condition (see MAP Guide §8.14.B.2.a):

“Any interest savings resulting purely from a differential between the HUD processed interest rate and the actual construction interest rate may not be construed as excess funds that may be used to offset costs in other categories at the time of cost certification. Any such saving must be applied as a mortgage reduction.”

2. Reprocessing For Rate Increase Before Closing. If the construction and/or permanent interest rate is increased before initial endorsement, the Firm Commitment must be amended and the application reprocessed to reflect the higher rate.

F. Reprocessing For Change in Permanent Financing After Closing. Re-processing of loans for changes to the permanent financing from the terms in the Firm Commitment after initial closing is generally prohibited by the MAP Guide §3.2.D. Changes are allowed in the limited situation of a bond deal, as the permanent interest rate may not be known at initial closing (see MAP Guide §8.14.B). If the evidence submitted in preparation for final endorsement does not indicate that the permanent financing will be available at the interest rate, for the term length, and for at least the mortgage loan amount identified in HUD's Firm Commitment, then the Firm Commitment must be reprocessed accordingly.

2.5 Regulatory Agreement. Form HUD-92466M, Regulatory Agreement for Multifamily Projects (Regulatory Agreement), must be used to establish regulatory restrictions on the project, Borrower's obligations in operations, and HUD's rights if the Agreement is violated. The Security Instrument incorporates the Regulatory Agreement by reference at Section 9. Section 50 of the Regulatory Agreement relates to the non-recourse nature of the indebtedness, and provides certain losses for which the named parties may be held personally liable; the names of those parties identified in the Firm Commitment shall be inserted.

2.6 Building Loan Agreement. Form HUD-92441M, the Building Loan Agreement, sets out the basic agreement to loan funds to Borrower. Project-specific terms shall be completed as appropriate. The form calls for three exhibits: (A) the legal description, (B) form HUD-2328, the Contractor's and/or Mortgagor's Cost Breakdown, and (C) if applicable, a disbursement agreement relating to disbursement of the Project Completion Funds required by HUD at initial closing. If the Borrower also acts as the Contractor in the transaction, Borrower shall also submit the supplement to form HUD-92441M.SUPP, Supplement to Building Loan Agreement. If a Section 241 transaction is not subject to prevailing wage requirements, the provisions of the Building Loan Agreement regarding prevailing wages for such transaction may be deleted.

2.7 Lender's Certificate

A. General Requirements. The Lender must make certain certifications and acknowledgements to HUD, as set forth in form HUD-92434M, Lender's Certificate (Lender's Certificate).

B. As set forth in the form Lender's Certificate, all required escrows, deposits, fees, charges, and financial obligations must be properly reflected in the Lender's Certificate. The Hub Director is responsible for determining that the financial amounts are appropriate and correct.

C. As set forth in the Lender's Certificate, appropriate exhibits, addenda and other items shall be either attached or provided separately, including without limitation:

1. Each of the exhibits to be attached, as required by Sections 7, 20(e) and 20(g) of

- the Lender's Certificate; and
2. Each of the memoranda to be attached, as required by Sections 29 and 30 of the Lender's Certificate; and
 3. Each of the items, as applicable, to be submitted separately to HUD, as required by Sections 2, 4, 10, 11, 12, 13(a) and 13(b).
 4. Any appropriate certifications, search results, or other documentation Lender determines are necessary in order for Lender to make the certifications and agreements set forth in the Lender's Certificate.
 5. Matters which are subject to HUD's approval at or prior to closing in accordance with the Lender's Certificate, and which have been approved by the Hub Director, may be itemized in an Addendum to the Lender's Certificate.
- D. Working Capital Deposit. The Working Capital Deposit required by the Lender's Certificate is discussed below at Section 2.8.G of this Closing Guide.
- E. Assurance of Funds to Meet Operating Deficits. The funding of any operating deficit projected on form HUD-92264, Multifamily Summary Appraisal Report, is a condition of the Firm Commitment. The initial operating deficit deposit is established with the Lender at initial closing. It may be funded by cash, letter of credit or excess mortgage proceeds, if any. These funds can be released pursuant to the protocol established in the MAP Guide §12.15.E. The details of this funding obligation are to be set forth in Lender's Certificate Section 12, and in form HUD-92476a-M, Escrow Agreement for Operating Deficits.
- F. Cost Certification
1. The Hub Director will inform Lender in writing of the aggregate amount that will be allowed at cost certification for discounts, financing fees and issuance costs. The allowed amount shall be reflected as a percentage of the mortgage loan. The amount of the fee is listed in the financing section of form HUD-92264 (or in an attachment thereto), which is a part of the Commitment.
 2. Lender will be required to acknowledge the additional costs, if any, that HUD will allow at cost certification by signing a copy of a letter from HUD to Lender detailing such costs. Such acknowledgement must be filed with form HUD-92434M in order to properly review the cost certification.
- G. Fee Payment:
1. Only financing fees and charges disclosed in the Lender's Certificate will be accepted by HUD as certifiable costs in connection with the determination of the maximum insurable mortgage.
 2. Loan fees are earned as follows:
 - a. Construction loan fees are earned at initial closing, except to the extent that the loan documents defer a portion to a later date. Construction loan extension fees are not earned until the time such extensions are granted.
 - b. Permanent loan fees and permanent loan extension fees, to the extent a

separate permanent loan is anticipated, are earned at final closing.

- c. Construction/Permanent loan fees (for construction loans anticipated to convert to permanent loans) are earned at initial closing, except to the extent that the loan documents defer a portion to a later date.
3. Fees Paid At Initial Closing. “Cash Available to Borrower” is also known as excess mortgage proceeds, and also may be used at initial closing to pay construction and permanent loan discounts, including those for bond issuance costs and a Ginnie Mae indemnification escrow to the extent recognized by HUD under form HUD-92434M, paragraphs 20(b) through 20(e), if loan documents approved by HUD provide for the payment of such fees and charges at initial closing.
 4. Fees Paid After Initial Closing. Excess mortgage proceeds may be used after initial closing to pay permanent loan discounts, including those for unitary loans, and construction and permanent loan extension fees approved by HUD in form HUD-92434M, paragraphs 20(b), (c), (d) and (g), if loan documents approved by HUD provide for the payment of such fees after initial closing, subject to the following:
 - a. Lender is required to escrow sufficient funds on Borrower’s behalf to cover fees approved in form HUD-92434M, paragraphs 20(b), (c), (d) and (g), for payment after initial closing.
 - b. Borrower is required to furnish a written acknowledgement to HUD that any disbursements from the escrow accounts require HUD’s advance written approval. Lenders must provide a separate escrow account for each escrow, as needed, as well as a separate letter for each disbursement from the various escrow accounts.
 - c. A Letter of Credit will not be accepted at initial closing for any of the amounts to be satisfied from excess mortgage proceeds.
 - d. Such escrowed excess mortgage proceeds may be released when earned.
 5. Deferred Fee Collection. Where Lender, bond underwriter or issuer may exercise the option for deferred collection of discounts, financing fees, etc., permitted by form HUD-92434M, Lender’s Certificate, paragraph 20(g), deferred collection of these items must be an obligation of a third party rather than of Borrower.
 - a. Third party obligees, and Lender, bond underwriter or issuer, must attest in writing that they will not seek payment from Borrower, Mortgaged Property, mortgage proceeds, any reserve or deposit required by HUD in connection with the mortgage transaction, or rents or other income of the Mortgaged Property. (See sample language for third-party obligee certification in Part 5 of the Closing Guide.)
 - b. The HUD Closing Attorney will review the third party’s promissory note (evidencing the third party’s obligation to pay the deferred fee(s)) to ensure that it complies with the requirements for secondary financing and guidance

for promissory notes as set forth in Section 3.3 of this Closing Guide, and meets the following criteria:

- i. The maker must be the third party obligated for payment of the fee.
- ii. The note may be unsecured or secured by pledging of specific assets. The assets must be completely separate from the Mortgaged Property, including the rental income and escrow accounts.
- iii. The note must include the following statement on its face:

“The payee or any subsequent holder hereof may not assert any claim arising from this note against the interest of the maker in (a) property located at _____ which is financed by a mortgage insured by HUD under Project No. _____, or (b) any reserves or deposits required by HUD in connection with the mortgage transaction, or (c) the rents or other income from the property.”

6. Identities of Interest. The Lender’s Certificate requires the Lender to disclose any identities of interest. The MAP Guide §2.6 defines identities of interest.
7. Broker’s Fees. See form HUD-92434M, *Lender’s Certificate*, paragraph 22.
 - a. Referral fees are always prohibited.
 - b. Lender may not pay anything of value directly or indirectly to any person or entity in connection with an insured transaction if the person or entity has received any other compensation from Borrower, seller, builder or any other person for services related to the transaction, or related to the purchase or sale of the Mortgaged Property, except as approved by HUD.
 - c. The Hub Director may approve compensation for services actually performed, which approval must be in writing and be based on the following findings:
 - i. The service performed is necessary,
 - ii. The service is actually rendered,
 - iii. Payment is reasonable and customary,
 - iv. The broker’s fee is included in form HUD-92434M, and
 - v. Borrower submits a letter to HUD identifying the fee paid, the name of the broker, the reasons why it was necessary to employ a broker, and certifying that there is no identity of interest between Borrower/Sponsor and the broker, or between Lender and the broker.

2.8 Escrow Agreements

- A. General Requirements. As set forth above, certain escrow agreements may be required to assure project completion.

- B. *Escrow Agreement for Operating Deficits*: If it is projected that delayed occupancy or other causes may result in operating deficits, the Firm Commitment may require an operating deficit escrow. See MAP Guide §7.14 and use form HUD-92476A-M.
- C. *Escrow Agreement for Working Capital*: Except that no working capital deposits are required for refinancing, HUD requires that every Borrower deposit with Lender at initial endorsement a cash escrow or letter of credit. For new construction, at least 4% of the mortgage amount, with 2% held for contingencies, is required, and for rehabilitations, 2% of the mortgaged amount is required. Lenders may require larger deposits. The details of the working capital deposit are to be set forth in Section 8 of the Lender's Certificate, in the form HUD-92412M, *Escrow Agreement for Working Capital*, and MAP Guide §12.15.C(1-3).
- D. *Escrow Agreement for Incomplete Construction*: With respect to all incomplete items, the amount held in escrow for completion must be at least one and one-half (1 ½) times the estimated cost of completion. The amount of any escrow shall be sufficient to assure an incentive to complete the work, taking into consideration a possible rise in cost. Such escrow will be held by Lender in accordance with the terms of form HUD-92456M, *Escrow Agreement for Incomplete Construction*, and the Hub Director will ascertain that the items to be completed are properly identified in the attachment to form HUD-92403.
- E. *Escrow Agreement for Latent Defects*: The escrow agreement for latent defects collateralizes the contractor's guarantee, running for a period of twelve months from the date of Project Substantial Completion and as defined in § 3.D of the Construction Contract for work completed after Project Substantial Completion, against latent defects due to faulty materials and/or workmanship. To this effect, the contractor must deposit with Lender, or a depository institution satisfactory to Lender and in accordance with Program Obligations, a sum equal to 2½% of the total amount of the Construction Contract. Contractor further covenants and agrees to correct latent defects within 60 days of a command by the Borrower, Lender or HUD. If the contractor fails to do so, the Lender, with the approval of HUD, shall have the right to complete the correction and may use funds from the deposit. The details of the *Latent Defects Escrow* are set forth in Form HUD-92414M. Performance may be ensured by a cash escrow, letter of credit, or surety bond.
- F. *Escrow for Non-critical, Deferred Repairs*: For projects with incomplete non-critical repairs, an escrow must be established at Initial/Final Endorsement, as set forth on Form HUD-92476.1M, *Escrow Agreement for Non-critical, Deferred Repairs*. These funds must be held by the Lender until all required non-critical repairs are complete which must be within 12 months of the initial endorsement. The Borrower may request release of these funds after completion of the repairs and with written approval of HUD.
- G. *Escrow Agreement of Sponsor to Furnish Additional Funds*: If additional funds are needed for project completion, HUD may require the use of a Sponsor Escrow and a Sponsor Bond. The Sponsor must complete form HUD-92476M, *Agreement of Sponsor to Furnish Additional Funds*, and the Sponsor and Surety must complete form HUD-92477M, *Bond Guaranteeing Sponsor's Performance*. The Sponsor will

deposit the necessary funds in escrow with Lender or an institution satisfactory to Lender and in accordance with Program Obligations. This deposit shall take the form of cash and/or one or more unconditional, irrevocable letter(s) of credit issued to Lender by a banking institution.

2.9 Opinion of Borrower's Counsel

- A. General. Borrower's attorney must submit a comprehensive opinion acceptable to HUD with the closing package (Opinion of Borrower's Counsel). The opinion shall be addressed to HUD, Lender, and, if required by Lender, Lender's attorney and shall opine as to the legal sufficiency of the security instruments and other additional agreements affecting Borrower or the project, as set forth in form HUD-91725M, *Guide for Opinion of Borrower's Counsel; Instructions to Guide for Opinion of Borrower's Counsel*; and *Exhibit A to Opinion of Borrower's Counsel, Certification of Borrower*.
- B. Exhibits. As set forth in form HUD-91725M, the *Opinion of Borrower's Counsel* shall include the following exhibits: (A) *Certification of Borrower* (included as part of form HUD-91725M); (B) legal description of the project property; (C) status certificates indicating the Borrower's good standing in the applicable jurisdictions; (D) if the project is financed by tax-exempt bonds, a supporting opinion indicating that no conflicting provisions in other project documents supersede provisions in the HUD documents or in Program Obligations; (E) a listing of pending litigation matters, if applicable, including the results of UCC and docket searches; (F) disclosure of substantive changes to HUD forms; and (G) other exhibits as appropriate.
- C. Alternate Provisions relating to LLCs and other Project-Specific Terms. Alternate provisions are set forth in form HUD-91725M, the *Guide for Opinion of Borrower's Counsel*, that shall be used as applicable. These alternate provisions include, without limitation, provisions relating to: (1) the type of entity involved, such as limited liability companies; (2) the other financing sources for the project; (3) off-site improvements; and (4) other project-specific circumstances.

2.10 Final Closing Forms and Requirements

- A. General Requirements.
 - 1. The requirements for final closing are set out in the HUD Final Closing Checklist, included in Part 4 of this Closing Guide (Final Closing Checklist), and in form HUD-92580, Maximum Insurable Mortgage (Maximum Insurable Mortgage). These requirements may be modified to comply with local law requirements.
 - 2. Borrower and Lender must prepare and submit the required deliverables to HUD, for HUD's review and approval, prior to final endorsement. Borrower and/or Lender, not HUD, are responsible for distribution of documents or other deliverables to third parties or otherwise. The Final Closing Checklist indicates the number of originals and/or copies of each deliverable that are required. HUD encourages electronic retention of documents, to the extent possible. To that end, although one original set of hard copy documents shall be retained for the Washington Docket, HUD encourages the Hub Director, HUD Closing Attorney,

Lender, and Borrower to consider retaining electronic versions of closing docket instead of hard copy versions. Hard copies remain the default requirement unless otherwise requested by the HUD Closing Attorney.

- B. Executing and Recording Documents. Prior to final endorsement, all documents must be fully executed and, if applicable, properly recorded in the real property records of the county in which the project is located. For any recorded documents, Lender must bring to final closing the original recorded document and, unless otherwise requested by the HUD Closing Attorney, two copies. If the original is not available, HUD requires a certification by either the title company or the recording official that the document presented is a true and correct copy of the recorded instrument. If applicable, the following documents more fully explained below must also be recorded: (i) Modification Agreement, (ii) Supplemental Security Instrument, (iii) Modification and Consolidation Agreement.
- C. Maximum Insurable Mortgage Form. As set forth in form HUD-92580, in addition to setting forth HUD's determination of the maximum insurable mortgage, this form may, without limitation, contain the following:
1. A listing of items from form HUD-92330, Cost Certification, that remain "to be paid," and a description of the arrangements to hold such amounts in escrow pending resolution of any open matters (see Schedule 1(A) of form HUD-92580). Note that the Certificate of Borrower is attached to form HUD-92023M, Request for Final Endorsement;
 2. Amount of additional Mortgage Insurance Premium, if there is a mortgage increase.
- D. Modifications to the Original Loan Terms. When modifications are made to the original loan terms, such as a decrease to the original mortgage loan amount, a number of documents authorizing and evidencing such modifications may be necessary.
1. Modification Agreement. A Modification Agreement, by and between Borrower and Lender, is required.
 - a. The Modification Agreement shall provide for HUD's signature to evidence HUD's acceptance and approval of the modification.
 - b. There is no prescribed form of modification agreement, although there is one mandatory provision, as follows:
 - c. "Nothing in this Agreement shall waive, compromise, impair or prejudice any right HUD may have to seek judicial recourse of any breach of that certain Regulatory Agreement executed by the parties hereto, recorded on even date with the Security Instrument, which breach may have occurred prior to or may occur subsequent to the date of this Agreement. In the event that HUD initiates an action for breach of said Regulatory Agreement and recovers funds, either on HUD's own behalf or on behalf of the Project or Borrower, those funds may be applied, at the discretion of HUD, to payment of the delinquent amounts due under the Note or the Security Instrument or

as a partial prepayment of the Note.”

2. Allonge or Supplemental Note.

- a. Allonge. If the amount of the insured loan is decreasing, an Allonge to the Note, may be necessary under state law. The Allonge must be approved by HUD and shall be attached to the original Note. If State law does not require an Allonge, the modification agreement can be used to modify the Note terms as well as those of the Mortgage.
- b. Supplemental Note. If the amount of the insured loan increases, Lender must prepare a supplemental note using the Note form required for initial closings (HUD-94001M), but entitled “Supplemental Note.” The Supplemental Note shall contain a cross-default provision with the original Note. The principal amount of the Supplemental Note shall be for the amount of the increase to the insured loan amount, not for the new total insured loan amount. The amount of the payments to principal in the Supplemental Note shall be sufficient to amortize the increase amount over the Mortgage term. Except for the foregoing, the terms and provisions of the Supplemental Note shall be the same as those in the Note used at initial endorsement.

3. Supplemental Security Instrument for Increased Loan Amount. If the amount of the insured loan increases, Lender must prepare a supplemental security instrument, using the Security Instrument form required for initial closings (HUD-94000M), but adding the word “Supplemental” to the title of the instrument (Supplemental Security Instrument). The Supplemental Security Instrument shall contain a cross-default provision with the original Security Instrument. The Supplemental Security Instrument secures repayment of the Supplemental Note, and shall encumber the entire Mortgaged Property. The Regulatory Agreement incorporated by reference in the Supplemental Security Instrument shall be the Regulatory Agreement recorded at the time of initial closing. Except for the foregoing, the terms and provisions of the Supplemental Security Instrument shall be the same as those in the Security Instrument used at initial endorsement.

4. Modification and Consolidation Agreement. If the amount of the insured loan increases, Lender must prepare a Modification and Consolidation Agreement, using a format approved by HUD, to evidence that the initial Note and the Supplemental Note represent and shall be deemed one indebtedness, to evidence that the initial Security Instrument and the Supplemental Security Instrument represent and shall be deemed one security instrument, and modifying the initial Security Instrument to provide for cross-default with the Supplemental Security Instrument. Prior to final endorsement, the Modification and Consolidation Agreement must be recorded in the county real property records where the project is located.

E. Borrower’s Attorney’s Opinion. Borrower’s attorney must give an opinion, as set forth in form HUD-91725M unless an alternate form is approved by the HUD Closing Attorney, specifically supplementing the opinion given at initial closing, and

addressing the following matters, as applicable and without limitation:

1. The enforceability of the documents evidencing any modification to the insured loan's terms and the continued first priority position of the insured loan's lien;
2. If the project is financed by Low-Income Housing Tax Credits, any land use restrictive agreements or extended use agreements, or any other restrictive covenants, that have been placed on the property since initial closing; and
3. Disclosure of any material modifications to the documents covered by the opinion given at initial closing, including any amendments or changes to the legal description.

F. Title Evidence at Final Endorsement. Prior to final endorsement, Lender must provide HUD with a new title policy, or, if approved by the HUD Closing Attorney, a title endorsement (and such endorsement or policy shall be provided as a *pro forma* for HUD's review prior to final closing), which must extend the title insurance coverage to the date of the final endorsement of the Note. The original is to be delivered to Lender and a duplicate original, marked as such, delivered to HUD, along with two additional copies, unless otherwise requested by the HUD Closing Attorney. The title evidence must:

1. Show what, if any, matters have gone on record since initial closing; copies of such items must be submitted to HUD for review prior to final closing. Any exception to title not shown in the title evidence accepted at initial closing shall be examined carefully by the Hub Director to determine whether or not it affects the value and/or marketability of the project. Any exception which affects the value and/or marketability of the project as determined by the Hub Director shall be removed from the title policy or its effect insured against by an appropriate endorsement to the title policy.
2. Bring the effective date forward to the day of final endorsement.
3. If a Modification Agreement or Supplemental Security Instrument and Consolidation Agreement are used, the title policy must list such documents on Schedule A of the Title Policy, and must insure the full amount of the HUD-insured loan lien, inclusive of amounts secured by the Security Instrument and any supplements and/or modifications, in first lien position. Should the title insurance company be unable to provide such endorsement, or should the endorsement show any lien intervening between the recordation of the original insured Mortgage and the Supplemental Mortgage, HUD will not endorse the Mortgage for insurance at the increased amount.
4. Delete or amend any other matters covered by the initial title policy, as appropriate, such as updating the exception for unpaid property taxes and deleting the pending disbursements clause.
5. Adjust the amount of title coverage, if the Mortgage amount has changed.

G. Final As-Built Survey & Surveyor's Report. This must be dated within 120 days before closing, meaning the surveyor's certification must show that the field work was made, or updated, no earlier than 120 days prior to closing. The survey must be

prepared, signed and sealed by a licensed surveyor who must include a certification in the format set out in form HUD-92457M, *Surveyor's Report*.

H. Updated organizational documents of Borrower. Borrower must provide:

1. A certification signed by the Borrower, including incumbency, either:
 - a. Confirming that no changes have been made to the Borrower's organizational documents, including incumbency, delivered to HUD at initial closing; or
 - b. Identifying any changes made to the organizational documents delivered to HUD at initial closing and attaching copies of the amendments or other documents effecting such changes.
2. Current authorizing resolution, if required, or certification by appropriate officer of Borrower that the authorizing resolution given at initial closing covers the final closing and is still in effect (including any increase in the loan amount).

I. Estoppel Letter and Certification from Lender. Lender must submit a letter dated the day of final endorsement stating that the loan is current, and that no event has occurred which with the giving of notice and/or passing of time will constitute an Event of Default, and providing the confirmations required by the Lender's Certificate at initial closing, such as the Borrower's receipt of necessary governmental certificates, permits, licenses, qualifications and approvals of Governmental Authorities, obtained after initial closing.

J. Guarantee Following Completion.

1. Form HUD-92442M, Construction Contract, contains guarantees against any defects due to faulty materials or workmanship that appear within a period of one year following completion.
2. The general contractor must provide assurance of performance under such guarantee, as follows:
 - a. *Bond*. If form HUD-92452M, *Performance Bond-Dual Obligee*, was used, no action is required, as it remains in effect for two (2) years from the date on which final payment under the construction contract becomes due. As part of this assurance, the surety will be required to perform when the general contractor fails to refund any overpayment to Borrower, a requirement of form HUD-92442M, Article 4 (Option 1 for Cost Plus Contract).
 - b. *Cash Assurance*. If form HUD-92450M, *Completion Assurance Agreement*, was used at initial closing, the remaining escrow funds may be released in accordance with the terms of that agreement, except that any amounts held pursuant to form HUD-92414M, *Escrow Agreement for Latent Defects*, must remain in escrow during the latent defects period.
3. In addition, the guarantee funds are to be kept separate from any escrow that may have been provided to assure completion of any incomplete construction items.

2.11 Section 223(f) Closing Forms and Documents

A. Promissory Note.

1. Endorsement of Note. In a section 223(f) closing, HUD is not insuring advances from a construction loan, so there is no “initial closing” endorsement of the Note. Instead, there is one closing at which FHA endorses only the “total sum” portion of the panel on the Note. Therefore, when endorsing the note, the Hub Director shall strike the first “By” and “Date” lines, enter the total sum, and sign the second set of “By” and “Date” lines.
2. Form HUD-94001M, the Note, includes alternate provisions relating to loans insured pursuant to Section 223(f) that shall be used for these transactions, including prepayment prohibitions. However, MAP Guide §3.9.G includes conditions under which the Hub Director may override prepayment prohibitions.

B. Evidence of Zoning and Building Code Compliance. Evidence of zoning compliance may be provided in the form of a zoning endorsement to the title policy (ALTA form 3.1 for improved land) but if such endorsement is only relevant to the condition of the project when it was first constructed, it may not be evidence of current code conditions. In such case, HUD may accept an alternative deemed acceptable by the HUD Closing Attorney, such as a supplemental letter from appropriate local authorities stating that there are no known zoning code violations associated with the subject property, a similar letter from the building code enforcement office that there are no known building code violations, and/or a certification from the Borrower or project architect that no changes have occurred since the issuance of certificates of occupancy. Sample building code and zoning code assurance letters are include in Part 5 of this Closing Guide.

C. Assurance of Funds to Meet Operating Deficits (if prescribed by the HUD Firm Commitment). For all facilities for which delayed completion of repairs will postpone or interrupt occupancy or income for any period, an additional deposit must be made to the operating deficit account in the amount specified by the Firm Commitment. See MAP Guide §7.13, and use form HUD-92476A, *Escrow Agreement for Operating Deficits*.

D. Certificate of Occupancy. This is not required unless local law requires issuance of a new certificate of occupancy which is not currently included in HUD’s files.

E. Additional Documentation of Authority/Amendment of Organizational Documents. Borrower’s organizational documents must be amended, if necessary, to include the HUD required provisions (see Section 3.1 of this Closing Guide). If Borrower’s organizational documents require prior consent of, or notice to, the principals in Borrower for any proposed refinance, evidence of compliance therewith shall be submitted.

F. Request for Endorsement of Credit Instrument, Form FHA-2455. Although the form states that it is used only for Insurance Upon Completion, it is also used for Section 223(f) closings. This form includes a Certificate of Lender, a Certificate of Borrower, and a Certificate of General Contractor, although in a Section 223(f) closing, there generally is no contractor, so the form is modified for the Section 223(f) program to

delete references to construction. It shall be completed so as to account for all of the funds required by the Firm Commitment.

- G. Short form Cost Certification. A modified form of cost certification for loans insured pursuant to Section 223(f) must be submitted 15 days prior to endorsement of the Note, using form HUD-2205-A, *Borrower's Certificate of Actual Cost*. See MAP Guide §13.4. No cost certification is required for Section 223(f) transactions where the mortgage is 80% of value or less.
- H. Certified Closing Statement. Lender must provide a certified loan closing statement signed by Lender and Borrower detailing the amount of any promissory notes made by Borrower and any cash contribution made by Borrower and itemizing the disbursement of the mortgage proceeds and of Borrower's cash contribution, if any. The statement must list the amounts to be paid to satisfy Borrower's obligations for existing or other indebtedness, acquisition, repairs, discounts, financing fees, legal expenses, organizational expenses, title and recording costs, and like items, and any Lender-required escrows for taxes, insurance or other items. If the funds are processed through a title company or other escrow officer, the escrow officer must also provide a closing statement signed by the escrow officer, Lender, and Borrower. The certified Closing Statement is reviewed by the Mortgage Credit Analyst prior to closing.
- I. Critical repairs. Critical repairs required by the Firm Commitment must be completed before endorsement. The closing files shall contain a memorandum from the Multifamily Housing Program Office stating that all critical repairs have been completed.
- J. Escrow Agreement for Non-critical, Deferred Repairs (Form HUD-92476.1M). Generally, all work must be acceptable before the loan closing. Only noncritical repairs may be deferred until after endorsement. Noncritical repairs are those that will not endanger the safety and well-being of tenants, visitors and passersby, adversely affect ingress or egress, or prevent the project from reaching sustaining occupancy. If there are noncritical repairs necessary, Borrower must establish an escrow with Lender using form HUD-92476.1M as required by the Firm Commitment.
- K. Latent Defect Guarantee. Latent defects assurances are not required where the repairs relate only to deferred maintenance items and minor cosmetic repairs, such as painting. When repairs and replacements are more significant, assurance against latent defects must be established in accordance with the terms of form HUD-92476.1M in the form of cash, letter of credit, or a surety bond, in an amount equal to 2 ½ percent (or greater percentage if required by the Firm Commitment) of the repair cost. In the event the latent defects assurance is in the form of surety bond, form HUD-3259 is required and the surety must be on the U.S. Treasury Listing of Approved Sureties (Department Circular 570). The bond must run for a period of at least two years from the date of completion of repairs.
- L. Utilities. It can be assumed that an existing project has access to the appropriate utilities, unless the Firm Commitment specifically requires evidence of utilities at closing.

M. State UCC Search and Filing. A search of the UCC filings against the Borrower and its general partner or manager shall be performed in the records of the state where the project is located and the respective states of origin of the entities searched. Any filings by other creditors shall be evaluated by the Hub Director and the HUD Closing Attorney prior to closing. The financing statement may be filed in advance of closing, and if so, may be identified on the searches conducted. Although Lender is free to perform or require additional searches, HUD does not require UCC or litigation docket searches for single-purpose entities formed within 90 days of closing.

2.12 Closing Forms and Documents for Insurance Upon Completion Closings

- A. Documents Required at Closing. A checklist for Insurance Upon Completion closings is attached in Closing Guide Part 4.
1. Mortgage Term. The term of the Mortgage commences on the date of HUD's endorsement. The Mortgage is not recorded prior to commencement of construction; instead, it is recorded at closing or just prior to closing.
 2. Title Evidence. The title insurance policy must be dated the same day as the date of endorsement of the Mortgage Note.
 3. Regulatory Agreement. The Regulatory Agreement must be recorded immediately following recordation of the Mortgage.
 4. Assurance of Performance Under Guarantee. Before endorsement of the Note, Borrower must furnish satisfactory evidence that the work of the contractor is covered by a guarantee, running for a period of one year from the date of Project Substantial Completion, against defects due to faulty materials and/or workmanship. Performance will be assured by one of the following:
 - a. *Surety Bond*. Form HUD-3259, *Surety Bond Against Defects Due to Defective Materials and/or Faulty Workmanship*, by a surety on the U.S. Treasury Listing of Approved Sureties (Department Circular 570), and drawn in an amount not less than 10% of the cost of construction as estimated by HUD-FHA.
 - b. *Cash Escrow*. A cash escrow equal to 2 ½% of the principal amount of the Mortgage, to be retained in escrow by Lender for a period of one year after endorsement.
 - c. Form FHA-92455M, Request For Endorsement of Credit Instrument, Certificate of Lender, Borrower and General Contractor, is required.
 5. Operating Deficit Escrow. If an operating deficit was projected on Form HUD-92264, the sponsors, at closing, must provide funds to meet the deficit in the manner set forth in MAP Guide §8.13. Use form HUD-92476a-M, Escrow Agreement for Operating Deficits, which requires a specified sum to be held for a specified number of months after closing in accordance with Program Obligations.

6. Contractor's Prevailing Wage Certificate. The Contractor must submit form HUD-92448, Contractor's Requisition Project Mortgages, to Lender, with the section entitled "Contractor's Prevailing Wage Certificate" completed.
- B. Ancillary Agreements. Other ancillary agreements are required as set forth in the MAP Guide and in the checklist for Insurance Upon Completion Closings included in Part 4 of this Closing Guide.
- C. Excess (Unused) Mortgage Proceeds. Provisions for excess or unused proceeds are included in form HUD-93305M, *Agreement and Certification*.
- D. Labor Relations. The Hub Director must assure that Labor Relations Staff have approved proceeding to final endorsement, and that, if required, deposits to the U.S. Treasury have been established as a condition of closing to ensure payment the correct amount of wages. Note: Labor Relations staff and the Hub Director must make the contractor aware that falling behind in submission of weekly payrolls will cause substantial delay if the contractor submits them all at once at closing.
- E. Endorsement of Note. In Insurance Upon Completion closings, HUD is not insuring advances from a construction loan, so there is no "initial closing" endorsement of the Note. Instead, there is one closing at which FHA endorses only the "total sum" portion of the panel on the Note. Therefore, when endorsing the note, the Hub Director shall strike the first "By" and "Date" lines, enter the total sum, and sign the second set of "By" and "Date" lines.

Part 3: Diligence and Other Closing Requirements

This part of the Closing Guide discusses the documents and diligence required in addition to the base legal documents to close insured loans.

3.1 Borrower Entity's Organizational Documents

- A. General. Organizational documents for the Borrower entity are required to be submitted at closing, for all types of closings including initial, initial/final, and final endorsements (including initial TAP closings), as well as to all requests for loan modifications occurring after closing. These requirements also apply to all entities that become the FHA-insured Borrower by a Transfer of Physical Assets (TPA), reorganization, re-domestication or restructuring of the Borrower entity. For multi-tier entities, Borrower entities will also be required to submit organizational documents for controlling entities, in accordance with MAP Guide §8.3. The following documents are required:
1. A certificate signed by the secretary (or other appropriate officer or designee of the Borrower): (a) indicating that the organizational documents attached to the certificate (which documents are listed below) are true and correct copies and have not been amended, modified, rescinded, or revoked and remain in full force and effect, and (b) including the incumbency (office and term) of the borrower's officers and key principals and signature of any officer authorized to execute the loan documents, provided that the certificate shall be made or witnessed by someone other than the party designated to execute the loan documents.
 2. Filed formation documents, including any and all amendments, certified copies from the Secretary of State within 30 days of closing, or such longer period approved by the HUD Closing Attorney: certificate of limited partnership, for partnerships; articles of organization, for limited liability companies; articles of incorporation, for corporations; or other applicable document as appropriate.
 3. The entity's governing document, including any and all amendments, executed or authorized by resolution, certified as complete and correct by an officer or other authorized representative of such entity, as appropriate: partnership agreement, for partnerships; operating agreements, for limited liability companies; by-laws, for corporations.
 4. Evidence that the transaction is authorized, and that the Borrower has authority to execute the loan documents, if not provided explicitly in the governing document: a resolution; consent of the partners of a partnership; consent of the members of a limited liability company, or other evidence of proper authorization as local law and custom dictate.
 5. Status certificate, such as a Certificate of Good Standing, from the secretary of state where the Borrower is organized, dated within 30 days of the closing, or such longer period approved by the HUD Closing Attorney. If Borrower is not organized in the state where the project is located, it must also submit a certificate from the secretary of state in the project state, indicating its authority to conduct business in the project jurisdiction.

- B. HUD-Required Provisions. The organizational documents must provide that the Borrower be in existence at least as long as the term of the insured loan, and must include certain provisions required by HUD, including without limitation provisions that indicate that the HUD Regulatory Agreement takes precedence in the event of any conflict with the organizational documents; that the Borrower is authorized to enter into the transaction; and that the Borrower is a single-purpose, single-asset entity. Sample language relating to the HUD-required provisions are set forth in this Closing Guide in Part 5.
- C. Indemnification Limited. No organizational document provisions indemnifying the members, partners, officers, and directors of Borrower are acceptable, except as follows:
1. A nonprofit Borrower may indemnify its principals, but only to the extent mandated by state law or to the extent that such indemnification can be paid from available proceeds of liability insurance coverage or from distributions of residual receipts or other funds permitted by Program Obligations and approved by HUD.
 2. A for-profit Borrower may indemnify its principals only to the extent that such indemnification is limited to available proceeds of liability insurance coverage or distributions from surplus cash, if available.
 3. Until funds from a permitted source for payment of indemnification costs are available for payment, the Borrower entity shall not (a) pay funds to any members, partners, owners, officers and directors, or (b) pay the deductible on an indemnification policy for any members, partners, officers and directors.
- D. Limitation on Encumbrance of Entity. Neither Borrower, nor its members, partners, officers or directors, shall, without HUD's prior written approval, grant a security interest in any of Borrower's or the project's assets (see Regulatory Agreement, §36).
- E. Notice 95-66 is no longer in effect. HUD seeks no recourse against entities in their capacity as managers or managing members of limited liability company borrowers. However, any entity identified by HUD in the Firm Commitment and required to acknowledge Section 50 of the Regulatory Agreement may face liability directly in its individual capacity for the acts listed in Section 50.
- F. Final Closings.
- G. At final closing, Borrower shall provide certification signed by the Borrower either:
- H. Confirming that no changes have been made to the Borrower's organizational documents delivered to HUD at initial closing; or
- I. Identifying any changes made to the organizational documents delivered to HUD at initial closing and attaching copies of the amendments or other documents effecting such changes.
- J. In cases involving a mortgage increase, an authorizing resolution may be required, unless the governing organizational documents and previously delivered resolutions establish authority to effect the mortgage increase.

3.2 Title and Survey Matters

- A. General Title Insurance Requirements. Borrower and/or Lender are responsible for providing the title documents, which HUD must review for initial closing.
1. Marketable title to the property must be vested in the Borrower on the date the mortgage is recorded. See requirements of form HUD-92434M, Lender's Certificate, paragraph (3).
 2. The Multifamily Hub Director is responsible for:
 - a. Ensuring that the project is free of unacceptable liens and encumbrances. Any title exceptions must be consistent with the anticipated financial structure of the project and must not adversely affect the project value or marketability, except to the extent accounted for by HUD in the underwriting of the project. When a clear determination cannot be made, the Hub Director shall refer the exception to Headquarters Office of Multifamily Housing Development.
 - b. The Hub Director shall ensure that the proposed construction contract documents and other contractual obligations do not violate any title conditions, covenants or restrictions identified by the HUD Closing Attorney. *See MAP Guide Chapter 5 and 6 for Architectural Analysis and Cost Processing requirements.*
 3. The HUD Closing Attorney is responsible for:
 - a. If the HUD Closing Attorney has objections to the selected Title Company, or Title Agent, making the Borrower aware of such objections, including prior negative experience.
 - b. Determining that the insured mortgage constitutes a valid enforceable first lien against the Mortgaged Property, provided that absence his or her knowledge to the contrary, the HUD Closing Attorney may rely on the Lender's certification in the Lender's Certificate.
 - c. Ensure the elimination of any exceptions or conditions, including covenants and restrictions that violate federal law or the Regulatory Agreement.
 - d. Bringing any title exceptions or conditions, including air right provisions, leasehold contracts, easements, and maintenance agreements, to the Hub Director's attention. The Hub Director shall decide whether to insure the loan with these exceptions.
 4. Lender must provide a policy of title insurance that is acceptable to HUD, at no expense to HUD. The Note cannot be endorsed without delivery to HUD of an original title policy or of an alternative acceptable to the HUD Closing Attorney. Marked up title commitments are not acceptable.
- B. Contents and Form of Title Insurance Policy.
1. The title policy must be issued by a title company and in an ALTA format acceptable to HUD, with an effective date the day of HUD's endorsement of the Note.

2. Lender and Secretary of HUD, “and their successors and/or assigns, as their interests may appear,” must be the named insureds of the policy. It may not name other parties such as junior lenders. The amount of the policy must be at least equal to the full amount of the insured loan.
3. The insured loan shall be shown as the first lien. The Security Instrument, and the Regulatory Agreement because it is incorporated in the Security Instrument, must appear in Schedule A, and any UCC-1 Financing Statement filed in the real estate records must appear in Schedule B, Part II.
4. No other monetary liens may be shown, except that approved secondary financing liens, and other liens approved by the Hub Director, may be shown as subordinate to the lien of the insured loan. Real estate taxes shall be shown as not yet due and payable; all due and payable taxes shall be paid prior to or at closing.
5. The legal description in the title policy, on the survey, and attached to all recorded documents shall match exactly, provided that minor differences, such as differences in abbreviations or other minor stylistic differences, are allowed.
6. Only exceptions acceptable to HUD may be listed. All standard exceptions, including those concerning the survey or matters that a survey would show and those concerning mechanic’s liens, must be deleted, except where such deletions are prohibited by applicable state law. Affirmative coverage shall be provided over any claims to project resources, such as water, patent reservations, *etc.* Mandatory arbitration requirements shall be deleted, except where such deletions are prohibited by state law.
7. If the title policy is issued by a broker title agent, rather than issued directly by the national title company, the agent shall provide a so-called closing protection or insured closing letter, indicating that the agent has the authority to issue the policy, which letter shall be issued to Lender and HUD, as its interests may appear.

C. Endorsements to Title Insurance Policy. Subject to state and local practice requiring or prohibiting certain endorsements, or making certain endorsements prohibitively expensive, the policy must include the following endorsements:

1. Comprehensive, ALTA Endorsement Form 9-06 (or 9.3-06) – Restrictions, Encroachments, Minerals;
2. Access, ALTA Endorsement Form 17-06;
3. Zoning, ALTA Endorsement Form 3.1-06 based on plans and specifications (for unimproved land) or Form 3.1-06 (for improved land and upon final closing), each with parking, provided, however, that a zoning letter may be accepted by the HUD Closing Attorney instead of a zoning endorsement, if zoning endorsements are not permitted in the project jurisdiction;
4. Environmental Protection Lien, ALTA Endorsement Form 8.1-06;
5. Same as Survey, ALTA Endorsement Form 25-06;

6. Easement endorsements, including insurance over blanket easements or other easements that cannot be plotted;
7. Deletion of arbitration provisions;
8. Construction Loan Pending Disbursement, ALTA Endorsement Form 32-06, if applicable (provided that, at each draw, an ALTA Endorsement Form 33-06 date down must extend the date of coverage to the draw date);
9. Future Advances, ALTA Endorsement Form 14-06, if applicable;
10. Leasehold, ALTA Endorsement Form 13.1-06, if a leasehold estate;
11. Air rights, if applicable; and
12. Any others determined necessary and appropriate by the HUD Closing Attorney.

D. ALTA Survey General Requirements.

1. An ALTA/ASCM Land Title Survey is required and must conform to the instructions set forth on form HUD-92457A-M, HUD Survey Report and Instructions, including the Table A items listed and certification set forth in the form. The Survey shall be dated, signed and sealed within 120 days before initial closing, meaning that the field work was performed or updated no earlier than 120 days prior to closing.
2. The Survey shall show all easements, apparent interests (including railroads) or encroachments upon the property or upon contiguous parcels of land. These easements or encroachments must be acceptable to HUD.
 - a. All easements, restrictions and exceptions on the title policy shall be shown. Blanket easements that cannot be plotted shall be listed with their recording information.
 - b. Maintenance, joint use, easement and other agreements may be required. In cases where common facilities exist between the insured parcel and an adjacent parcel, Borrower must provide for recordation of an agreement for the common use of land and facilities, e.g., common drives, common lobbies, elevators, walkways, utility roads, parking structures, recreation facilities, storm water management facilities (retention ponds detention ponds, swales and culverts) or other common facilities. The agreement must grant rights to the HUD project site and its tenants to use the common facilities.
 - c. If the HUD project is subject to condominium and property/homeowner association documents, these documents may provide for maintenance, access and cost sharing.
3. All access roads must be labeled as public or private roads.
4. Surveyor's Report. Lender must provide Form HUD-92457M, *Surveyor's Report*, signed within 120 days before initial closing by a licensed surveyor, not by an engineer, and bearing the surveyor's original signature and professional seal. Form HUD-92457M must be prepared in accordance with the instructions in form

HUD-92457A-M.

E. Air Rights and Other Shared Interest Projects

1. For transactions involving air rights, a three dimensional air rights map is required. The existence of adequate vertical ways to the ground for required services, e.g., utility and fire suppression lines, chimneys, trash chutes, elevators and emergency exit stairs must be verified. In addition, there must be an acceptable discharge to a public way from all building egresses, including emergency exits, and services, e.g., trash removal.
2. The Hub Director must:
 - a. Ensure that the integrity and maintenance of air rights platform foundations and other structural members are defined as the air rights provider's responsibility.
 - b. Verify that shared maintenance/operating costs are equitable and that enforcement rights protect the project interests.
 - c. Require easements, cross easements or other documents to provide the HUD project and its tenants the right to use the common facilities.

F. Projects involving Leasehold Estates.

1. Ground Leases must conform to form HUD-92070M, Instructions for Leasehold Projects and Lease Addendum and the Lease Addendum must be attached to or incorporated into the body of the Ground Lease.
2. The term of the leasehold must either (a) run for a term of 99 years and be renewable, or (b) satisfy the applicable following requirements:
 - a. for Sections 220 and 221(d) transactions, the term must run at least 10 years after the maturity date of the insured loan;
 - b. for Section 207/223(f) transactions, the term must run for at least 50 years from the date the Security Instrument is executed.
3. The leasehold estate must have been directly granted by the holder of the fee simple estate ("landlord"). The landlord must be able to convey the fee to HUD in accord with form HUD-92070M without subdivision or any other government approval.
4. HUD must ensure the non-default status of the mortgaged leasehold at the time of endorsement. An estoppel certificate from the landlord dated within 30 days of the Note endorsement shall be required as a closing document. The landlord shall also confirm the property description is correct.
5. ALTA Endorsement Form 13.1.06 to the title insurance policy shall be required for Security Instruments secured by leaseholds.

G. Commercial Leases. Commercial leases must comply with the requirements as set forth in Section 4 of the Security Instrument, provided however that it is acknowledged that many commercial tenants will not execute a long-term lease unless they are given assurance of non-disturbance. Therefore, the HUD Closing

Attorney may approve the use of the form of Subordination, Non-Disturbance and Attornment Agreement promulgated by Housing Notice 2011-07 for commercial leases, with modifications, as applicable, in accordance with Program Obligations.

3.3 Secondary Financing

A. General.

1. Secondary financing is permitted, but only in compliance with the requirements set forth in MAP Guide §8.9 and 24 CFR §200.71. Unless approved by the Lender and HUD, no secondary financing may be secured by a lien encumbering the real property that is subject to the HUD-insured mortgage loan.
 - a. When a government entity provides the secondary financing, form HUD-92420M, *Subordination Agreement*, shall be used. The Subordination Agreement may be modified in order to comply with the requirements of the governmental program providing such secondary financing, subject to approval by the Multifamily Development Field Staff and HUD Closing Attorney. The HUD Closing Attorney shall bring any requests for modifications to the Subordination Agreement to the attention of the Assistant General Counsel for the Multifamily Mortgage Division and the Headquarters Multifamily Development Staff. The final form of the Subordination Agreement shall be subject to the approval of the Assistant General Counsel for Multifamily Mortgage Division and the Headquarters Multifamily Development Staff.
 - b. If a private entity provides secondary financing, a Secondary Financing Rider setting forth HUD-required provisions must be attached to any mortgage or similar security documents creating an encumbrance on the project real estate. A sample Secondary Financing Rider is included in Part 5 of this Closing Guide. Note that liens against the project real estate to secure secondary financing from a private entity are not allowed, except for (1) Section 223(f) transactions; (2) operating loss loans under Section 223(d); (3) supplemental loans under Section 241; or (4) when the HUD-insured loan accounts for less than 50% of the project cost. The Subordination Agreement is not to be used with respect to secondary financing provided by a private entity.
 - c. Section 8.9 of the MAP Guide also discusses mezzanine financing, not secured by a mortgage of the property.
2. Any liens created by secondary financing shall be shown on the title insurance policy in Schedule B, Part II.
3. Provided that the terms of any secondary financing are explicitly subordinate to the HUD-insured loan in a manner approved by the HUD Closing Attorney, such secondary financing may be secured by a collateral assignment of any HAP contract for any loan or obligation relating to the Project, provided the proper documentation is used and approved by HUD.

B. Rules Concerning Unsecured Promissory Notes.

1. Unsecured promissory notes may be used to evidence Borrower debt incurred for the development of the project if approved by HUD. Such promissory notes may include:
 - a. Surplus Cash Note, form HUD-92223M (when Borrower is a for-profit entity);
 - b. Residual Receipts Note, form HUD-91710M (when Borrower is a nonprofit entity); and
 - c. Residual Receipts Note, form HUD-91712M (when Borrower is a limited dividend entity).
2. Promissory notes may be used to evidence the following types of debt:
 - a. Discounts, financing fees, and/or extension fees paid by a third party on behalf of Borrower;
 - b. Secondary loans from a governmental or nongovernmental source;
 - c. Deferral of the general contractor's profit in return for Borrower's agreement to pay it upon completion of the project, if such arrangements: (1) are disclosed by the parties before initial endorsement, and (2) are permitted only under those sections of the National Housing Act that do not provide for a builder's and sponsor's profit and risk allowance ("BSPRA").
 - d. Land acquisition costs that exceed HUD's warranted price of land fully improved.
3. Promissory notes may not be executed:
 - a. For costs disallowed in the cost certification review;
 - b. To determine the distribution of surplus cash; or
 - c. To establish an equity interest.

C. Secondary Financing That Is Unavailable At Initial Closing.

1. Secondary Financing from Federal, State or Local Government Agencies. If grant or loan funds from government sources are necessary to finance completion of the project but are not available at initial endorsement, provided that HUD shall not require an escrow of tax credit related equity (e.g., proceeds from LIHTC, New Market tax credits, or historic rehabilitation tax credits), HUD may proceed to initial endorsement, provided that insured mortgage proceeds shall only be disbursed pro rata with grant or loan proceeds, in accordance with procedures set forth in Program Obligations.
2. Grants or Loans From Private (Nongovernmental) Sources. If grant or loan funds from private, non-government sources are necessary to finance completion of the project but are not available at initial endorsement, except to the extent otherwise permitted by 24 CFR 200.54, HUD shall require an amount deemed by HUD to be sufficient, when added to the proceeds of the insured mortgage loan, to ensure completion of the project, to be escrowed with Lender before or at initial endorsement, and shall require that such private grant or loan funds be

disbursed in full for project costs prior to disbursement of the insured loan proceeds.

- D. Development Staff Duties. Development staff must coordinate the identification and handling of development-related liabilities and expenditures. The Hub Director will be responsible for approving the issuance of any promissory note before final endorsement and will prepare a list of all promissory notes approved before the final endorsement of the Note. The list must include the name of the payee, the amount, and the reason for the issuance.
- E. Restrictive Covenants, Use Agreements, and Local Rent Restrictions. The sources of the secondary financing or of the project's other approved financing (e.g., LIHTCs, tax-exempt bonds, etc.) may impose affordability restrictions on rents and occupancy restrictions based on tenant incomes. When imposed in connection with the HUD-approved financing structure, such affordability restrictions, and the accompanying encumbrances on title, such as use agreements and other restrictive covenants, are acceptable. However, such restrictions must terminate upon foreclosure and such use agreements and restrictive covenants must include the HUD-required language set forth in Part 5 of this Closing Guide.

3.4 Construction Contract

- A. Construction Contract. Form HUD-92442M, *Construction Contract*, must be used for the construction contract. This form can be modified to provide for either "Lump Sum" or "Cost Plus" compensation. The Hub Director and the office's Architectural Staff are primarily responsible for reviewing the substantive terms of the construction contract.
 - 1. "Lump Sum" may be used only when no identity of interest exists between Borrower and General Contractor.
 - 2. "Cost Plus" may be used in any case and shall be used when an identity of interest exists between Borrower and General Contractor. (See Instructions in MAP Guide Forms Book for more information and see 24 C.F.R. §200.52.)
- B. Supplementary Conditions of the Contract for Construction. Form HUD-92554M, *Supplementary Conditions of the Contract for Construction* (Supplementary Conditions), must be incorporated as a part of the construction contract.
 - 1. Terms of the HUD Supplementary Conditions must take precedence over all provisions of the "General Conditions of the Contract for Construction" (AIA Document A201) inconsistent with the Supplementary Conditions. Both forms are referenced in the Construction Contract and are included in the Specifications Book.
 - 2. Standard binding arbitration and binding mediation provisions in the A201 must be stricken.
 - 3. HUD staff must confirm with Labor Relations that the Davis-Bacon prevailing wage determination is current as of the date of initial endorsement (except in the case of a HUD-approved Early Start, in which event the prevailing wage

determination must have been current as of the date of such HUD approval).

- C. Identity of Interest Amendment. The HUD identity of interest amendment to the construction contract, (which can be found at MAP Guide Appendix §6B) is required to disclose whether an identity of interest relationship exists between the owner, contractor, subcontractor or architect. If there is no identity of interest, indicate “none” on the form.
- D. Contractor’s and/or Mortgagor’s Cost Breakdown (Form HUD-2328). This form contains a schedule of values of classes of work, equipment and materials and must be attached as an exhibit to the construction contract and as Exhibit B to form HUD-92441M, Building Loan Agreement. The cost breakdown is found as an attachment to the Firm Commitment (form HUD-92432). The copy used must be legible and must bear all required signatures, including signatures of HUD officials. (*See also MAP Guide §6.2.B.1.d.*)
- E. Completion of Forms.
 1. The Construction Contract is normally dated the same date as the other closing documents, which may be prior to the date the Note is endorsed by HUD for insurance, provided adequate title coverage is provided.
 2. The reference to drawings and specifications in Article 2.A of the Contract shall be identical to the reference in Section 2 of the Building Loan Agreement, and is taken from Paragraph 2 of the Firm Commitment (HUD-92432).
 3. The completion date in Article 3 is the date determined using the number of months for construction stated in form HUD-92264, the Multifamily Summary Appraisal Report.
 4. Initialing of Master Sets and Signing Cover Sheets. MAP Guide §5.7 C.3 and HUD Handbook 4460.1 REV 2 at Section 2-9.C.3.c requires that each cover sheet and last page of each set of drawings and each first and last page of specifications be signed and each page of the Master Set of Drawings and Specifications be initialed at the closing by authorized representatives of the Borrower, design architect, architect administering the contract, contractor, and surety, if any.
 5. If a Section 241 transaction is not subject to prevailing wage requirements because the underlying loan is not subject to prevailing wage requirements, the provisions of the Construction Contract regarding prevailing wages may be deleted.

3.5 Assurance of Completion and Related Requirements

- A. General Requirements. Assurance of project completion by the general contractor must be provided for the protection of HUD and Lender and to meet state and local requirements protecting material suppliers, mechanics, subcontractors. Applicable assurances are listed in form HUD-92434M, *Lender’s Certificate* (see, e.g., Paragraph 11). Lender or Borrower may impose additional or more stringent requirements than HUD.

1. Completion Assurance Agreement, form HUD-92450M, must be executed by the Borrower, Lender, and contractor. The contractor must fund its obligations with a cash deposit or letter of credit. MAP Guide §3.4.M details the requirements for Completion Assurance Agreements. The Hub Director and the Multifamily Housing staff have primary responsibility to review the substantive terms of any Completion Assurance Agreements.
 2. Performance Bond, form HUD-92452M, protects against financial loss caused by the failure of the contractor to build the project in accordance with the terms and conditions of the contract. The Performance Bond must name Lender and HUD as obligees.
 3. Payment Bond, form HUD-92452A-M, guarantees that certain labor and material bills associated with the project will be paid.
- B. Notes regarding Bonds. Sureties must be on the accredited U.S. Treasury list, Circular 570, available online at www.fms.treas.gov/c570/c570.html, and published annually in the Federal Register on or about July 1. Bonds must not exceed limits listed in Circular 570. An original power-of-attorney from the surety company to its agent must be attached to each performance and payment bond. A facsimile transmission (or PDF file sent via email) addressed to the HUD Closing Attorney must be received in hand on the day of closing from the surety company (not local agent's office) confirming the agent's power-of-attorney to bind the surety company as of the date the bonds are executed and delivered to Lender and HUD. The facsimile or PDF transmission shall identify the agent, date of bonds, amount of each bond, obligee(s), principal, FHA project name and number, and name and title of sender.
- C. Notes regarding Letters of Credit. Letters of credit may be used instead of cash for all assurances of completion and escrows required at initial and final endorsement, or during construction, except for up-front cash escrows and the estimated costs of deferred Section 223(f) repairs that are required to be withheld in cash from mortgage loan proceeds and placed in escrow. Acceptance of a letter of credit is at the Lender's option, but when used, Letters of Credit must be attached to the escrows and assurance agreements they collateralize. Requirements for letters of credit are detailed in MAP Guide §8.4.C.7. Enforceability and acceptability of letters of credit are the responsibility of the Lender and HUD will neither review the letter of credit nor render an opinion on its sufficiency.
- D. Permits and Governmental Approvals. The Hub Director must determine that all building and other permits, governmental approvals, and plans required to construct or to rehabilitate the project improvements have been provided and are consistent with the plans and specifications reviewed and approved by HUD. The permits and approvals must be final, full, and subject only to conditions acceptable to the Hub Director. (The MAP Guide details several requirements for various permit and government approvals, including §4.2.A.1, §5.26.D.2.a, and §12.17.B.1.d.)
- E. Assurance of Completion for Off-Site Improvements. When the Firm Commitment requires Borrower to fund construction of elements outside the project's property boundaries, HUD may require submittal of one or more of the following items, each

in the discretion of the Hub Director and in such form and substance as may be acceptable to the Hub Director:

1. Plans and specifications for the off-site improvements;
2. Contracts or other agreements governing the construction of the off-site improvements;
3. An Off-Site Bond, form HUD-92479M;
4. Escrow Agreement for Off-Site Facilities, form FHA-2446;
5. A Letter of Credit;
6. If the municipality or other governmental locality will be responsible for completion of the off-site improvements, evidence of the locality's plans; and
7. Other evidence as deemed appropriate in the Hub Director's discretion.

3.6 Owner-Architect Agreement

- A. General Requirements. The AIA Document B108, Standard Form of Agreement Between Owner and Architect (Owner-Architect Agreement) shall be used. The Housing program office is primarily responsible for reviewing the substantive terms of the Owner-Architect Agreement. The arbitration provision, any provision for binding mediation, and references to such provisions in the Owner-Architect Agreement shall be deleted. MAP Guide §5.2.C – D detail requirements for the Owner-Architect Agreement.
- B. Amendment to B108. HUD Amendment of Agreement, must be included as a rider with the AIA Document B108, Standard Form of Agreement Between Owner and Architect. The required inclusion of the HUD Amendment in Article 13.3 of the AIA Document B108 is sufficient to incorporate HUD requirements. No modification of the HUD Amendment is permitted except as provided in the following sentence. If the design architect and the supervisory architect are different, a separate Owner-Architect Agreement and HUD Amendment must be executed for each architect, with appropriate modifications to reflect the responsibilities of each architect.
- C. Professional Liability Insurance. Form HUD-92432, *Commitment for Insurance of Advances*, Section 12, and MAP Guide §5.2.A.2 provide that the Design Architect and the Architect administering the construction contract shall each be covered by a policy of professional liability insurance in an amount consistent with insurance industry practice. An insurance agent's certificate of insurance, substantially in the form prescribed, must be provided to the Hub Director at or prior to initial closing.

3.7 Miscellaneous Other Closing Requirements

- A. Insurance. Form HUD-92447, *Property Insurance Requirements* and form HUD-92329, *Property Insurance Schedule* are to be provided by the Hub Director together with the Firm Commitment.
 1. Lender is solely responsible for determination of whether the insurance requirements set forth in form HUD-92447 have been satisfied. There is no need

for HUD to either review or obtain the policy(ies), except for flood insurance. Evidence of flood insurance will be provided on an Accord 28 or FEMA form. Lender will certify to insurance compliance in form HUD-92434M, Lender's Certificate, Paragraph 35. Flood insurance is only required to the extent buildings or other improvements are located within the area of special flood hazards.

2. Prior to Final Closing and after receipt of the cost certification audit, the Hub Director will determine whether any changes in drawings and specifications, or any appreciable change in the cost of construction of the project, have occurred during the course of construction that would require revision of form HUD-92329, Property Insurance Schedule. If a revision of form HUD-92329 is necessary, the Hub Director shall inform the Lender, and it is the Lender's responsibility to ensure that the proper insurance is maintained and that form HUD-92329 is properly updated and resubmitted to HUD.
- B. UCC and Docket Searches. A search of (i) the litigation dockets against the Borrower and its general partner, manager or managing member shall be performed in the state, federal district courts and bankruptcy courts located where the project is located and in the county in which the Borrower and its general partner, manager or managing member have their principal places of business; and (ii) UCC filings against the Borrower shall be performed in the records of the county where the project is located and the state of origin of the Borrower. Although Lender is free to perform or require additional searches, HUD does not require litigation docket searches for single-purpose entities formed within 30 days of closing. Any litigation that is disclosed must be explained by the Borrower or Borrower's counsel to the reasonable satisfaction of the Lender and HUD.
- C. Agreement and Certification. Form HUD-93305M, *Agreement and Certification*, obligates Borrower, among other promises, to:
1. Certify its actual costs of project construction or rehabilitation costs;
 2. Disclose any identity of interest among project participants;
 3. Agree, in certain cases, to a reduction of the amount of the mortgage loan;
- D. Note that certain required certifications are collected by the program office staff in connection with the application for Firm Commitment and not required to be re-collected at Initial Closing. These include: Borrower's Oath, EEOC certification, Title VI Assurance of Compliance, Borrower's and Lender's Byrd Certificates, and Borrower's LIHTC Certification.
- E. Additional Agreements. Borrower is required to disclose any additional agreements affecting the property or financing of the project. When possible, these agreements shall be submitted to HUD for approval prior to execution, and executed copies shall be submitted with the closing package. These agreements cannot alter or amend HUD documents or alter the obligations of the parties thereto without the written approval of the Hub Director. This requirement includes, but is not limited to, disclosure of:

1. Easements and joint use agreements.
2. Construction agreements between the Borrower and the general contractor and other agreements as required to be disclosed pursuant to the Identity of Interest Amendment to the Construction Contract.
3. Indemnifications, guarantees and hold harmless agreements executed by Borrower.
4. Any document or information that would otherwise require reprocessing of the HUD Firm Commitment, increase Borrower's cash requirements, or increase the general contractor's bond requirement.

3.8 Tax Exempt Bond-Financed Projects.

A. IRS Code 142(d) Projects. Projects financed with the proceeds from tax-exempt bonds pursuant to the Internal Revenue Code, Section 142(d), must meet minimum low income occupancy restrictions to exempt the earned interest income from federal income taxation. Such projects typically contain special deed covenants and/or other recorded restrictions to ensure owner compliance with occupancy and use requirements.

1. The Internal Revenue Code requires that Owners of residential rental projects must either meet the 20-50 test or the 40-60 test, e.g., set aside a minimum of either:
 - a. Twenty percent of the units for occupancy by individuals whose income is 50 percent or less of the area median gross income (with adjustments for family size) for the term of the qualified project period (20-50 test), or
 - b. Forty percent (25 percent in New York City) of the units for occupancy by individuals whose median gross income is 60 percent or less of the area median gross income (with adjustments for family size) for the term of the qualified project period (40-60 test).
2. Under Internal Revenue Code requirements, "Qualified Project Period" means the period beginning on the 1st day on which 10 percent of the residential units in the project are occupied and ends on the latest of:
 - a. The date which is 15 years after the date on which 50 percent of the project units are occupied,
 - b. The 1st day on which no tax-exempt private activity bond issued with respect to the project is outstanding, or
 - c. The date on which any assistance provided with respect to the project under Section 8 ends.

B. Underwriting Review. The legal instruments, e.g., deed, land use restriction agreement (a.k.a., extended use agreement), tax regulatory agreement, etc., containing tax exempt financing-required covenants must be reviewed by the Field Office underwriting staff prior to initial closing to determine any effect on the mortgage insurance underwriting.

- C. Prepayment of Note. The Note used to evidence the FHA-insured loan (form HUD-94001M, *Note*), contains alternate language regarding prepayment that shall be used for transactions involving tax-exempt bond financing.
- D. HUD Subordination Language. The subordination provisions set forth in the HUD Rider/Amendment to Restrictive Covenants included in Part 5 of this Closing Guide shall be incorporated into any recorded document containing restrictive covenants. And every legal instrument containing rent restrictions must include the following provisions:
1. Enforcement of the provisions of this instrument will not result in any claim against the project, the mortgage loan proceeds, any reserve or deposit required by HUD in connection with the mortgage loan transaction, or the rents or other income from the property (other than available surplus cash)." (For cases involving limited distribution Borrowers, substitute "available distributions and residual receipts authorized for release by HUD" in place of "available surplus cash.")
 2. Notwithstanding anything in this instrument to the contrary, the provisions hereof are subordinate to all applicable HUD mortgage insurance regulations and related administrative requirements. In the event of any conflict between the provisions of this document and the provisions in any of the HUD Loan Documents or Program Obligations, as such term is defined in the HUD Loan Documents, the terms of the HUD Loan Documents and Program Obligations shall control.
- E. Bond Counsel Opinion. The initial closing review package must include a copy of the bond counsel's opinion relating to the tax-exempt nature of the bonds and enforceability of the bond documents. HUD will review the closing documents only to determine that they do not conflict with HUD occupancy or other requirements.
- F. Borrower's Counsel Opinion (Tax-exempt Bond Financing). Form HUD-91725M, *Guide for Opinion of Borrower's Counsel*, includes alternate language that shall be used if the project involves tax-exempt bond financing.
- G. Lender's Attorney's Opinion (Tax-exempt Bond Financing). Lender's counsel must provide an opinion to HUD ensuring that the project covenants related to the bond financing are consistent with HUD requirements, which shall include an opinion that the covenant instrument contains the HUD subordination provisions required by Section 3.8(D) above, that each such provision is in full force and effect, enforceable by HUD to achieve its stated effect.

3.9 Low-Income Housing Tax Credit-Financed Projects (LIHTC).

- A. Introduction. In order to qualify for Low-Income Housing Tax Credits pursuant to Section 42 of the Internal Revenue Code, Borrower will typically execute and record a Land Use Restriction Agreement (LURA), or similarly named restrictive covenant imposing affordability restrictions on the project. The LURA shall be recorded no later than final endorsement or initial/final endorsement, as applicable.
1. For a minimum of 30 years the owner must ensure occupancy that meets either

the 20-50 or 40-60 test, as described above, in Section 3.8.A.1.

2. Gross rents, inclusive of utility costs, for the project's low-income units may not exceed 30 percent of the applicable qualifying low-income limit, adjusted for family size.
- B. Borrower's Attorney's Opinion (Tax Credits). Borrower's counsel must provide the same opinions required above (see §3.8) regarding tax-exempt bond financing, except that references to tax credits shall be substituted for references to "tax exempt bonds."
 - C. Lender's Attorney's Opinion (Tax Credits). Lender's counsel must provide an opinion similar to that required for tax-exempt bonds (see above §3.8), provided, however, that HUD may subordinate the HUD-insured mortgage to the requirements set out in 26 U.S.C. § 42(h)(6)(E)(ii), which provides that: for three years following termination of an extended use period, low income tenants may not be evicted (except for good cause) and their rents may not be raised unless otherwise permitted by 26 U.S.C. § 42.
 - D. Other tax-exempt bond requirements apply. The requirements above pertaining to subordination, termination, etc., relating to tax-exempt financing apply to the LIHTC restrictive covenants as well.
 - E. Bridge Loan Financing. Pursuant to Housing and Economic Development Recovery Act of 2008 (HERA), Public Law 110-289, HUD does not require LIHTC equity to be escrowed, but at least 20% of tax credit equity must be invested at the time of initial endorsement (and then subsequently be available) to provide a reasonable degree of assurance that the relationship between the Borrower and tax credit investor will be maintained and HUD's exposure under the loan is acceptable. HUD may also require that disbursement of such funds be governed by a disbursement agreement, as set forth in form HUD-92441M, *Building Loan Agreement*, Paragraphs 4(c) and 5.
 - F. Sample Language and Guide Forms. Sample language and guide forms for LIHTC closings has been included in the Closing guide in Part 5.
 1. HUD Rider to Restrictive Covenants, which contains HUD requirements for incorporation into the restrictive covenants.
 2. Amendment to Recorded Restrictive Covenants, which contains HUD requirements for amendment of previously-recorded restrictive covenants.

3.10 223(f) Transactions – Additional Closing Requirements

- A. Repairs. Note that if repairs constitute "substantial rehabilitation," the project must be processed in accordance with MAP Guide §3.4.C (Multifamily projects under Section 221 of the National Housing Act).
- B. Architectural Issues. See MAP Guide §5.23 through §5.27.
- C. Cost. See MAP Guide §6.9 through §6.9.2 for cost issues in the 223(f) program.
- D. Valuation. See MAP Guide §7.11 for valuation issues in the 223(f) program.
- E. Underwriting. See MAP Guide §8.8 for a discussion of the underwriting of a

Section 223(f) loan. Note that Mortgages insured under this section follow the “85% rules” (see MAP Guide §3.8.K and §8.9).

- F. Term. Note that the mortgage term is usually limited to 35 years (MAP Guide §3.8.P and §8.5).
- G. Endorsement. Note that the correct designation of a Section 223(f) loan is “Insured under Section 207 pursuant to Section 223(f) of the National Housing Act”.

3.11 Insurance Upon Completion – Additional Closing Requirements

- A. Construction Completion. Completion must be achieved prior to closing Insurance Upon Completion transactions. However, in some instances, such transactions may be closed prior to fully achieving 100% completion if only minor items remain outstanding, as determined by the Hub Director, and adequate assurances of completion are received, as the Hub Director may require (such as those set forth above in Section 3.5). Such transactions shall not close unless all on- and off-site sewer, water, electrical, and gas utilities are completely and properly installed, and other incomplete off-site facilities, such as streets, walks, curbs and gutters, are useable and safe and that all buildings have all-weather vehicular and pedestrian access. Adequate facilities for ingress and egress must be provided.
- B. Zoning. Prior to issuing a Firm Commitment, the Hub Director must determine that the proposed project will not violate zoning laws or regulations. No further zoning evidence will be required prior to final endorsement of the credit instrument, unless questions, changes, challenges, or litigation have arisen in connection with zoning. If such challenges have arisen, additional evidence of zoning compliance may be necessary, in the discretion of either the Hub Director or HUD Closing Attorney. Current letters from the zoning authority or zoning endorsements to the title policy are two common forms of assurance.
- C. Conditions for Endorsing Note. The Hub Director may consult with other HUD staff, including the HUD Closing Attorney, prior to endorsing the credit instrument. The Hub Director, however, is fully authorized, pursuant to current delegations of authority, to endorse the Note after receiving the first year’s mortgage insurance premium and inspection fee and concluding that all requirements for closing have been met. In no event shall the Hub Director endorse the Note for an amount greater than the principal balance of the Mortgage that would have been outstanding if all payments to principal due before the date of endorsement (including required advance amortization payments if any) had been paid. Nor shall the Hub Director endorse for insurance on a date after the first principal payment is due until the Hub Director has determined that all principal payments due have actually been made and the mortgage otherwise is current.

3.12 Building Components Stored Offsite

- A. Introduction. Eligible building components may qualify for insurance of advances when stored offsite under the conditions listed in MAP Guide Appendix 12B, paragraph B, and HUD Handbook 4435.1, (*Project Construction and Servicing Before Final Closing*), paragraph 1-6. (*See MAP Guide appendix §12B*)

B. HUD Review of Requirements for Purchase of Building Components Stored Offsite.

1. The HUD Closing Attorney's role includes, at the Hub Director's request, review of legal documents submitted in connection with requests for approval of insured advances of funds to pay for such components.
2. The UCC Financing Statement(s) filed at initial endorsement shall have perfected a first security interest in such components until they are incorporated into the building(s). Whatever additional filings are determined to be necessary to maintain a first security interest on the components shall be made at this time.
3. The Construction Contract must include the rider entitled "Amendment to the Construction Contract for Components Stored Offsite" entered into at initial endorsement. (see Appendix 12B of the MAP Guide.)
4. Insured advances for components stored offsite may not be approved where the contractor does not have a 100% performance and payment bond securing the contractor's performance under the Construction Contract.
5. A Bill of Sale running to the Borrower for the components and an itemized invoice transferring title to the components must be submitted.
6. Lender must certify to HUD unconditionally that the security instrument is a "first lien" on the components covered by the instrument.
7. Lender's counsel must submit an opinion stating that he/she has reviewed the Security Instrument, UCC-1 Financing Statements, and any associated documents, as necessary, relative to the building components and that such documents create a valid security interest in the collateral and that when the financing statements are duly filed, the secured party will have a first lien.

Part 4: Checklists

- 4.1 Initial Closing Checklist**
- 4.2 Final Closing Checklist**
- 4.3 Section 223(a)(7) Initial/Final Closing Checklist**
- 4.4 Section 223(f) Initial/Final Closing Checklist**
- 4.5 Insurance Upon Completion Checklist**
- 4.6 Workout / Interim Closing Checklist**

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
 FHA Insured Initial Closing Checklist – For §§§ 207, 220, and 221 Projects

Project Name _____

Checklist Draft Date _____

FHA Project Number _____

Initial Closing Date _____

Unless otherwise agreed, the HUD Attorney will obtain 3 sets of all documents: originals (O), certified copies (Cert), or photocopies (C), as noted. Where originals are requested, only 1 needs to be an original, and the rest may be copies. If a copy is requested, an original will be accepted.

Item		HUD Form	#	Status and Comment
I. FHA Commitment				
1.	a. FHA Firm Commitment	HUD-92432	C	<i>Include all attachments including HUD-executed 92264, 92264-A, and property insurance requirements and schedule.</i>
	b. Amendments, if any		C	
	c. Assignments, if any		C	
II. Organizational, Due Diligence, and Other Supporting Documents				
2.	Borrower's Incumbency Certificate with Organizational Documents attached		O	<i>Update checklist as appropriate for entity type.</i>
	a. Filed formation documents, from Secretary of State, as amended		C	<i>e.g., Articles of Organization, Certificate of Limited Partnership, or Articles of Incorporation</i>
	b. Operating Agreement / Partnership Agreement / Bylaws, as amended		C	<i>Should include HUD-required provisions and be certified by Borrower as current and correct.</i>
	c. Authorizing Resolution		C	<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		C	<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		C	<i>For out-of-state entities, if applicable.</i>
2.	Borrower's Managing Member / General Partner's Incumbency Certificate with Organizational Documents attached		O	<i>As applicable.</i>
	a. Filed formation documents, from Secretary of State, as amended		C	<i>e.g., Articles of Organization, Certificate of Limited Partnership, or Articles of Incorporation</i>
	b. Operating Agreement / Partnership Agreement / Bylaws, as amended		C	<i>Should include HUD-required provisions and be certified by Borrower as current and correct.</i>
	c. Authorizing Resolution		C	<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		C	<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		C	<i>For out-of-state entities, if applicable, and if required.</i>
4.	ALTA Survey Plat		O	<i>Dated within 120 days of closing.</i>
5.	Surveyor's Report	HUD-92457M	O	<i>Last inspection within 120 days of closing.</i>

Initial Closing Checklist

Project Name and/or Number: _____

	Item	HUD Form	#	Status and Comment
6.	Title Insurance Policy, with endorsements		O	<i>2006 ALTA form, where approved for use in the applicable jurisdiction. HUD-required endorsements shall be attached. Title Commitment, title exception documents, and pro forma policy should be received & reviewed prior to closing.</i>
	a. Title Exception Documents		C	
	b. UCC Search Report		C	
7.	Deed or Ground Lease		C	<i>If Ground Lease, include Addendum: HUD-92070M.</i>
8.	Evidence of Zoning Compliance		C	<i>Usually a zoning endorsement to Title Policy; if not, a zoning opinion or letter from the zoning authority may be needed.</i>
9.	Evidence of Building Code Compliance		C	
10.	Assurance of Utility Service letters		C	<i>Letters: water, sanitary & storm sewer, electricity, gas, & phone.</i>
11.	Opinion of Borrower's Counsel	HUD-91725M	O	<i>Should include bond/LIHTC opinions, if applicable, and appropriate attachments</i>
12.	Closing Statement		O	
13.	Application for Insurance of Advance of Mortgage Proceeds	HUD-92403	O	
14.	Inspection Fee Check		O	<i>If applicable.</i>
15.	Mortgage Insurance Premium (MIP) Check		O	<i>If applicable.</i>
16.	Additional Examination Fee Check		O	<i>If applicable.</i>
17.	Certificate Regarding Tenant's Security Deposits		O	<i>If applicable</i>
18.	Special Conditions from Firm Commitment			
19.	Local Requirements			
20.	Attendance List		O	<i>If applicable.</i>
III. HUD Loan Documents				
21.	Note (Multistate)	HUD-94001M & state addendum	C	<i>State-specific provisions and/or addenda may be required.</i>
22.	Security Instrument	HUD-94000M & state	O	<i>State-specific provisions and/or addenda may be required.</i>

Initial Closing Checklist

Project Name and/or Number: _____

Item		HUD Form	#	Status and Comment
		addendum		
23.	Regulatory Agreement	HUD-92466M	O	<i>State-specific provisions and/or addenda may be required.</i>
24.	UCC Financing Statements (State & County)		C	
25.	Building Loan Agreement	HUD-92441M		
26.	Lender's Certificate		O	<i>With all applicable exhibits and attachments</i>
27.	Lender's Assurance of Permanent Financing		O	
28.	Operating Deficit Escrow	HUD-92476A-M	O	
29.	Escrow Agreement for Working Capital	HUD-92412M	O	
30.	Other escrow agreements, if applicable		O	<i>List as required, see Closing Guide §2.8</i>
IV. Construction Documents				
31.	Owner-Architect Agreement (B108) & HUD Amendment	HUD-92408-M	C	
32.	Certification of Architectural / Engineering Fees		O	<i>See sample language</i>
33.	Architect's Insurance Agent's Certificate		C	<i>For both design and supervisory architects, if different.</i>
34.	Building Permit(s)			
35.	Construction Contract	HUD-92442M HUD 92554-M	O	<i>Include HUD Supplementary Conditions and all appropriate exhibits</i>
36.	Assurance of Completion for Project			<i>Either bonds or completion assurance agreement</i>
	a. Bonds			
	i. Performance Bond	HUD-92454M	C	
	ii. Payment Bond	HUD-92452A-M	C	
	iii. Surety's Power of Attorney		O	<i>Original to be attached to each bond or to each Performance/Payment Bond set</i>
	iv. Surety's Fax/Email Letter		C	<i>To be sent on closing day from surety's corporate office, not broker's office, confirming Power of Attorney.</i>
	b. Completion Assurance Agreement		O	
	i. Evidence of Deposit or Letter of Credit		C	<i>As applicable.</i>
37.	Plans and Specifications		O	<i>Final, signed by Architect and collected by housing staff.</i>
38.	Completion Assurance Documents for Off-Site Improvements			<i>List required documents if applicable and as required by HUD, pursuant to Closing Guide.</i>
39.	Notice of Commencement		C	<i>If project jurisdiction requires. Recording may also be required.</i>

	Item	HUD Form	#	Status and Comment
V. Secondary Financing Documents				
40.	Restrictive Covenants / Use Agreements		C	<i>With HUD rider if applicable.</i>
41.	Secondary Financing Loan Documents		C	
	a. Loan Agreement		C	
	b. Note		C	
	c. Mortgage		C	
	d. Subordination Agreement, or Rider to Mortgage	HUD-92420	O	<i>If private, non-governmental secondary financing is approved, a Rider to the second mortgage is used; if public financing, a HUD subordination agreement is required</i>
42.	Disbursement Agreement		O	
VI. Supplemental Bond/LIHTC Deliverables				
43.	Restrictive Covenants / Use Agreements		C	<i>With HUD rider if applicable.</i>
44.	Bond Counsel Opinion		C	
45.	Tax Regulatory Agreement, Other Restrictive Covenant		C	<i>With HUD rider.</i>
46.	Lender's Attorney's Opinion		O	
VII. HUD Administrative Documents and Additional Requirements				
47.	Administrative Memo with attached Waivers and HUD-2 forms		O	<i>If applicable.</i>
48.	Document Review Worksheets, if applicable		O	<i>If used by program staff to document compliance with cost, valuation, architectural, or other underwriting requirements.</i>
49.	Previous Participation Certification Clearance	HUD-92530	C	
50.	Closing Certification		O	
51.	Closing Memorandum	HUD-290	O	
52.	Environmental Permits		C	<i>As applicable: U.S. and State Environmental Protection Agency Permit, Wetlands Permits from Army Corps of Engineers</i>
53.	Bond Guaranteeing Sponsor's Performance	HUD-92477M	O	
54.	Commercial Space Leases (with Tenant Estoppel Certificates)		C	
55.	Subordination, Non-Disturbance and Attornment Agreements		C	

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FHA Insured Final Closing Checklist

(For §§§ 207, 220, and 221 Projects)

Project Name _____

Checklist Draft Date _____

FHA Project Number _____

Final Closing Date _____

Unless otherwise agreed, the HUD Attorney will obtain 3 sets of all documents: originals (O), certified copies (Cert), or photocopies (C), as noted. Where originals are requested, only 1 needs to be an original, and the rest may be copies. If a copy is requested, an original will be accepted.

Item	HUD Form	#	Status and Comment
I. Organizational, Due Diligence, and Other Supporting Documents			
1.	Borrower's Incumbency Certificate with Organizational Documents attached, or certification of no change since initial closing		<i>Update required documents as appropriate for entity type.</i>
	a. Filed formation documents, from Secretary of State, as amended		<i>e.g., Articles of Organization, Certificate of Limited Partnership, Articles of Incorporation</i>
	b. Operating Agreement/Partnership Agreement/Bylaws		<i>Should include HUD-required provisions and be certified by Borrower as current and correct</i>
	c. Authorizing Resolution		<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status Certificate		<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		<i>For out-of-state entities, if applicable.</i>
2.	Borrower's Managing Member or General Partner's Incumbency Certificate with the Organizational Documents attached, or certification of no change since initial closing		<i>As applicable</i>
	a. Filed formation documents, from Secretary of State, as amended		<i>e.g., Articles of Organization, Certificate of Limited Partnership</i>
	b. Operating Agreement/Partnership Agreement/Bylaws		<i>Should include HUD-required provisions</i>
	c. Authorizing Resolution		<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		<i>For out-of-state entities, if applicable.</i>
3.	Opinion of Borrower's Counsel	HUD-91725M	<i>Should include LIHTC & bond opinions, if applicable.</i>
4.	ALTA Survey Plat		
5.	Surveyor's Report	HUD-92457M	<i>Last inspection within 120 days of closing.</i>
6.	Title Insurance Policy, with endorsements		<i>Either a new policy, or a date-down endorsement updating the original policy to final endorsement date.</i>
	a. Title Exception Documents		

Final Closing Checklist

Project Name and/or Number: _____

Item		HUD Form	#	Status and Comment
7.	Certificate of Occupancy		C	
8.	Certificates			
	a. Request for Final Endorsement of Credit Instrument	HUD-92023M	O	
	b. Lender's Current Payment Letter		O	<i>If applicable</i>
	c. Contractor's Requisition	HUD-92448	O	
9.	Special Conditions from Firm Commitment			
10.	Attendance List			
III. HUD Loan Documents				
11.	Modification Agreement		O	<i>If applicable</i>
12.	Allonge or Supplemental Note		C	<i>If applicable, include state-specific requirements, if any.</i>
13.	Modification to or Supplemental Security Instrument	HUD-94000, if applicable	O	<i>Include state-specific provisions and/or addenda, if applicable.</i>
14.	Modification and Consolidation Agreement		O	<i>If applicable</i>
15.	Increase Mortgage Insurance Premiums Check		O	<i>If applicable</i>
16.	Mortgage Note, with final endorsement	HUD-940001	C	
17.	Application for Insurance of Advance of Mortgage Proceeds	HUD-92403	O	
18.	Guarantee following completion		O	<i>If applicable</i>
19.	Escrow Agreements			<i>If applicable.</i>
	a. Escrow Agreement for Incomplete Construction	HUD-92456M	O	
	b. Escrow Agreement for Non-critical, Deferred Repairs	HUD-92476.1M	O	
	c. Other Escrow Agreements, as required			<i>For example, Deposit Agreement for Davis-Bacon non-compliance, Escrow Agreement for Off-Site Facilities, Excess Mortgage Proceeds Escrow, Latent Defects Escrow, and Escrow Agreement for Unpaid Construction Costs, Repairs, or Needs Assessments.</i>
IV. HUD Administrative Documents				
20.	Maximum Insurable Mortgage	HUD-92580	O	

Final Closing Checklist

Project Name and/or Number: _____

Item		HUD Form	#	Status and Comment
21.	Labor Relations Clearance		C	
22.	Labor Standards Deposit Agreement	HUD-4732	O	<i>If required.</i>
23.	Local Requirements			<i>If applicable.</i>

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Section 223(a)(7) Initial/Final Closing Checklist

Project Name _____

Checklist Draft Date _____

FHA Project Number _____

Initial/Final Closing Date _____

Unless otherwise agreed, the HUD Attorney will obtain 3 sets of all documents: originals (O), certified copies (Cert), or photocopies (C), as noted. Where originals are requested, only 1 needs to be an original, and the rest may be copies. If a copy is requested, an original will be accepted.

Item		HUD Form	#	Status and Comment
A. FHA Commitment				
1.	a. FHA Firm Commitment	HUD-92432	C	<i>Include all attachments including HUD-executed 92264, 92264-A, and property insurance requirements and schedule.</i>
	b. Amendments, if any		C	
	c. Assignments, if any		C	
II. Organizational, Due Diligence, and Other Supporting Documents				
2.	Borrower's Incumbency Certificate with Organizational Documents attached		O	<i>Update checklist as appropriate for entity type.</i>
	a. Filed formation documents, from Secretary of State, as amended		C	<i>e.g., Articles of Organization, Certificate of Limited Partnership, or Articles of Incorporation</i>
	b. Operating Agreement / Partnership Agreement / Bylaws, as amended		C	<i>Should include HUD-required provisions and be certified by Borrower as current and correct.</i>
	c. Authorizing Resolution		C	<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		C	<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		C	<i>For out-of-state entities, if applicable.</i>
3.	Borrower's Managing Member / General Partner's Incumbency Certificate with Organizational Documents attached		O	<i>As applicable.</i>
	a. Filed formation documents, from Secretary of State, as amended		C	<i>e.g., Articles of Organization, Certificate of Limited Partnership, or Articles of Incorporation</i>
	b. Operating Agreement / Partnership Agreement / Bylaws, as amended		C	<i>Should include HUD-required provisions and be certified by Borrower as current and correct.</i>
	c. Authorizing Resolution		C	<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		C	<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		C	<i>For out-of-state entities, if applicable, and if required.</i>
4.	ALTA Survey Plat		O	<i>Dated within 120 days of closing.</i>

Section 223(a)(7) Initial/Final Closing Checklist

Project Name and/or Number: _____

	Item	HUD Form	#	Status and Comment
5.	Certificate of No Change to Survey		O	<i>If applicable</i>
6.	Surveyor's Report	HUD-92457M	O	<i>Last inspection within 120 days of closing.</i>
7.	Title Insurance Policy, with endorsements		O	<i>2006 ALTA form, where approved for use in the applicable jurisdiction. HUD-required endorsements should be attached. Title Commitment, title exception documents, and pro forma policy should be received & reviewed prior to closing.</i>
	a. Title Exception Documents		C	
	b. UCC Search Report		C	
8.	Deed or Ground Lease		C	
9.	Evidence of Zoning Compliance		C	<i>Usually a zoning endorsement to Title Policy; if not, a zoning opinion or letter from the zoning authority may be needed.</i>
10.	Evidence of Building Code Compliance		C	
11.	Assurance of Utility Service letters		C	<i>Letters: water, sanitary sewer, storm sewer, electricity, gas, and phone.</i>
12.	Opinion of Borrower's Counsel	HUD-91725M	O	<i>Should include bond/LIHTC opinions, if applicable, and appropriate attachments</i>
	a. Certification of Borrower		O	
	b. Supporting legal opinion (tax-exempt bonds)		O	<i>If applicable.</i>
	c. Listing of pending litigation		C	<i>If applicable.</i>
13.	Inspection Fee Check		O	
14.	Mortgage Insurance Premium (MIP) Check		O	
15.	Special Conditions from Firm Commitment			
III. HUD Loan Documents				
16.	Note (Multistate)	HUD-94001M & state addendum	C	<i>State-specific provisions and/or addenda may be required.</i>
17.	Security Instrument	HUD-94000M & state addendum	O	<i>State-specific provisions and/or addenda may be required.</i>
18.	Regulatory Agreement	HUD-92466M	O	<i>State-specific provisions and/or addenda may be required.</i>

Section 223(a)(7) Initial/Final Closing Checklist

Project Name and/or Number: _____

	Item	HUD Form	#	Status and Comment
19.	UCC Financing Statements (State & County)		C	
20.	Building Loan Agreement	HUD-92441M		
21.	Lender's Certificate		O	<i>With all applicable exhibits and attachments</i>
22.	Certified Closing Statement		O	
23.	Agreement and Certification	HUD 933050-M	O	<i>If applicable</i>
24.	Estoppel Letter/Lender's Current Payment Letter		O	<i>If applicable</i>
25.	Certificate Regarding Tenant's Security Deposit		O	<i>If applicable</i>
26.	Lender's Assurance of Permanent Financing		O	
27.	Request for Endorsement with PCNA Lender's Certification		O	
28.	Escrow Agreement for Non-critical, Deferred Repairs	HUD-92476.1M	O	
29.	Other escrow agreements, if applicable		O	<i>List as required, see Closing Guide §2.8</i>
VI. Secondary Financing Loan Documents				
30.	Subordination Agreement, or Rider to Mortgage	HUD-92420	C	<i>If private, none-governmental secondary financing is approved, a Rider to the second mortgage is used; if public financing, a HUD subordination agreement is required.</i>
31.	Disbursement Agreement		O	
VII. HUD Administrative Documents and Additional Requirements				
32.	Administrative Memo with attached Waivers and HUD-2 forms		O	<i>If applicable.</i>
33.	Document Review Worksheets, if applicable		O	<i>If used by program staff to document compliance with cost, valuation, architectural, or other underwriting requirements.</i>
34.	Previous Participation Certification Clearance	HUD-92530	C	
35.	HUD Representative's Trip Report	HUD-95379	O	
36.	Restrictive Covenants/Use Agreements		O	<i>With HUD rider if applicable</i>

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Section 223(f) Initial/Final Closing Checklist

Project Name _____

Checklist Draft Date _____

FHA Project Number _____

Initial/Final Closing Date _____

Unless otherwise agreed, the HUD Attorney will obtain 3 sets of all documents: originals (O), certified copies (Cert), or photocopies (C), as noted. Where originals are requested, only 1 needs to be an original, and the rest may be copies. If a copy is requested, an original will be accepted.

Item		HUD Form	#	Status and Comment
I. FHA Commitment				
1.	a. FHA Firm Commitment	HUD-92432	C	<i>Include all attachments including HUD-executed 92264, 92264-A, and property insurance requirements and schedule.</i>
	b. Amendments, if any		C	
	c. Assignments, if any		C	
II. Organizational, Due Diligence, and Other Supporting Documents				
2.	Borrower's Incumbency Certificate with Organizational Documents attached		O	<i>Update checklist as appropriate for entity type.</i>
	a. Filed formation documents, from Secretary of State, as amended		C	<i>e.g., Articles of Organization, Certificate of Limited Partnership, or Articles of Incorporation</i>
	b. Operating Agreement / Partnership Agreement / Bylaws, as amended		C	<i>Should include HUD-required provisions and be certified by Borrower as current and correct.</i>
	c. Authorizing Resolution		C	<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		C	<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		C	<i>For out-of-state entities, if applicable.</i>
3.	Borrower's Managing Member / General Partner's Incumbency Certificate with Organizational Documents attached		O	<i>As applicable.</i>
	a. Filed formation documents, from Secretary of State, as amended		C	<i>e.g., Articles of Organization, Certificate of Limited Partnership, or Articles of Incorporation</i>
	b. Operating Agreement / Partnership Agreement / Bylaws, as amended		C	<i>Should include HUD-required provisions and be certified by Borrower as current and correct.</i>
	c. Authorizing Resolution		C	<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		C	<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		C	<i>For out-of-state entities, if applicable, and if required.</i>
4.	ALTA Survey Plat		O	<i>Dated within 120 days of closing.</i>

Section 223(f) Initial/Final Closing Checklist

Project Name and/or Number: _____

	Item	HUD Form	#	Status and Comment
5.	Certificate of No Change to Survey		O	<i>If applicable</i>
6.	Surveyor's Report	HUD-92457M	O	<i>Last inspection within 120 days of closing.</i>
7.	Title Insurance Policy, with endorsements		O	<i>2006 ALTA form, where approved for use in the applicable jurisdiction. HUD-required endorsements should be attached. Title Commitment, title exception documents, and pro forma policy should be received & reviewed prior to closing.</i>
	a. Title Exception Documents		C	
	b. UCC Search Report		C	
8.	Deed or Ground Lease	HUD-92070M and addendum	C	<i>As applicable, depending upon type of transaction.</i>
9.	Evidence of Zoning Compliance		C	<i>Usually a zoning endorsement to Title Policy; if not, a zoning opinion or letter from the zoning authority may be needed.</i>
10.	Evidence of Building Code Compliance		C	
11.	Opinion of Borrower's Counsel	HUD-91725M	O	<i>Should include bond/LIHTC opinions, if applicable, and appropriate attachments</i>
12.	Inspection Fee Check		O	
13.	Mortgage Insurance Premium (MIP) Check		O	
14.	Special Conditions from Firm Commitment		C	
15.	Local Requirements		C	
16.	Attendance List		O	
HUD Loan Documents				
17.	Note (Multistate)	HUD-94001M & state addendum	C	<i>State-specific provisions and/or addenda may be required.</i>
18.	Security Instrument	HUD-94000M & state addendum	O	<i>State-specific provisions and/or addenda may be required.</i>
19.	Regulatory Agreement	HUD-92466M	O	<i>State-specific provisions and/or addenda may be required.</i>
20.	Lender's Certificate	HUD-92434M	O	<i>With all applicable exhibits and attachments</i>
21.	Agreement and Certification	HUD 933050- M	O	<i>If applicable</i>

	Item	HUD Form	#	Status and Comment
22.	Estoppel Letter/Lender's Current Payment Letter		O	<i>If applicable</i>
23.	Certificate Regarding Tenant's Security Deposit		O	<i>If applicable</i>
24.	Lender's Assurance of Permanent Financing		O	
25.	Request for Endorsement with PCNA Lender's Certification		O	
26.	Escrow Agreement for Non-critical, Deferred Repairs	HUD-92476.1M	O	
27.	Latent Defects Escrow	HUD-92414M	O	
28.	Operating Deficit Escrow	HUD-92476a-M		
29.	Escrow Agreement for Off-Site Facilities	FHA-2446	O	
30.	Excess Mortgage Proceeds Escrow			
31.	Other escrow agreements, if applicable		O	<i>List as required, see Closing Guide §2.8</i>
IV. Secondary Financing Loan Documents				
32.	Restrictive Covenants/Use Agreements		C	<i>With HUD rider if applicable</i>
33.	Secondary Financing Loan Documents		C	
	a. Loan Agreement		C	
	b. Note		C	
	c. Mortgage		C	
	d. Subordination Agreement, or Rider to Mortgage	HUD-92420M	O	<i>If private, none-governmental secondary financing is approved, a Rider to the second mortgage is used; if public financing, a HUD subordination agreement is required.</i>
34.	Disbursement Agreement		O	
V. HUD Administrative Documents and Additional Requirements				
35.	Administrative Memo with attached Waivers and HUD-2 forms		O	<i>If applicable.</i>
36.	Document Review Worksheets, if applicable		O	<i>To the extent the field office program staff uses checklists or otherwise documents compliance with architectural, cost, valuation, or other underwriting requirements or Program Obligations, such documentation shall be retained.</i>
37.	Previous Participation Certification Clearance	HUD-92530	C	
38.	HUD Representative's Trip Report	HUD-95379	O	

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

FHA Insurance Upon Completion Checklist

(For §§§ 207, 220, and 221 Projects)

Project Name _____

Checklist Draft Date _____

FHA Project Number _____

Final Closing Date _____

Unless otherwise agreed, the HUD Attorney will obtain 3 sets of all documents: originals (O), certified copies (Cert), or photocopies (C), as noted. Where originals are requested, only 1 needs to be an original, and the rest may be copies. If a copy is requested, an original will be accepted.

Item		HUD Form	#	Status and Comment
I. FHA Commitment				
1.	a. FHA Firm Commitment	HUD-92432	C	<i>Include all attachments including HUD-executed 92264, 92264-A, and property insurance requirements and schedule.</i>
	b. Amendments, if any		C	
	c. Assignments, if any		C	
II. Organizational, Due Diligence, and Other Supporting Documents				
2.	Borrower's Incumbency Certificate with Organizational Documents attached		O	<i>Update checklist as appropriate for entity type.</i>
3.	a. Filed formation documents, from Secretary of State, as amended		C	<i>e.g., Articles of Organization, Certificate of Limited Partnership, or Articles of Incorporation</i>
	b. Operating Agreement / Partnership Agreement / Bylaws, as amended		C	<i>Should include HUD-required provisions and be certified by Borrower as current and correct.</i>
	c. Authorizing Resolution		C	<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		C	<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		C	<i>For out-of-state entities, if applicable.</i>
4.	Borrower's Managing Member / General Partner's Incumbency Certificate with Organizational Documents attached		O	<i>As applicable.</i>
	a. Filed formation documents, from Secretary of State, as amended		C	<i>e.g., Articles of Organization, Certificate of Limited Partnership, or Articles of Incorporation</i>
	b. Operating Agreement / Partnership Agreement / Bylaws, as amended		C	<i>Should include HUD-required provisions and be certified by Borrower as current and correct.</i>
	c. Authorizing Resolution		C	<i>If applicable (authority may be granted in operative agreement)</i>
	d. Status certificate		C	<i>Should be dated w/in 30 days of closing.</i>
	e. Qualification to Do Business in Project State		C	<i>For out-of-state entities, if applicable, and if required.</i>

FHA Insurance Upon Completion Checklist

Project Name and/or Number: _____

Item		HUD Form	#	Status and Comment
5.	ALTA Survey Plat		O	<i>Dated within 120 days of closing.</i>
6.	Surveyor's Report	HUD-92457M	O	<i>Last inspection within 120 days of closing.</i>
7.	Title Insurance Policy, with endorsements		O	<i>2006 ALTA form, where approved for use in the applicable jurisdiction. HUD-required endorsements shall be attached. Title Commitment, title exception documents, and pro forma policy should be received & reviewed prior to closing.</i>
	a. Title Exception Documents		C	
	b. UCC Search Report			
8.	Deed or Ground Lease	HUD-92070M and addendum	C	<i>As applicable, depending upon type of transaction.</i>
9.	Evidence of Zoning Compliance		C	<i>Usually a zoning endorsement to Title Policy; if not, a zoning opinion or letter from the zoning authority may be needed.</i>
10.	Assurance of Utility Service letters		C	<i>Letters: water, sanitary sewer, storm sewer, electricity, gas, and phone.</i>
11.	Opinion of Borrower's Counsel	HUD-91725M	O	<i>Should include bond/LIHTC opinions, if applicable, and appropriate attachments</i>
12.	Inspection Fee Check		O	<i>If applicable.</i>
13.	Mortgage Insurance Premium (MIP) Check		O	<i>If applicable.</i>
14.	Additional Examination Fee Check		O	<i>If applicable.</i>
15.	Certificate Regarding Tenant's Security Deposits		O	<i>If applicable</i>
16.	Special Conditions/Local Requirements			
17.	Attendance List		O	<i>If applicable.</i>
III. HUD Loan Documents				
18.	Note (Multistate)	HUD-94001M & state addendum	C	<i>State-specific provisions and/or addenda may be required.</i>
19.	Security Instrument	HUD-94000M & state addendum	O	<i>State-specific provisions and/or addenda may be required.</i>

Item		HUD Form	#	Status and Comment
20.	Regulatory Agreement	HUD-92466M	O	<i>State-specific provisions and/or addenda may be required.</i>
21.	Lender's Certificate	HUD-92434M	O	<i>With all applicable exhibits and attachments</i>
22.	Agreement and Certification	HUD-93305M	O	
23.	Lender's Current Payment Letter			
24.	Applicable Wage Determinations		C	
25.	Latent Defects Escrow	HUD-92414M	O	
26.	Escrow Agreement for Critical, Non-deferred Repairs	HUD-92476.1M	O	
27.	Other escrow agreements, if applicable		O	<i>List as required, see Closing Guide §2.8</i>
IV. Construction Documents				
28.	Building Permit(s)		C	
29.	Construction Contract	HUD-92442M	O	<i>Include HUD Supplementary Conditions and all appropriate exhibits</i>
30.	Applicable Wage Determinations		C	
31.	Certificate of Occupancy		C	
V. Certificates and Other Closing Requirements				
32.	Contractor's Requisition with Contractor's Prevailing Wage Certificate	HUD-92448	O	
33.	Request for Endorsement of Credit Instrument	HUD-9245MM	O	
34.	Secondary Financing Documents		C	
35.	Land Use Restriction Agreement		C	<i>If tax-exempt bond financing or LIHTCs</i>
36.	Borrower's Attorney Opinion		O	<i>If tax-exempt bond financing or LIHTCs</i>
37.	Lender's Attorney Opinion		O	<i>If tax-exempt bond financing or LIHTCs</i>
VI. Secondary Financing Documents <i>If applicable, as to each.</i>				
38.	Restrictive Covenants/ Use Agreements		C	<i>With HUD rider if applicable.</i>
39.	Secondary Financing Loan Documents		C	
	a. Loan Agreement		C	
	b. Note		C	
	c. Mortgage		C	
	d. Subordination Agreement, or Rider to Mortgage		O	<i>If private, non-governmental secondary financing is approved, a Rider to the second mortgage is used; if</i>

FHA Insurance Upon Completion Checklist

Project Name and/or Number: _____

Item		HUD Form	#	Status and Comment
				<i>public financing, a HUD subordination agreement is required</i>
40.	Disbursement Agreement		O	
VI. HUD Administrative Documents and Additional Requirements				
41.	Administrative Memo with attached Waivers and HUD-2 forms		O	<i>If applicable.</i>
42.	Document Review Worksheets, if applicable		O	<i>If used by program staff to document compliance with architectural, cost, valuation, or other underwriting requirements.</i>
43.	Previous Participation Certification Clearance	HUD-92530	C	
44.	HUD Representative's Trip Report	HUD-95379	O	
45.	Maximum Insurable Mortgage	HUD-92580	O	
46.	Labor Relations Clearance		C	

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
Sample Workout / Interim Closing Checklist

Project Name _____

Checklist Draft Date _____

FHA Project Number _____

Interim Closing Date _____

As discussed in the Closing Guide, workouts and interim closings are each unique and have project-specific requirements. The following list may not be exhaustive, but includes items that may be helpful to review in preparation for an interim closing.

Item		Status and Comment
1.	All proposed Settlement/Workout Agreements with or among some or all of the following	
	a. Borrower	
	b. Borrower's Principals	
	c. Existing General Contractor	
	d. Surety	
	e. Subcontractors and material suppliers	
	f. Lender	
	g. Secondary Lenders	
	h. Grant issuers	
	i. Tax Credit issuers	
2.	Firm Commitment and necessary amendments	<i>Determine which, if any, conditions that were to be fulfilled during the construction period have not yet been completed, e.g. environmental issues such as asbestos removal.</i>
3.	Loan Title Policy	<i>a. All documents and amendments to documents that are intended to be placed of record should be reviewed ahead of time by the HUD Closing Attorney. b. HUD should receive a current date-down endorsement (not a pro forma) covering the period from the cover date of the initial policy through as current a date as possible. Check to ensure that all necessary releases, stipulations, orders for litigation dismissals will be available on closing day and persons designed to have nay orders entered in court as needed.</i>
4.	Proposed certification of sources and uses	<i>Must take into consideration the proposed settlement/workout agreements and proposed new financing, if any.</i>
5.	Hub Director should check for the following possible additional costs and, if possible, factor into the reprocess	
	a. New design architect's fees	<i>Existing plans and specs may need revision, and generate additional fees, to accommodate discoveries made during existing construction and change orders already fully agreed to under the construction</i>

Item		Status and Comment
		<i>contract to be terminated.</i>
	b. New architects fees for observation and scope of work	
	c. New Construction Costs	
	d. New payment and performance bonds costs	
	e. Additional legal fees	
	f. Additional title fees	
	g. Taxes during construction	
	h. Insurance during construction	
	i. Interest during construction	
6.	Proposed amendments to the HUD firm commitment, including financial requirements for interim closing, necessitated by the terms of the various workout and settlements, additional costs, loan increases and other additional loans and/or grants	
7.	Waivers	<i>During the HUD Closing Attorney's participation in the workout process, it is likely a list of needed waivers will be developed. HUD Closing Attorney should obtain 3 copies from Housing for inclusion in dockets.</i>
8.	Borrower's Organization Documents, Good Standing Certificates and Incumbency Certificates	<i>Can be obtained from HUD closing docket</i>
	a. What, if any, amendments are needed to these items in order to implement the provisions of the workout/settlement agreements	<i>e.g. update the Capital Contributions provisions</i>
	b. Obtain incumbency certificates covering the day of interim closing	
9.	Previous Participation Certification	<i>Submit original to Housing for processing for new principals; copied for docket</i>
10.	Additional Byrd Amendment Certifications	<i>If applicable</i>
11.	Borrower's Resolution	<i>Update the resolution to ensure that Borrower has the authority to accept and be bound under any increased and new loans and new grant documents and tat the principal who will be signing the Settlement Agreements and other interim closing documents has the necessary authority to do so.</i>
12.	Owner/Architect Agreement	<i>Amend, supplement or terminate and replace as necessary</i>

Workout / Interim Closing Checklist

Project Name and/or Number: _____

Item		Status and Comment
13.	New Certification of Architect and Engineering Fees	<i>CG-26 and HB 4430.1 Appendix 7</i>
14.	Escrow Agreements	<i>As applicable.</i>
15.	Restrictive Covenants / Use Agreements	<i>As applicable, including amendments to existing documents and/or new documents.</i>
16.	Disbursement Agreement	<i>As applicable.</i>

Part 5: Sample Language and Certificates

Sample Language

- 5.1 HUD Secondary Financing Rider
- 5.2 HUD-Required Provisions for Borrower's Organizational Documents
- 5.3 HUD Rider to Restrictive Covenants
- 5.4 Survey Affidavit of No Change
- 5.5 Amendment for Components Stores Off-Site

Certificates

- 5.6 Certificate of Architectural & Engineering Fees
- 5.7 Payee Certification
- 5.8 Building Code Certification
- 5.9 Zoning Certification
- 5.10 Third Party Obligee Certification

5.1 HUD Secondary Financing Rider

To be used when private, non-governmental sources provide secured, secondary financing.

This Rider ("Rider") is attached to and made a part of (i) that certain Promissory Note (herein, the "Junior Note") dated _____, 20__ from _____ (the "Borrower") in favor of _____ (herein, the "Junior Lender") in the principal amount of \$_____ evidencing a loan (herein, the "Junior Loan") from Junior Lender to Borrower and (ii) that certain Mortgage and Security Agreement (herein, the "Junior Mortgage") dated _____, 20__ from Borrower in favor of Junior Lender. The Junior Note and Junior Mortgage and any and all other documents now or hereafter executed and/or delivered in connection with the Junior Loan are hereafter collectively referred to as the "Junior Loan Documents." The terms and conditions of this Rider supersede all other terms of the Junior Loan Documents, and, should there be any conflict or inconsistency between this Rider and any other provisions of the Junior Loan Documents, the terms and conditions of this Rider shall prevail.

As used herein, "Senior Loan Documents" shall mean (i) that certain Note (herein, the "Senior Note") dated _____, 20__ from _____ (the "Borrower") in favor of _____ (herein, the "Senior Lender") in the principal amount of \$_____ evidencing a loan (herein, the "Senior Loan") from Senior Lender to Borrower and (ii) that certain _____ [insert Security Instrument title] (herein, the "Senior Mortgage") dated _____, 20__ from Borrower in favor of Senior Lender, granting a mortgage on the project known as _____, FHA Project No. _____ (herein, the "Project"); (iii) that certain Regulatory Agreement (herein, the "Regulatory Agreement") dated _____, 20__ by and between Borrower and the Secretary of Housing and Urban Development (herein, "HUD"); and (iv) any and all other documents required by Senior Lender and/or HUD in connection with, evidencing and/or securing the Senior Loan.

The Junior Lender, by acceptance of delivery and recordation of the Junior Mortgage, and the Borrower, by execution of the Junior Mortgage, agree to the following provisions incorporated in said Mortgage to the same extent as if fully rewritten therein:

1. The Junior Loan Documents and all amounts now and/or hereafter advanced thereunder and/or secured thereby are specifically subordinate to the Senior Loan Documents and all amounts now and/or hereafter advanced thereunder and/or secured thereby.
2. The Junior Note may not mature, and may not bear a maturity date, prior to the date on which the Senior Note matures. The term of the Junior Loan may be extended if the Junior Note matures, there are no surplus cash funds available for repayment and the Senior Loan has not been retired in full or HUD grants a deferment of amortization or forbearance that results in an extended maturity of

the Senior Loan.

3. The Junior Loan may be assumed when a sale or transfer of the physical assets occurs under the following conditions:
 - a. Not more than the excess, if any, of (i) 70 percent of the net proceeds of the sale or transfer is applied to the reduction of the Junior Loan over (ii) the amount paid on account of any other loans with respect to the Project which are junior to the Senior Loan but senior to the Junior Loan; provided, however, that if there are other loans which have the same priority as the Junior Loan, the foregoing amount shall be allocated pari passu among such loans based upon the total outstanding indebtedness of each.
 - b. As used herein, net proceeds are the funds available to the Borrower after:
4. Correcting any monetary or covenant default under any of the Senior Loan Documents, and
5. Making required contributions to any reserve funds and needed improvements to the Project as evidenced by HUD's annual inspection reports.
6. If HUD approves a sale of the project pursuant to HUD guidelines for transfers of physical assets, then Junior Lender will agree to such transfer of ownership of the project.
7. The Junior Note, Junior Mortgage and all other Junior Loan Documents automatically terminate if HUD acquires title to the project by foreclosure or a deed in lieu of foreclosure.
8. All work performed with the proceeds of the Junior Mortgage must be cost certified and conformed to Davis-Bacon requirements, if applicable in accordance with Program Obligations.
9. The Junior Mortgage is subject to and subordinate to the Senior Mortgage, the Regulatory Agreement and that certain Building Loan Agreement between the Borrower and Senior Lender.
10. Proceeds of the Junior Loan may only be used to cover allowable project costs or any anticipated operating shortfall.
11. As long as HUD or its successors or assigns is the insurer or holder of the Senior Mortgage, any payments due under the Junior Loan Documents shall be payable only from "surplus cash" (or "residual receipts") as that term is defined in the Regulatory Agreement and subject to the availability of such surplus cash (or residual receipts) in accordance with the provision of said Regulatory Agreement. The restriction on payment imposed by this paragraph shall not excuse any default caused by failure of the Borrower to pay the indebtedness evidenced by the Junior Note.
12. Borrower has obtained the prior written consent of the Senior Lender to the existence of the Junior Loan.
13. To the extent that the Junior Note provides for payments of principal and interest,

such principal and interest shall be due and payable on or after the maturity date of the Senior Loan, provided that if the Senior Loan is prepaid in full, to the extent otherwise provided in the Junior Loan Documents, the holder of the Junior Note, at its option upon 30 days notice, may declare the whole principal sum or any balance thereof, together with interest thereon, immediately due and payable. Interest due pursuant to the terms of the Junior Note that is not paid in accordance therewith shall not create any default in the terms of the Junior Note, but shall accrue and be payable in full at or after the date of maturity of the Senior Loan.

14. The Junior Note is non-negotiable and may not be sold, transferred, assigned, or pledged by the Junior Lender except with the prior written approval of HUD.
15. The Junior Lender certifies that the Junior Loan Documents represent a bona fide transaction and that it fully understands all of HUD's requirements for such secondary financing [add for nonprofit borrowers: "and that no prepayment of principal or interest shall be accepted without evidence that HUD has authorized such prepayment. If an unauthorized prepayment is accepted, the funds shall be held by the Junior Lender in trust for the Project"].
16. In the event of any conflict between (i) any of the Junior Loan Documents, and (ii) any of the Senior Loan Documents, the Section of the National Housing Act under which HUD insures the Senior Mortgage, and/or any applicable HUD rule, regulation or requirement (collectively, the "HUD Documents and Requirements"), the HUD Documents and Requirements shall be controlling in all respects.

JUNIOR LENDER:

a _____

By: _____

Name:
Title:

BORROWER:

a _____

By: _____

Name:
Title:

5.2 HUD-Required Provisions for Borrower's Organizational Documents

The Borrower entity's organizational formation document (partnership agreement, operating agreement, or by-laws, as applicable) must include provisions stating as follows, which provisions may automatically terminate when the loan no longer is insured or held by HUD:

1. If any of the provisions of the organizational documents conflict with the terms of the HUD-insured Note, Security Instrument, or HUD Regulatory Agreement ("HUD Loan Documents"), the provisions of the HUD Loan Documents shall control.
2. So long as HUD is the insurer or holder of the Note, no provision required by HUD to be inserted into the organizational documents may be amended without HUD's prior written approval.
3. None of the following will have any force or effect without the prior written consent of HUD:
 - a. Any amendment that modifies the term of Borrower's existence;
 - b. Any amendment that triggers application of the HUD previous participation certification requirements (as set forth in Form HUD-2530, Previous Participation Certification, or 24 C.F.R. § 200.210, et seq.);
 - c. Any amendment that in any way affects the HUD Loan Documents;
 - d. Any amendment that would authorize any member, partner, owner, officer or director, other than the one previously authorized by HUD, to bind the Borrower entity for all matters concerning the project which require HUD's consent or approval;
 - e. A change that is subject to the HUD TPA requirements contained in Chapter 13 of HUD Handbook 4350.1 REV-1, or that requires a vote of those who control the Borrower entity; or
 - f. Any change in a guarantor of any obligation to HUD (including those obligations arising from violations of the Regulatory Agreement).
4. The Borrower entity is authorized to execute a Note and Security Instrument in order to secure a loan to be insured by HUD and to execute the Regulatory Agreement and other documents required by the Secretary in connection with the HUD-insured loan.
5. Any incoming member/partner/owner of Borrower must as a condition of receiving an interest in the Borrower entity agree to be bound by the HUD Loan Documents and all other documents required in connection with the HUD-insured loan to the same extent and on the same terms as the other members/partners/owners.
6. Notwithstanding any other provisions, upon any dissolution, no title or right to

possession and control of the project, and no right to collect the rents from the project, shall pass to any person or entity that is not bound by the Regulatory Agreement in a manner satisfactory to HUD.

7. The key principals of the Borrower identified in the Regulatory Agreement are liable in their individual capacities to HUD to the extent set forth in the Regulatory Agreement.
8. The approved Borrower entity shall not voluntarily be dissolved or converted to another form of entity without the prior written approval of HUD.
9. The Borrower entity has designated _____ [insert name] as its official representative for all matters concerning the project that require HUD consent or approval. The signature of this representative will bind the Borrower entity in all such matters. The Borrower entity may from time to time appoint a new representative to perform this function, but within three business days of doing so, will provide HUD with written notification of the name, address, and telephone number of its new representative. When a person other than the person identified above has full or partial authority with respect to management of the project, the Borrower entity will promptly provide HUD with the name of that person and the nature of that person's management authority.
10. Unless otherwise approved in writing by HUD, the Borrower entity's business and purpose shall consist solely of the acquisition, ownership, operation and maintenance of FHA Project No. _____ [insert project number] (the "Project") located in _____ [insert name of City and State], and activities incidental thereto. Borrower shall not engage in any other business or activity. The project shall be the sole asset of the Borrower entity, which shall not own any other real estate other than the aforesaid project.
11. Notwithstanding any provision in this [Operating Agreement / Partnership Agreement / Bylaws] to the contrary, for so long as the Project is subject to a loan insured by HUD, any obligation of the [Corporation / Partnership / Limited Liability Company] to provide indemnification under this [Operating Agreement / Partnership Agreement / Bylaws] shall be limited to (i) coverage afforded under any liability insurance carried by the [Company / Partnership] and (ii) available "surplus cash" of the partnership as defined in the Regulatory Agreement.

5.3 HUD RIDER/AMENDMENT TO RESTRICTIVE COVENANTS

This [RIDER/AMENDMENT TO RESTRICTIVE COVENANTS] is made as of [_____, 20__], by _____ (“Borrower”) and _____ (“Agency”).

WHEREAS, Borrower has obtained financing from _____ (the “Lender”) for the benefit of the project known as _____ (the “Project”), which loan is secured by a [name of Security Instrument] (“Security Instrument”) dated as of _____, and recorded in the [Recorder’s Office] of _____ County, _____ (the “Records”) on _____ as Document Number _____, and is insured by the United States Department of Housing and Urban Development (“HUD”);

WHEREAS, Borrower has received [a loan / an allocation of Low Income Housing Tax Credits / _____] from the Agency, which Agency is requiring certain restrictions be recorded against the Project; and

[Whereas Borrower entered into that certain [_____] Declaration of Restrictive Covenants] (“Restrictive Covenants”) with respect to the Project, [more particularly described in Exhibit A attached hereto], dated as of [_____] and recorded in the;]

WHEREAS, HUD is requiring that the lien and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the Security Instrument; and]

WHEREAS, the Agency has agreed to subordinate the Restrictive Covenants to the lien of the Mortgage Loan in accordance with the terms of this [Rider/Amendment].

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

(a) In the event of any conflict between any provision contained elsewhere in the Restrictive Covenants and any provision contained in this Rider/Amendment, the provision contained in this Rider/Amendment shall govern and be controlling in all respects.

(b) The following terms shall have the following definitions:

"HUD" means the United States Department of Housing and Urban Development.

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

“Lender” means _____, its successors and assigns.

“Mortgage Loan” means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

“Mortgage Loan Documents” means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

“National Housing Act” means the National Housing Act of 1934, as amended.

“Program Obligations” has the meaning set forth in the Security Instrument.

“Security Instrument” means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

“Surplus Cash” has the meaning specified in the HUD Regulatory Agreement.

“Residual Receipts” has the meaning specified in the HUD Regulatory Agreement.

(c) Notwithstanding anything in the Restrictive Covenants to the contrary, except the requirements in 26 U.S.C. 42(h)(6)(E)(ii), the provisions hereof are expressly subordinate to (i) the Security Instrument, (ii) the HUD Regulatory Agreement and (iii) Program Obligations. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the Security Instrument, HUD Regulatory Agreement, or Program Obligations, the provisions of the Mortgage Loan Documents and Program Obligations shall control and supersede the enforcement of the Restrictive Covenants.

(d) In the event of foreclosure, the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically terminate, with the exception of the requirements of 26 U.S.C. 42(h)(6)(E)(ii) above, or as otherwise approved by HUD.

(e) Borrower and the Agency acknowledge that Borrower’s failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the terms of the Security Instrument, the HUD Regulatory Agreement, or any other document relating to the Mortgage Loan to Borrower for the Project, provided that, nothing herein limits the Agency’s ability to enforce the terms of the Restrictive Covenants to the extent not in conflict with the Mortgage Loan Documents or Program Obligations.

(f) [Except for the Agency’s reporting requirement,] in enforcing the Restrictive Covenants the Agency will not file any claim against the Project or any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

- i. Available surplus cash, if the Borrower is a for-profit entity;
- ii. Available distributions and residual receipts authorized for release by

- HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity.
- iv. [A HUD-approved collateral assignment of any HAP contract.]

(g) For so long as the Mortgage Loan is outstanding, Borrower and Agency shall not further amend the Restrictive Covenants without HUD's prior written consent.

(h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) [**Use only with Low-Income Tax Credits:** Borrower and Agency further agree that if at any time any covenant or restriction of this Amendment shall be determined by the Internal Revenue Service to be an event invalidating or terminating the award of low-income housing tax credits awarded to the Project, then in such event such covenant or restriction provided herein shall immediately and automatically terminate.] [**Use only with tax-exempt bonds:** No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.]

BORROWER:

AGENCY:

By:

By:

Name:
Title:

Name:
Title:

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this _____, _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of _____ for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

Notary Public

STATE OF _____
COUNTY OF _____

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this _____, _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of _____ for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

Notary Public

[Attach Exhibit A – Legal Description]

5.4 Survey Affidavit of No Change

State of _____
County of _____

The undersigned ("Affiant") being first duly sworn on oath does hereby depose, represent and say to the U.S. Department of Housing and Urban Development ("HUD"): as follows:

Affiant is the _____ of _____ ("Borrower") and is fully and well acquainted and knowledgeable concerning the physical characteristics and condition of the real estate legally described on Exhibit A attached hereto and made a part hereof and the buildings, structures and improvements (collectively the "Improvements") located thereon;

Said real estate and Improvements are part of the HUD Project named _____ and designated HUD Project Number _____;

On _____, _____ ("Surveyor") surveyed said real estate and Improvements and produced a written survey dated _____ and identified as job, survey or order number _____ of the surveying firm of _____ whose address is _____

("Survey"). On _____ an original of said Survey was delivered to HUD;

On _____, the Affiant reviewed said Survey and physically inspected said real estate and Improvements including, without limitation, the perimeter boundaries of said real estate;

The Survey accurately and fully depicts the observable physical conditions of said real estate and the location and condition of all Improvements and any above ground physical indicia of any easements, licenses, roadways, paths or other physical usage located on said real estate as of _____ [the date of Affiant's said inspection] including, without limitation, all encroachments thereof on or into easements and set back lines and by Improvements primarily located on adjoining real estate onto the real estate described on Exhibit A hereto; EXCEPT [if none, state "NONE"] _____.

Affiant hereby certifies that the statements and representations contained in this instrument and all supporting documentation thereto are true, accurate, and complete. This instrument has been made, presented, and delivered for the purpose of influencing an official action of HUD in insuring a multifamily loan, and may be relied upon by HUD as a true statement of the facts contained therein.

AFFIANT:

By:

Name:

Title:

Date:

Warning: Any person who knowingly presents a false, fictitious or fraudulent statement or claim in a matter within the jurisdiction of the U.S. Department of Housing and Urban Development is subject to criminal penalties, civil liability, and administrative sanctions, including but not limited to: (i) fines and imprisonment under 18 U.S.C. §§ 287, 1001, 1010, and 1012; (ii) civil penalties and damages under 31 U.S.C. § 3729; and (iii) administrative sanctions, claims and penalties under 24 C.F.R. parts 24, 28, and 30.

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that _____, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and severally acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and purposes therein set forth.

GIVEN under my hand and official seal this _____ day of _____, 20__.

Notary Public
(SEAL)

5.5 Amendment to the Construction Contract for Payment for Components Stored Offsite

- A. The undersigned as Contractor and as Owner will abide by the following conditions to induce the Commissioner to release mortgage loan proceeds for the payment of components stored offsite.
1. The components stored offsite that will be recognized for payment under Article 3.B(3) of the contract are those listed and approved by HUD as an appendix to the Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-2328, attached to the Contract as Exhibit "A". The appendix must provide an inventory of the "stored components" and a breakdown of the line item of which the stored components are a part. The breakdown must state:
 - a. Cost of Components (Invoice Value),
 - b. Cost of transportation from offsite storage location to the construction site,
 - c. Cost of Installation, and
 - d. Costs of any other items included in the line item.
 2. The Contractor is responsible for:
 - a. All direct and indirect costs associated with the storage and transportation of components stored offsite.
 - b. Obtaining a risk of loss insurance policy which covers the components during storage, in transit and until installed at the project site. The policy must name the Borrower, Lender and the Commissioner as their interest may appear. Evidence of the existence of this insurance must be submitted to HUD prior to the approval of any advance for components stored offsite.
 - c. Assuring to the satisfaction of HUD proper identification and segregation of components while in storage and protection of components while in storage and transportation.
 - d. Securing from the borrower or lender all necessary security agreements, copies of financing statements, and documentation pertaining to first lien warranties, and submitting them with the request for payment.
 - e. Providing corporate surety bonds for on-site improvements on Form FHA-2452 for payment and performance bonds, each equaling 100 percent of the HUD estimate of construction or rehabilitation cost.
 3. All requests for payment for components stored offsite must be submitted by the Contractor on Form HUD-92448, Contractor's Requisition, accompanied by the following:
 - a. A statement from the Architect certifying that:
 - b. He/she has visited the storage site and has inspected the components for which payment has been requested.

- i. The components are in good condition and they comply with the contract requirement,
 - ii. The components are properly stored and protected,
 - iii. The components are segregated in an easily identified manner from other materials stored at the same site and are marked for identification.
- c. A bill of sale accompanied by an itemized invoice transferring title of the components to the borrower.
- d. A copy of the security agreement provided to the lender by the borrower.
- e. A copy of the financing statement filed by the lender in accordance with the Uniform Commercial Code.
- f. A warranty from the lender that the security instruments requested a first lien on the building components.
- g. An opinion from the lender's attorney that he/she has reviewed the security agreement and associated documents relative to the components for which advance are sought and that the security agreement creates a valid security interest in the collateral and that when the financing statement is duly filed, the secured party will have the first lien.

4. Restrictions

- a. Payments for components stored offsite shall be limited to the cost of components (Invoice Value) identified in the HUD approved appendix to the Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-2238, attached to the Contract as Exhibit "A," and shall be subject to a 10 percent holdback.
- b. In no case shall a payment be approved for components stored offsite to a contractor whose performance, in the judgment of the HUD Field Office Manager, is marked by serious deviations from the contract documents.
- c. At no time may the outstanding amount of insured advances for components stored offsite exceed 50 percent of the total estimated construction costs as specified in the construction contract.
- d. The minimum amount for any single advance is \$10,000.

OWNER

By: _____

Name:
Title:
Date:

CONTRACTOR

By: _____

Name:
Title:
Date:

5.6 Certification of Architectural/Engineering Fees

TO: Assistant Secretary-Federal Housing Commissioner

C/O: _____

Dear _____:

The undersigned hereby certifies that all architectural, engineering, drafting, land surveyor, testing, laboratory and related services fees and fee balances for the analysis of the property, preparation of reports, and for the project design and preparation of plans and specifications have been fully paid, except as listed below. The undersigned further certifies that there are no other disputed or undisputed claims for such services.

FIRM _____
SERVICE _____
FEE _____
BALANCE _____

FIRM _____
SERVICE _____
FEE _____
BALANCE _____

FIRM _____
SERVICE _____
FEE _____
BALANCE _____

5.7 Payee Certification

(To be attached to Bridge Loan Note)

Anything in this Note to the contrary notwithstanding, by acceptance of this Note, the Payee, for itself and its successor and assigns, hereby acknowledges, stipulates and agrees that so long as the United States Department of Housing and Urban Development (“HUD”) is the insurer or holder of that certain Mortgage Loan between the Maker and _____ [insert name of HUD lender], (the “Lender”), in the original principal amount of \$_____ [insert loan amount], (the “Mortgage Loan”), FHA Project No. _____ [insert FHA No.], (the “Project”), to be developed, constructed and operated by the Maker:

- a. this Note shall be nonrecourse to the Maker;
- b. the Payee shall have no claim against the Maker by reason of any default hereunder, nor shall the Payee assert any lien against the Maker, the mortgage loan proceeds, the Mortgaged Property, any reserve deposited under the Mortgage Loan, or the rents or other income from the Project by reason of any default hereunder;
- c. the obligations of the Maker shall terminate automatically following acquisition of title to the Project by HUD pursuant to a foreclosure or deed in lieu of foreclosure; and
- d. upon a transfer of physical assets with respect to the Mortgaged Property, this Note must be paid in full.

The foregoing shall not affect any remedy that the Payee may have against any guarantor of this Note or with respect to any reserve held by the Payee as security for this Note, nor any rights against Maker from and after the date on which the Mortgage Loan is no longer held or insured by HUD.

The limitations agreed to by the undersigned shall be incorporated by reference in the Note.

Warning – HUD will prosecute false claims and statements. Conviction may result in criminal and/or civil penalties. (18 U.S.C. 1001, 1012; 31 U.S.C. 3729, 3802)

By: _____
Name:
Title:

5.8 Building Code Certification

This will confirm that an apartment project known as _____, located at _____, built in _____, and consisting of _____ units, which are housed in _____ buildings and situated on _____ acres (_____ square feet), was built in accordance with the applicable codes at the time of construction and has no code violations on record, except for: [Specify violation, remedy, and status (open/closed). If none, write "None."]

GOVERNING AUTHORITY:

By: _____
Name: _____
Title: _____
Date: _____
Phone: () _____

This certification should be signed by an individual with supervisory responsibility, such as the Chief Planner, *etc.*

An inspection of the project is not required.

The intent of this certification is to notify HUD that the project, as it stands today, is not under the scrutiny of the governing authority and does not have any violations recorded against it which jeopardize the project's existence. If any violations have existed or do exist, the governing authority should specify the violation and the remedial action taken or required.

Your assistance in this matter is greatly appreciated.

5.9 Zoning Certification

This will confirm that an apartment project known as _____, located at _____, built in _____, and consisting of _____ units, which are housed in _____ buildings and situated on _____ acres (_____ square feet), was adequately zoned as a multifamily project at the time of occupancy and that there are no zoning violations on record, except for: [Specify violation, remedy, and status (open/closed). If none, write "None."]

GOVERNING AUTHORITY:

By: _____
Name: _____
Title: _____
Date: _____
Phone: () _____

This certification should be signed by an individual with supervisory responsibility, such as the Chief Planner, *etc.*

An inspection of the project is not required.

The intent of this certification is to notify HUD that the project, as it stands today, is not under the scrutiny of the governing authority and does not have any violations recorded against it which jeopardize the project's existence. If any violations have or do exist, the governing authority should specify the violation and the remedial action taken or required.

Your assistance in this matter is greatly appreciated.

5.10 Third Party Obligee Certification

[Address to Hub Director]

Dear _____:

The undersigned hereby certifies that, under an agreement dated _____ between the undersigned and _____, a discount or other financing charge of \$ _____ in addition to the initial service charge will be paid by _____.

The undersigned does not now have and will not later assert any claim against the borrower, Mortgaged Property, mortgage loan proceeds, any reserve or deposit made with the undersigned or another required by HUD in connection with the mortgage transaction, or against the rents or other income from the Mortgaged Property for payment of any part of such discount.

LENDER:

By: _____
Name:
Title:
Date:

The undersigned does not now have and will not later assert any claim against the borrower, Mortgaged Property, mortgage loan proceeds, any reserve or deposit made with the undersigned or another required by HUD in connection with the mortgage transaction, or against the rents or other income from the Mortgaged Property for payment of any part of such discount.

THIRD PARTY:

By: _____
Name:
Title:
Date: