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# Section III Asset Management

## Chapter 7

### ~~Change in Ownership:~~ ~~Transfer of Physical~~ ~~Assets~~Participants

#### 7.1

#### Introduction

10  
11 ~~A full Transfer of Physical Assets (“TPA”) is a sale or conveyance by deed of a property that has~~  
12 ~~a mortgage insured or held by HUD. A modified TPA is a conveyance of certain interests in~~  
13 ~~entities owning an FHA insured project. This chapter applies to all transactions involving the~~  
14 ~~transfer of all or part of an interest in the ownership of such properties.~~

15  
16 ~~This chapter~~Change of Participant transactions (also called CHOPs in ORCF) encompass three  
17 types of application submissions: Change of Borrower (formerly known as a Transfer of  
18 Physical Assets or TPA), Change of Operator, and Change of Management Agent. This chapter  
19 will cover the procedures for processing changes in all three entity types. A CHOP transaction  
20 is required for any proposed change to a Controlling Participant, as defined in Housing Notice H  
21 16-15 or any successor Notice.

22  
23 As used in this Chapter, “Principal” or “Participant” are used interchangeably with “Controlling  
24 Participant” as defined in 24 C.F.R. 200 Subpart H, Housing Notice H 16-15, and any successors  
25 thereto.

26  
27 In the application for a Change of Participants, Lenders should disclose any matter that could be  
28 of reputational risk (financial or other material risk) for any participant in the project whether  
29 they are a Controlling Participant or not. This Chapter lays out the procedures that all parties  
30 will follow to ensure that new participants are appropriately vetted and obligated to perform the  
31 duties and responsibilities required by HUD.~~The chapter will also outline the applicability~~  
32 ~~requirements to HUD’s programs and outline the delegation of responsibilities for HUD’s staff. The~~  
33 ~~criteria to determine a project’s and Borrower’s eligibility for a transfer of assets is outlined in detail and~~  
34 ~~directions are provided for certain relationships involving multiple commitments.~~

35  
36 The removal of or change in capacity of a Controlling Participant also requires HUD review and  
37 approval (i.e. of updated Org Docs, APPS, Consolidated Certifications) though ORCF’s review  
38 will be more limited than a CHOP.

40 When a facility is facing exigent circumstances, it may be necessary to make changes to the  
 41 participants (Borrower, Master Tenant, Operator or Management Agents). ORCF and the  
 42 Mortgagee/Servicer expect to be notified immediately and will work expeditiously to review the  
 43 CHOP submission in accordance with this section and pursuant to any related discussions with  
 44 ORCF.  
 45  
 46

**7.2**

**CHOP Application**

47  
 48 Each CHOP transaction will have one or more transaction codes as follows:

<u>Transaction Code</u>	<u>Description</u>
<u>(1)</u>	<u>Change of Borrower (entity)</u>
<u>(2)</u>	<u>Change of Borrower’s Controlling Participant(s)</u>
<u>(3)</u>	<u>Change of Borrower’s Internal Revenue Service (IRS) reporting structure (i.e. Borrower is converting from LP to LLC but all Controlling Participants remain the same)</u>
<u>(4)</u>	<u>Change of Operator, Operator's Controlling Participant(s), Master Tenant, or Master Tenant's Controlling Participant(s)</u>
<u>(5)</u>	<u>Change of Management Agent</u>
<u>(6)</u>	<u>Change of Management Agent’s Controlling Participants</u>

49  
 50 For the CHOP application, the parties must submit the documents provided in the checklist that  
 51 correspond to the appropriate transaction code:

<u>Type of Transaction</u>	<u>Change of Borrower: (1), (2), or (3) (can also include (4) (5) or (6))</u>	<u>Change of Operator: (4) (can also include (5) or (6))</u>	<u>Change of Management Agent: (5) or (6) only</u>
<u>Checklist</u>	<u>Change of Borrower Checklist</u>	<u>Change of Operator Checklist</u>	<u>Change of Management Agent Checklist</u>
<u>Lender’s Narrative</u>	<u>HUD-92266-ORCF</u>	<u>HUD-92266A-ORCF</u>	<u>HUD-92266B-ORCF</u>

52  
 53 Submissions herein must be assembled, reviewed for completeness, accuracy and eligibility, and  
 54 submitted by the Mortgagee/Servicer to ORCF with a recommendation for approval. A  
 55 checklistThe checklists of the required application exhibits, which include the Lender Narrative,

56 as well as the instructions for submitting the application ~~is~~are posted on the Section 232 Program  
57 Loan Servicing website.

## 7.2

## Applicability

60  
61 ~~A. Transactions requiring HUD's **full review** of a project, its current Borrower, and the~~  
62 ~~qualifications of the new controlling entity include, but are not limited to, projects~~  
63 ~~demonstrating the following characteristics:~~

- 64  
65 ~~1. Transfer of title from the Borrower entity to a buyer, including conveyance by~~  
66 ~~installment sales contract, land contract, or wrap-around mortgage;~~
- 67  
68 ~~2. Transfer of any interest in a partnership Borrower that causes a dissolution of the~~  
69 ~~partnership under applicable state law;~~
- 70  
71 ~~3. Transfer of the beneficial interest in a passive trust that results in a change in control~~  
72 ~~and management of the asset, although legal title remains in the trustee.~~

73  
74 ~~B. HUD requires a **modified review** of certain transactions involving transfers of interests in~~  
75 ~~entities owning properties with the following characteristics:~~

- 76  
77 ~~1. Any transfer of partnership interests in excess of 50% that do not cause a dissolution~~  
78 ~~of the existing partnership under applicable law, as certified by an attorney who has~~  
79 ~~no identity of interest with the partnership and is licensed to practice law in the state~~  
80 ~~where the partnership is organized;~~
- 81  
82 ~~2. Addition or substitution of a managing or controlling member in a Limited Liability~~  
83 ~~Company (LLC);~~
- 84  
85 ~~3. The substitution of one or more of the general partner(s) of a limited partnership~~  
86 ~~Borrower that does not cause a dissolution of the existing partnership under~~  
87 ~~applicable law, as certified by an attorney who has no identity of interest with the~~  
88 ~~partnership and is licensed to practice law in the state where the project is located;~~
- 89  
90 ~~4. A transfer of stock of a corporate general partner of a partnership where such transfer~~  
91 ~~results in one person or entity controlling in excess of 50% of the stock of a publicly~~  
92 ~~traded entity or closely held corporation, where such transfer results in a change of~~  
93 ~~control of the corporate general partner;~~
- 94  
95 ~~5. A transfer of stock of a corporate Borrower where such transfer results in one person~~  
96 ~~or entity, other than the original controlling entity, controlling stock in excess of 50%,~~  
97 ~~or an amount less than 50% where such a transfer results in a change of control of the~~  
98 ~~corporate Borrower; and~~

100 6. ~~Transfer of a beneficial interest in a passive trust that does not result in a change in~~  
101 ~~control of the property.~~

102  
103 7. ~~Other entities not falling into categories above, where the managing control is~~  
104 ~~changing (for example, a change to a corporate officer or voting board member of a~~  
105 ~~non-profit corporation).~~

106  
107 ~~C. TPA Light Reviews include, but are not limited to, transactions with the following~~  
108 ~~characteristic:~~

109  
110 ~~Change of Internal Revenue Services (IRS) Reporting Structure, i.e. when a Borrower(s) changes~~  
111 ~~from Limited Partner (LP) to LLC but all principals remain the same and the Tax Identification~~  
112 ~~Number is not changing.~~

113  
114 ~~D. When faced with a transaction that does not fall clearly into the definition of a TPA, but~~  
115 ~~ORCF believes warrants HUD review, a TPA Application may be required. After addressing~~  
116 ~~the following questions, ORCF will determine whether or not a modified review or full~~  
117 ~~review will be performed:~~

118  
119 1. ~~Will there be a change in the control of the project ownership?~~

120  
121 2. ~~Will a significant sum of money (any amount that exceeds 10% of the original~~  
122 ~~insured loan amount), change hands in conjunction with the transaction?~~

123  
124 ~~Note that a change to ownership entities/structure can be done in conjunction with a Section~~  
125 ~~232 refinance under Section 223(a)(7) of the National Housing Act. In this situation, the~~  
126 ~~required exhibits for the processing of this change are listed on the Section 223(a)(7) Firm~~  
127 ~~Application Checklist posted on the Section 232 Program website.~~

128  
129 ~~E. A change to ownership entities/structure is also possible prior to the final closing of an~~  
130 ~~insured Note for new FHA mortgage insurance. Such situations should be discussed with the~~  
131 ~~ORCF Closer; ORCF may choose to re-process the application for Mortgage Insurance or~~  
132 ~~require a TPA (depending upon the extent of the change).~~

133  
134 ~~F. On occasion, there will be changes within the second, third or even higher levels of an FHA~~  
135 ~~project owner; these various levels of ownership are referred to as "tiers." These changes~~  
136 ~~need to be reviewed with the Account Executive (AE) to determine if the transaction is~~  
137 ~~considered a TPA and falls into one of the categories above or if another form of review is~~  
138 ~~required. Any changes in the higher levels of ownership (tiers) must be reported to HUD,~~  
139 ~~along with a summary of the transaction and organizational charts (please reference Housing~~  
140 ~~Notice H 2016-15 or successors thereto). HUD will determine what will be required in these~~  
141 ~~situations, as well as the type of review.~~

## 7.3

## Transfer Fees

144  
145 ~~The~~For a Change of Borrower transaction, the Department imposes a fee of \$0.50 per \$1,000 of  
146 the original face amount of the mortgage to cover the costs of administrative, legal, and fiscal  
147 actions that a review entails. ~~Substitution of principals that result in a change in control of the~~  
148 ~~project (regardless of whether a change in ownership will occur (i.e., the single asset entity~~  
149 ~~Borrower remains the same)) will be subject to the application fee. Applications received for a~~  
150 ~~full review~~Applications that are not accompanied by the proper fee will be returned without  
151 review. For applications that are reviewed by HUD and subsequently withdrawn, the fee paid to  
152 HUD will be considered earned and non-refundable.

153  
154 ~~A. Transactions Not Requiring a Transfer Fee:~~

- 155  
156 1. ~~Substitution of principals, if the assignment does not result in a change in the control~~  
157 ~~of the project;~~  
158  
159 2. ~~Transactions where both parties to the transfer are non-profit purchasers;~~  
160  
161 3. ~~Assignment of the beneficial interest in a trust that holds title to the project if the~~  
162 ~~assignment does not result in a change in the control of the project; and~~

163  
164 A. ~~A TPA Application Fee~~An application fee is not required ~~when for all CHOP's with~~  
165 ~~transaction codes (1) and (2), unless~~ the new owner is obtaining a new FHA-insured  
166 mortgage at the time of the transfer, ~~or both parties to the transaction are non-profit entities.~~  
167 ~~A fee is not charged to process a change in Borrower type (3), Operator (4) or Management~~  
168 ~~Agent (5). See 24 C.F.R. 200.40(h).~~

169  
170 B. ~~Certain complex~~Complex transactions ~~involving with~~ multiple transfers ~~impacting a single~~  
171 ~~project~~ may be subject to more than one ~~TPA application~~ fee.

- 172  
173 1. With transactions involving two transfers of title by deed, ~~the Director of Asset~~  
174 ~~Management~~ORCF will determine whether a second fee is required after consulting  
175 with Field Counsel.  
176  
177 2. If the Director of Asset Management determines that a transaction or series of  
178 transactions have been structured to avoid paying the application fee, the ~~TPA~~  
179 application will be rejected and new application(s) will not be accepted until the  
180 required application fee(s) have been paid. ———

181  
182 ~~B. The same application fee is required for a transfer of interest requiring a modified review if~~  
183 ~~the proposed transaction involves: (a) a transfer of more than fifty percent (50%) of the~~  
184 ~~partnership (or limited partnership) interests of a Borrower; (b) a transfer of more than fifty~~  
185 ~~percent (50%) of the corporate stock (or shares) of a Borrower; or (c) a transfer of the~~  
186 ~~corporate stock (or shares) of a Borrower that constitutes a change in control of such entity.~~

## 7.4

## Approval Authority

189  
190 A ~~full TPA~~Change of Participant transaction includes ~~an initial (sometimes referred to as a~~  
191 ~~preliminary)~~ and a final approval stage. The initial preliminary approval ~~of a full TPA~~ provides  
192 the assignee with all HUD approvals needed for ~~the deed to be transferred and~~ the transaction to  
193 be completed. ORCF will not grant approvals that are conditioned upon commitments being  
194 issued from other sources. In limited circumstances, HUD has the discretion to issue a letter that  
195 acknowledges (if required by a third party) that once all TPACHOP requirements have been  
196 satisfied, a preliminary approval letter will be issued.  
197  
198

## 7.5

## Initial and Final Approval Actions

- 199  
200 A. Initial Preliminary and final approval authority rests with ~~the~~ ORCF.  
201  
202 B. ~~ORCF will review the Application for Transfer of Physical Assets (TPA) (Form HUD-~~  
203 ~~92266-ORCF) and all accompanying documentation.~~ At the end of the ORCF's review  
204 ~~process~~, if the ~~attached instruments are found to be in order, and the~~ transfer proposal is  
205 acceptable, HUD will issue a letter granting initial preliminary approval of the application.  
206 This approval may be conditioned upon ~~any ORCF requirement plus necessary changes in~~  
207 ~~the submitted documents, if any~~ certain ORCF requirements being met to receive ORCF's  
208 final approval, and will authorize the execution of all remaining required ~~instruments-~~  
209 ~~documents~~. It is at this point that the parties to the transaction are authorized to transfer  
210 ~~possession of and beneficial interest in~~ the project. The purchaser is not authorized to  
211 transfer any interest in, take possession of, or assume the burdens and benefits of ownership  
212 without the written approval of ORCF.  
213

214 After the initial preliminary approval letter is issued, the ~~real estate~~ transaction can close, and  
215 all ~~of~~ the documents approved by HUD can be executed and recorded along with any  
216 additional items included in the initial approval letter. ~~The TPA~~  
217

- 218 C. For final approval, certified copies of all executed and/or recorded documents, along with  
219 any additional items required in the preliminary approval letter, together with the final  
220 documents that were reviewed by HUD prior to preliminary approval, must be provided to  
221 the AE within 45 calendar days from the date of the letter of preliminary approval, unless  
222 additional time is granted by ORCF in writing. The Change of Participant transaction may  
223 be completed based upon a certification by the applicant's attorney that the documents to be  
224 executed and recorded are exactly as approved by HUD. ~~The form of the required~~  
225 ~~certification is "Attorney's Certification on Execution and Recordation" (See Appendix 7.1).~~  
226  
227 ~~D. For final approval, certified copies of all executed and/or recorded documents, along with~~  
228 ~~any additional items required in the initial approval letter, together with the final documents~~  
229 ~~that were reviewed by HUD prior to initial approval, must be provided to the AE within 45~~  
230 ~~working days from the date of the letter of initial approval, unless additional time is granted~~  
231 ~~by ORCF in writing.~~

232  
233 ~~E.D. ORCF may grant final approval of the TPA~~ORCF will grant final approval of the Change  
234 ~~of Participant transaction~~ after it has approved the final documents and determined that any  
235 additional requirements included in the ~~initial~~preliminary approval letter have been met.

236  
237 ~~F.E. Records in HUD's database~~Historical records associated with the ~~Property ID~~subject  
238 ~~project will stay~~remain in HUD's database upon completion of the ~~same~~CHOP. There will  
239 also be no change in the FHA loan number ~~or the project's Property ID~~.

240  
241 ~~G. The Financial Assessment System (FASS) date is the date of legal ownership change (which~~  
242 ~~is either the date the deed is signed or recorded, as dictated by state law). This date must be~~  
243 ~~entered into FASS as soon as HUD is aware of the legal transfer. FASS will automatically~~  
244 ~~calculate the reporting periods for old and new Borrowers. However, at the time of filing of~~  
245 ~~the first financial return for the new Borrower, the auditor may need to call FASS Technical~~  
246 ~~Assistance and request help with changing the reporting period in the filing template that~~  
247 ~~they use. Please refer to iREMS User Guide for complete details for transferring the~~  
248 ~~property. After the transfer the HUD database is required to be updated with the new~~  
249 ~~Borrower information, Operator, or management information depending upon the~~  
250 ~~transaction.~~

251  
252 ~~H. It should be noted that the previous Borrower is not relieved of the obligation to file a final~~  
253 ~~financial statement from the start of their fiscal year to the day of legal ownership change.~~  
254 ~~The recording of new documents shall not release sellers of liability for pre-transfer~~  
255 ~~violations of their Regulatory Agreements or for (1) funds or property coming into their~~  
256 ~~hands which, by the provisions thereof, they are not entitled to retain; and (2) for their own~~  
257 ~~acts and deeds or acts and deeds of others that they have authorized in violation of the~~  
258 ~~provisions thereof.~~

## 7.6

### Procedures for Processing a **Full TPA** **Review**Change of Participants Application

262  
263 ~~After submission of the initial TPA application, as described above, the Mortgagee/Service~~er shall  
264 ~~contact HUD to schedule a conference call between the assigned AE, the prospective Borrower,~~  
265 ~~and the Mortgagee/Service~~er. Please see the TPA checklist on the Section 232 Program website.

266  
267 ~~A. The following items need to be discussed in the initial conference call:~~

- 268  
269 1. ~~Nature of the transaction,~~
- 270 2. ~~Organizational charts that describe the transaction (highly important);~~
- 271 3. ~~Identification of the type of TPA transaction,~~
- 272 4. ~~The applicable checklists and appendices to this chapter,~~
- 273 5. ~~Application requirements,~~
- 274 6. ~~The project's current physical and financial condition,~~

- 275 7. ~~Special considerations, such as accounts receivable financing and/or master lease~~  
276 ~~requirements, and~~  
277 8. ~~Experience of the new Borrower and its principals.~~  
278

279 ~~Based on project data and history, the AE will review and assess each of the items in this section~~  
280 ~~to determine the extent of review necessary provided in the application submission to achieve a~~  
281 ~~thorough understanding of the Borrower's proposed transaction. All project files must be~~  
282 ~~reviewed to evaluate the Borrower and proposed Lessee/Management Agent's Controlling~~  
283 ~~Participant's previous performance and acceptability, the Lessee/Management Agent operations,~~  
284 ~~financial compliance and performance and physical condition of the project using available data,~~  
285 ~~such as Center for Medicare & Medicaid Services (CMS) star rating, and survey performance~~  
286 ~~data. If necessary, new or additional data must be gathered, being mindful that~~  
287 ~~Lessee/Management Agent, physical plant and financial operations are interrelated. If problems~~  
288 ~~exist, they must be identified in the application, along with proposals to adequately address the~~  
289 ~~problems through the TPA process.~~  
290

291 ~~Processing a. The review entails communications with buyers, sellers, counsel for buyers and~~  
292 ~~sellers, and the AE. It is imperative that replies are made as quickly as possible.~~  
293

#### 294 ~~B. Project Records~~

295  
296 A. ~~The review and will include, but not be limited to, analysis begins with a thorough~~  
297 ~~examination of the project records and database information, including Center for Medicare~~  
298 ~~& Medicaid Services (CMS) and Nursing Survey Risk Reports, as applicable. If the physical~~  
299 ~~condition data is outdated, the star rating is less than two stars, the Survey Risk Reports~~  
300 ~~rating is high, or there is serious recurring or unresolved compliance or performance~~  
301 ~~problems, a risk management plan must be provided as an exhibit in the TPA application. of~~  
302 ~~the following:~~  
303

- 304 1. The physical, financial and management operations must be fully acceptable, or  
305 immediate corrections ~~are~~ must be proposed and funded that are acceptable to ORCF.  
306 Evaluation of any new Controlling Participants will follow the  
307 Department requirements outlined in Section II, Chapter 6.1 A-M of this Handbook.  
308
- 309 2. Capital improvement needs will be evaluated, and conditions may be imposed by ~~the~~  
310 ORCF to ensure all capital repairs, upgrades, and replacements are made. ~~A~~ If ORCF  
311 determines repairs are required, a Borrower Certification addressing when such work  
312 will be accomplished must be provided.  
313
- 314 3. All known noncompliance and operating performance issues will be shared with the  
315 Borrower Participant as soon as possible after the AE receives the transfer CHOP  
316 application. ~~The Borrower must clearly understand that~~ If there are any issues,  
317 addressing each item to ~~the~~ ORCF's satisfaction ~~of the Department will be~~ is required  
318 for ~~initial~~ ORCF's preliminary approval.  
319

320 4. Center for Medicare & Medicaid Services (CMS) and Nursing Survey Risk Reports,  
321 as applicable, will be reviewed.

322  
323 5. The application documents must be approved by the Office of General Counsel  
324 (OGC). The AE and the HUD field attorney shall simultaneously review the  
325 application based on the criteria set forth in this Handbook. If the proposed  
326 transaction is deemed acceptable by HUD, ORCF will issue a preliminary approval  
327 letter to the applicant. If the proposed transaction is unacceptable, the applicant shall  
328 be notified accordingly and provided the reasons for such rejection.

329  
330 NOTE: If the TPA Change of Participant includes a change in the Operator entity, then the  
331 process CHOP will require the implementation of a new Healthcare Regulatory Agreement –  
332 Operator (Form HUD-92466A-ORCF). This form includes requirements for a Risk  
333 Management Program in Paragraph 7, and is applicable to all new Operators, irrespective of  
334 compliance or performance risks detailed above.

335  
336 ~~C. Proposed Owner/Operator/Management Agent~~

337  
338 ~~1. Previous Participation Review. Controlling Participants, as defined in Housing~~  
339 ~~Notice H-2016-15 (or successors thereto), must file a Previous Participation~~  
340 ~~Certification either via the Active Partners Performance System (APPS) or via the~~  
341 ~~Consolidated Certification. Detailed information on the Previous Participation~~  
342 ~~Review process is found in the above CFR Subpart, and the associated Processing~~  
343 ~~Guide.~~

344  
345 ~~2. Requisite Experience. Prospective owners must satisfy ORCF that they bring~~  
346 ~~sufficient experience and lessee/management expertise to successfully operate the~~  
347 ~~project. HUD requires that a minimum of three years of owning, and/or operating~~  
348 ~~similar or relevant projects be demonstrated for each of these entities. For a troubled~~  
349 ~~project, ORCF will require an experienced Owner/Operator who has demonstrated~~  
350 ~~the ability to successfully own and manage troubled projects. In cases where there~~  
351 ~~will be significant repairs and/or upgrades, the prospective owner/managing entity~~  
352 ~~must have sufficient experience, capability and capacity to timely complete the~~  
353 ~~rehabilitation requirements.~~

354  
355 ~~3. All organization documents that affect the transfer, including but not limited to the~~  
356 ~~establishment of the new purchasing entity, alterations to existing ownership~~  
357 ~~documents, lessee/management agreements, etc., must be reviewed to assure that~~  
358 ~~none of the provisions of those documents conflict with HUD contracts, regulations~~  
359 ~~or statutes.~~

360  
361 ~~C. Procedures and Requirements for:~~

362 B. Additionally, as applicable, procedures and requirements for the following will also be  
363 reviewed:

365 1. Accounts Receivable Financing, see Production, Chapter 15 and Asset Management,  
366 Chapter 10;

367  
368 ~~2. Master Lease, (new, modified, or releases/terminations), see Production, Chapter 13~~  
369 ~~and Asset Management, Chapter 9.~~

370  
371 ~~3.2. Operating If a CHOP transaction impacts the structure of a Master Lease and/or~~  
372 ~~Management Agreement, see Asset Management, Chapter 8; and, the Lender should~~  
373 ~~utilize the appropriate CHOP checklist to submit the requested modifications to the~~  
374 ~~Master Lease.~~

375  
376 ~~4.3. Project Capital Needs Assessment (PCNA), see Asset Management, Chapter 3.~~

377  
378 ~~Legal Review of TPA Proposals by Office of General Counsel (OGC). The AE and the HUD~~  
379 ~~Attorney shall simultaneously review the application based on the criteria set forth in this~~  
380 ~~handbook. If the proposed transaction is deemed acceptable by HUD, a preliminary approval~~  
381 ~~letter shall be transmitted to the applicant.~~

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## 7.7

### Use of New Forms Required

382  
383 For CHOP transactions, incoming entities are generally required to execute the newest version of  
384 the HUD forms. This policy assists in ORCF's enforcement of "Program Obligations" which is  
385 defined as a live requirement in the Regulatory Agreements. For all project-specific documents,  
386 the newest OMB version must be used except where noted otherwise on the CHOP checklist or  
387 approved by HUD. Documents that are shared across multiple projects (Master Lease and Cross-  
388 Default Guaranty) generally do not have to be re-executed on a new form."

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## 7.8

### Court Orders/Inheritances

391  
392 If there is a change in ownership of the Borrower, Operator, Master Tenant, Management Agent,  
393 or any controlling participants therein, that is the result of a court order or inheritance, ORCF  
394 will require the Lender to submit a CHOP application within 60 calendar days of the court  
395 order/inheritance effective date. While HUD's Previous Participation regulation at 24 CFR  
396 200.220(a)(2) prohibits HUD from requiring a Previous Participation review for transfers that  
397 occur due to inheritance or court order, all other CHOP exhibits should be submitted so that  
398 ORCF can obtain updated business agreements, organizational documents, review healthcare  
399 experience and credit worthiness, as applicable. The CHOP will not be subject to  
400 approval/disapproval due to the court order/inheritance, but the review of the CHOP application  
401 will provide ORCF the opportunity to consider risk mitigation strategies, such as requiring a  
402 third part Risk Assessment or monthly financial reporting, when deemed necessary. Please also  
403 note that the guidance above applies only to the initial involuntary transfer occurring by  
404 operation of law (such as court order or inheritance). If the parties subsequently execute a  
405 voluntary transfer after the initial involuntary one, ORCF does have the right to require a full  
406 CHOP submission for the subsequent transfer.

407 ~~4.1. If the proposed transaction is unacceptable, the applicant shall be notified accordingly~~  
408 ~~and provided the reasons for such rejection.~~

409  
410 ~~[NOTE: The Purchaser is not authorized to transfer any interest in, take possession of, or~~  
411 ~~assume the burdens and benefits of ownership of the project without the prior written~~  
412 ~~approval of HUD. If this requirement is violated, HUD reserves the right to pursue all~~  
413 ~~available administrative, legal, civil, and criminal remedies.]~~

414  
415 ~~D. Opportunity for Update to Affirmative Fair Housing Marketing Plan (AFHMP). HUD~~  
416 ~~requires a Borrower to review a project's AFHMP (where AFHMP was required during the~~  
417 ~~firm application process of the existing loan) every five years. The TPA application review~~  
418 ~~process provides the Office of Healthcare Programs an opportunity to inquire of the proposed~~  
419 ~~Purchaser whether such reviews were performed and the results of such reviews. Any~~  
420 ~~updated AFHMPs should be obtained for HUD's records. HUD may recommend that the~~  
421 ~~AFHMP be updated to reflect changes in demographics or other relevant changes in the~~  
422 ~~project's marketing area.~~

---

## 7.7

### ~~Procedures for Processing a Modified Review TPA~~

425  
426 ~~A. Routine minimum documentation that must be submitted by the Borrower to the Lender~~  
427 ~~when a modified review is required may be found on the Submission Checklist—Section~~  
428 ~~232, Transfer of Physical Assets (TPA) Checklist for Full or Modified TPA (see Section 232~~  
429 ~~Program website).~~

430  
431 ~~B. Opportunity for Update to Affirmative Fair Housing Marketing Plan (AFHMP). HUD~~  
432 ~~requires a Borrower to review a project's AFHMP every five years. The TPA application~~  
433 ~~review process provides the Office of Healthcare Programs and the Office of Fair Housing~~  
434 ~~and Equal Opportunity an opportunity to inquire of the Borrower whether such reviews were~~  
435 ~~performed and the results of such reviews. HUD may recommend that the AFHMP be~~  
436 ~~updated to reflect changes in demographics or other relevant changes in the project's~~  
437 ~~marketing area.~~

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## 7.8

### ~~Procedures for Processing a Light Review~~

440  
441 ~~Types of transfer requiring a Light Review include, but are not limited to, transactions with the~~  
442 ~~following characteristics:~~

443  
444 ~~A. Change of Internal Revenue Services (IRS) Reporting Structure (i.e., when a Borrower~~  
445 ~~converts from a limited partnership to a limited liability company, but all principals remain~~  
446 ~~the same and the Tax Identification Number is not changing).~~

448 ~~B. Opportunity for Update to Affirmative Fair Housing Marketing Plan. HUD requires a~~  
449 ~~Borrower to review a project's AFHMP every five years. The TPA application review~~  
450 ~~process provides the Office of Healthcare Programs and the Office of Fair Housing and~~  
451 ~~Equal Opportunity an opportunity to inquire of the Borrower whether such reviews were~~  
452 ~~performed and the results of such reviews. HUD may recommend that the AFHMP be~~  
453 ~~updated to reflect changes in demographics or other relevant changes in the project's~~  
454 ~~marketing area.~~

## 7.9

## Special Consideration Secondary Financing

457  
458 ~~**Secondary Financing.** Any portion of the purchase price that is not paid in cash at the time of~~  
459 ~~purchase is considered to be secondary financing. Secondary financing must be junior~~  
460 ~~(subordinate) to the FHA-insured mortgage or deed of trust and can be recorded or unrecorded.~~  
461 ~~Secondary financing includes all deferred financing; financing secured by the project, financing~~  
462 ~~secured by collateral other than the project, or unsecured financing. Please see Production,~~  
463 ~~Chapter 3.15.~~

464  
465 ~~ORCF must make certain specific determinations when secondary financing is an element of~~  
466 ~~the TPA.~~

- 467  
468 ~~1. HUD policy permits the use of secondary financing in connection with transfers of~~  
469 ~~projects in those situations that the ORCF determines that the proposal does not~~  
470 ~~jeopardize HUD's security, does not conflict with HUD's legal or programmatic~~  
471 ~~interests, and will not unduly burden the project with financial debt.~~
- 472  
473 ~~2. If FHA insured secondary financing is proposed as part of the TPA or Section~~  
474 ~~232/223(a)(7) refinance, it must meet the underwriting criteria of the applicable~~  
475 ~~Section of the Act. The proposed documents must not conflict with a HUD-held or~~  
476 ~~FHA-insured first mortgage or the Regulatory Agreement, or the language of any~~  
477 ~~subsidy agreement. ORCF will approve the use of secondary financing in a TPA only~~  
478 ~~when the following conditions are met:~~
  - 479 ~~a. ORCF will not approve any transfer that includes a lien against the project~~  
480 ~~without the written approval of the first Lender;~~
  - 481 ~~b. Where the consent of the first Lender to allow secondary financing is~~  
482 ~~obtained, the original signed consent document must be transmitted~~  
483 ~~immediately to the Office of Asset Management at HUD Headquarters for~~  
484 ~~inclusion in the project's safe instruments file;~~
  - 485 ~~c. Approval of the secondary financing will not increase HUD's exposure to~~  
486 ~~financial risk or loss; and~~
  - 487 ~~d. Approval of the proposal would not violate the Department's obligation to~~  
488 ~~provide housing at the least cost to the Federal government.~~
- 489  
490 ~~3. **Subordination of Secondary Financing.** The second mortgage or security~~  
491 ~~agreement must be subordinate to any HUD-held or FHA-insured mortgage, and~~

492 comply with Production, Chapter 3.15. The following language, as appropriate, must  
493 be included:

- 494 a. ~~Security Agreement.~~ Secured Party, for itself and its successors and assigns,  
495 covenants and agrees that all of its rights and powers under this security  
496 agreement are subordinate and subject to the rights of [identify mortgagee]  
497 under that certain [mortgage or deed of trust] dated [date] and recorded [date],  
498 office of recordation, and under that certain Security Agreement dated  
499 [closing date], and the rights of the Secretary of Housing and Urban  
500 Development under that certain Regulatory Agreement dated [original closing  
501 date] and incorporated by reference in the above described mortgage.
- 502 b. ~~Second or Wrap Around Mortgages.~~ Mortgagee, for itself and its  
503 successors and assigns, covenants and agrees that all of its rights and powers  
504 under this mortgage are subordinate and subject to the rights of [identify first  
505 mortgagee] under that certain [mortgage or deed of trust] dated [original  
506 closing date] and recorded [date], [office of recordation] and under that certain  
507 Security Agreement dated [original closing date], and the rights of the  
508 Secretary of Housing and Urban Development under that certain Regulatory  
509 Agreement dated [original closing date] and incorporated by reference in the  
510 above described mortgage.

511  
512 ~~Payment Only from Surplus Cash.~~ Notes evidencing secondary financing subordinate to  
513 FHA insured or HUD held financing must provide that any payments from project income can  
514 only be made from permissible distributions from surplus cash.  
515  
516

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## 7.10

### Monitoring

517  
518 ORCF must ensure that each project is monitored after ~~initial~~preliminary approval or final  
519 approval where applicable, to ensure that the conditions of approval are satisfied.

520  
521 Monitoring should begin at the point when initial approval is issued and continue until such time  
522 as all of the terms and conditions of the transfer have been satisfied. All required documents,  
523 including the Regulatory Agreements, Riders, and/or Assumption/Assignment documents, if any,  
524 must be executed in the form as reviewed and approved and conform to the terms and conditions  
525 of initial approval within 45 calendar days, or with approved extensions of time.  
526  
527

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## 7.11

### Non-Compliance with Transfer

528  
529 ~~HUD~~ORCF will use the ~~TPA~~Change of Participants process as an opportunity to enforce  
530 compliance with regulatory agreement requirements that are not being followed and will not  
531 grant final approval of the transfer until all financial, physical, and legal requirements are met.  
532

- 533 A. If a scheduled payment, repair, or other requirement of the ~~TPA~~Change of Participant  
534 transaction, is not made as agreed under the terms of the transfer, the AE assigned to monitor

535 the transfer must provide the ~~Borrower~~Participant with written notice of non-compliance and  
536 direct that appropriate corrective action be taken within the reasonable period of time  
537 specified in the written notice of non-compliance.  
538

- 539 B. ~~B.~~ If the deficiency is not corrected within the period of time specified in the written notice  
540 of non-compliance, the situation should be reported to the Workload Manager. The  
541 Workload Manager should immediately consider all available options to enforce compliance.  
542 Field and Regional Counsel may be consulted and, if necessary, OGC and/or the  
543 Departmental Enforcement Center (DEC) may be requested to participate in developing a  
544 plan of enforcement. The available remedies and Administrative Sanctions include: Civil  
545 Money Penalty (as expressly authorized by 12 U.S.C. Sections 1735f-15(b)(1)), Limited  
546 Denial of Participation (LDP), suspension, debarment, etc., as well as suit for specific  
547 performance to enforce the conditions of the TPA Change of Participant transaction.  
548  
549

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## 7.12

## Project Capital Needs Assessment (PCNA)

550  
551 A PCNA (in accordance with the Statement of Work as set forth in the Section 232 Handbook,  
552 Production, Chapter 4, ~~for a Limited Scope PCNA~~) and Reserve for Replacement (R4R)  
553 Analysis are required with a TPA Change of Participant transaction in the following situations:  
554

- 555 • A PCNA or comparable reserve analysis has not been submitted to HUD in the previous  
556 10 years; or
- 557 • If the Borrower wishes to halt R4R Deposits.  
558  
559

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## 7.13

## Financial Statement Requirements

560  
561 ~~A. When a Full Transfer of Physical Assets occurs, the old~~The previous Borrower is not  
562 relieved of ~~filing the obligation to file~~ a final financial statement from the ~~beginning~~start of  
563 their fiscal year ~~until~~ to the day of legal ownership change. The recording of new documents  
564 also shall not release sellers of liability for pre-transfer violations of their Regulatory  
565 Agreements or for (1) funds or property coming into their hands which, by the provisions  
566 thereof, they are not entitled to retain; and (2) for their own acts and deeds or acts and deeds  
567 of others that they have authorized in violation of the provisions thereof.  
568

569 B. The Financial Assessment System (FASS) date is the date of legal ownership change (which  
570 is either the date the deed is signed or recorded, as dictated by state law). The ORCF AE will  
571 update the date in FASS as soon as ORCF is made aware of the transfer. FASS will  
572 automatically calculate the reporting periods for old and new Borrowers. However, at the  
573 time of filing of the first financial return for the new Borrower, the auditor may need to call  
574 FASS Technical Assistance and request help with changing the reporting period in the filing  
575 template that they use. A finalPlease refer to the iREMS User Guide for complete details for  
576 transferring the property. After the transfer, ORCF will update the HUD database to reflect

577 the new Borrower, Operator and/or Management Agent information depending upon the  
578 transaction.

579  
580 C. The requirement for filing an audited financial statement ~~must~~ is regulatory in nature and the  
581 Department does not waive the requirement. However, when a project is newly mortgaged  
582 close to the end of a fiscal year, the Borrower may request that the audit for the end of the  
583 initial mortgage year be ~~filed~~ approved as a “stub period” report to be folded into the next full  
584 fiscal year audit. The request for submitting a “stub period” report depends on the individual  
585 project's fiscal year-end date. If the FASS date is ~~is~~ within ~~90~~120 days from the date of the  
586 actual Transfer of Physical Assets, and if not timely filed, will be subject to Civil Money  
587 penalties of \$42,500 (or the amount in effect at the time of the failure to file) for each return  
588 not filed of the project's fiscal year end, this is considered a “stub period”, the owner may  
589 request that the Department consider a deferment of the audit for this time period. The  
590 following fiscal year's audit would be performed on both the following fiscal year and the  
591 “stub period.” Guidance on how the owner may request a “stub period” deferment can be  
592 found in the Industry User Guide for the Financial Assessment Subsystem - Multifamily  
593 Housing (FASSUB 7.0), Chapter 9, Page 33, March 2013, revised January 2014.