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Section III Asset Management

Chapter 7

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

7.1

Introduction

10
11 A full Change of Participant transactions (also called CHOPs in ORCF) encompass three types
12 of application submissions: Change of Ownership (formerly known as a Transfer of Physical
13 Assets (“or TPA”) is a sale or conveyance by deed of a property that has a mortgage insured or
14 held by HUD. A modified TPA is a conveyance of certain interests in entities owning an FHA-
15 insured project.), Change of Operator, and Change of Management Agent. This chapter will
16 cover the procedures for processing changes in all three entity types.

17
18 This chapter applies to all transactions involving the transfer of all proposals to change existing
19 Borrower, Operator and/or Management Agent entities as well as to certain transfers of financial
20 or partoperational control of an interest in the ownership of such properties. existing Borrower,
21 Operator or Management Agent entity.

22
23 This chapterIn the application for Change of Participants, Lenders should disclose matter that
24 could be of reputational risk (financial or other material risk) for any participant in the project
25 whether they are controlling or no. Additionally, this lays out the procedures that all parties will
26 follow to ensure that new participants are appropriately vetted and obligated to perform the
27 duties and responsibilities required by HUD. The chapter will also outline the applicability
28 requirements to of HUD’s programs and outline the delegation of responsibilities for HUD’s staff.
29 The criteria to determine a project’s and Borrower’s eligibility for a transfer of assets is outlined
30 in detail and directions are provided for certain relationships involving multiple commitments.

31
32 The removal of an entity/participant with financial or operational control also requires HUD
33 review and approval.

34
35 In certain limited circumstances, it may prove necessary for the Borrower (or Master Tenant or
36 Operator, if applicable) to approve an emergency replacement Operator or Management agent.
37 In such circumstances, the Borrower shall be required to immediately notify ORCF and the
38 Mortgagee/Servicer of such exigent circumstances, and within five (5) business days of such
39 emergency replacement, shall submit all the documents required by this Chapter for the review
40 and approval of the new Operator and/or Management Agent as set forth herein.

41
42 Submissions herein must be assembled, reviewed for completeness, accuracy and eligibility, and
43 submitted by the Mortgagee/Servicer to ORCF with a recommendation for approval. A checklist
44 of the required application exhibits, which include a Lender Narrative – Change of Ownership
45 Review, as well as the instructions for submitting the application is posted on the Section 232
46 Program website.
47
48

7.2

Applicability RESERVED

49
50 ~~A. Transactions requiring HUD’s full review of a project, its current Borrower, and the~~
51 ~~qualifications of the new controlling entity include, but are not limited to, projects~~
52 ~~demonstrating the following characteristics:~~

- 53
54 ~~1. Transfer of title from the Borrower entity to a buyer, including conveyance by~~
55 ~~installment sales contract, land contract, or wrap-around mortgage;~~
- 56
57 ~~2. Transfer of any interest in a partnership Borrower that causes a dissolution of the~~
58 ~~partnership under applicable state law;~~
- 59
60 ~~3. Transfer of the beneficial interest in a passive trust that results in a change in control~~
61 ~~and management of the asset, although legal title remains in the trustee.~~

62
63 ~~B. HUD requires a modified review of certain transactions involving transfers of interests in~~
64 ~~entities owning properties with the following characteristics:~~

- 65
66 ~~1. Any transfer of partnership interests in excess of 50% that do not cause a dissolution~~
67 ~~of the existing partnership under applicable law, as certified by an attorney who has~~
68 ~~no identity of interest with the partnership and is licensed to practice law in the state~~
69 ~~where the partnership is organized;~~
- 70
71 ~~2. Addition or substitution of a managing or controlling member in a Limited Liability~~
72 ~~Company (LLC);~~
- 73
74 ~~3. The substitution of one or more of the general partner(s) of a limited partnership~~
75 ~~Borrower that does not cause a dissolution of the existing partnership under~~
76 ~~applicable law, as certified by an attorney who has no identity of interest with the~~
77 ~~partnership and is licensed to practice law in the state where the project is located;~~
- 78
79 ~~4. A transfer of stock of a corporate general partner of a partnership where such transfer~~
80 ~~results in one person or entity controlling in excess of 50% of the stock of a publicly~~
81 ~~traded entity or closely held corporation, where such transfer results in a change of~~
82 ~~control of the corporate general partner;~~
- 83
84 ~~5. A transfer of stock of a corporate Borrower where such transfer results in one person~~
85 ~~or entity, other than the original controlling entity, controlling stock in excess of 50%;~~

86 or an amount less than 50% where such a transfer results in a change of control of the
87 corporate Borrower; and

88
89 6. ~~Transfer of a beneficial interest in a passive trust that does not result in a change in~~
90 ~~control of the property.~~

91
92 7. ~~Other entities not falling into categories above, where the managing control is~~
93 ~~changing (for example, a change to a corporate officer or voting board member of a~~
94 ~~non-profit corporation).~~

95
96 ~~C. TPA Light Reviews include, but are not limited to, transactions with the following~~
97 ~~characteristic:~~

98
99 ~~Change of Internal Revenue Services (IRS) Reporting Structure, i.e. when a~~
100 ~~Borrower(s) changes from Limited Partner (LP) to LLC but all principals remain the~~
101 ~~same and the Tax Identification Number is not changing.~~

102
103 ~~D. When faced with a transaction that does not fall clearly into the definition of a TPA, but~~
104 ~~ORCF believes warrants HUD review, a TPA Application may be required. After addressing~~
105 ~~the following questions, ORCF will determine whether or not a modified review or full~~
106 ~~review will be performed.~~

107
108 1. ~~Will there be a change in the control of the project ownership?~~

109
110 2. ~~Will a significant sum of money (any amount that exceeds 10% of the original~~
111 ~~insured loan amount), change hands in conjunction with the transaction?~~

112
113 ~~Note that a change to ownership entities/structure can be done in conjunction with a Section~~
114 ~~232 refinance under Section 223(a)(7) of the National Housing Act. In this situation, the~~
115 ~~required exhibits for the processing of this change are listed on the Section 223(a)(7) Firm~~
116 ~~Application Checklist posted on the Section 232 Program website.~~

117
118 ~~E. A change to ownership entities/structure is also possible prior to the final closing of an~~
119 ~~insured Note for new FHA mortgage insurance. Such situations should be discussed with the~~
120 ~~ORCF Closer; ORCF may choose to re-process the application for Mortgage Insurance or~~
121 ~~require a TPA (depending upon the extent of the change).~~

122
123 ~~F. On occasion, there will be changes within the second, third or even higher levels of an FHA~~
124 ~~project owner; these various levels of ownership are referred to as "tiers." These changes~~
125 ~~need to be reviewed with the Account Executive (AE) to determine if the transaction is~~
126 ~~considered a TPA and falls into one of the categories above or if another form of review is~~
127 ~~required. Any changes in the higher levels of ownership (tiers) must be reported to HUD,~~
128 ~~along with a summary of the transaction and organizational charts (please reference Housing~~
129 ~~Notice H 2016-15 or successors thereto). HUD will determine what will be required in these~~
130 ~~situations, as well as the type of review.~~

7.3

Transfer Fees

133

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

142

143 ~~A. Transactions Not Requiring a Transfer Fee:~~

144

145 ~~1. Substitution of principals, if the assignment does not result in a change in the control~~
 146 ~~of the project;~~

147

148 ~~2. Transactions where both parties to the transfer are non-profit purchasers;~~

149

150 ~~3. Assignment of the beneficial interest in a trust that holds title to the project if the~~
 151 ~~assignment does not result in a change in the control of the project; and~~

152

153 A. A ~~TPA Application Fee~~transaction fee is ~~not~~ required ~~when~~for all Changes of Ownership
 154 unless the new owner is obtaining a new FHA ~~insured~~ mortgage at the time of the transfer, or
 155 both parties of the transaction are non-profit purchasers.

156

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

159

160 1. With transactions involving two transfers of title by deed, the Director of Asset
 161 Management will determine whether a second fee is required after consulting with
 162 Field Counsel.

163

164 2. If the Director of Asset Management determines that a transaction or series of
 165 transactions have been structured to avoid paying the application fee, the TPA
 166 application will be rejected and new application(s) will not be accepted until the
 167 required application fee(s) have been paid.——

168

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

174

175

7.4

Approval Authority

176
177 A ~~full TPA~~ Change of Participant entity (Owner, Operator, or Management Agent) transaction
178 includes ~~an initial (sometimes referred to as a preliminary)~~ and a final approval stage. The
179 ~~initial preliminary~~ approval ~~of a full TPA~~ provides the assignee with all HUD approvals needed
180 for ~~the deed to be transferred and~~ the transaction to be completed. ORCF will not grant
181 approvals that are conditioned upon commitments being issued from other sources. In limited
182 circumstances, HUD has the discretion to issue a letter that acknowledges (if required by a third
183 party) that once all ~~TPA requirements~~ Participant have been satisfied, a preliminary approval
184 letter will be issued.
185
186

7.5

Initial and Final Approval Actions

- 187
188 A. ~~Initial Preliminary~~ and final approval authority rests with the ORCF.
189
190 B. ~~ORCF will review the Application for Transfer~~ Change of Physical Assets (TPA) (Form
191 HUD-92266-ORCF) and Participant application which includes the appropriate Lender
192 Narrative, Review Checklist, and all accompanying documentation. For Ownership changes,
193 utilize the Lender Narrative—Change of Ownership Review (Form HUD-92266-ORCF) and
194 Change of Ownership Review Checklist, Section 232 (available on Residential Care
195 Facilities Loan Servicing Homepage). For Operator changes, utilize the Lender Narrative—
196 Change of Operator/Lessee (Form HUD-92266A-ORCF) and Change of Operator Checklist,
197 Section 232 (available on Residential Care Facilities Loan Servicing Homepage). For
198 Management Agent changes, utilize the Lender Narrative – Change of Management Agent
199 (Form-92266B-ORCF) and Change of Management Agent Checklist, Section 232 (available
200 on Residential Care Facilities Loan Servicing website).
201

202 At the end of the review process, if the ~~attached instruments are found to be in order, and the~~
203 transfer proposal is acceptable, HUD will issue a letter granting ~~initial preliminary~~ approval
204 of the application. This approval may be conditioned upon any ORCF requirement plus
205 necessary changes in the submitted documents, if any, and will authorize the execution of all
206 remaining required instruments. It is at this point that the parties to the transaction are
207 authorized to transfer possession of and beneficial interest in the project. The purchaser is
208 not authorized to transfer any interest in, take possession of, or assume the burdens and
209 benefits of ownership without the written approval of ORCF.
210

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

- 214
215 ~~B-C.~~ For final approval, certified copies of all executed and/or recorded documents, along with
216 any additional items required in the preliminary approval letter, together with the final
217 documents that were reviewed by HUD prior to preliminary approval, must be provided to

218 the AE within 45 working days from the date of the letter of preliminary approval, unless
219 additional time is granted by ORCF in writing. The Change of Participant transaction may
220 be completed based upon a certification by the applicant's attorney that the documents to be
221 executed and recorded are exactly as approved by HUD. The form of the required
222 certification is "Attorney's Certification on Execution and Recordation" (See Appendix 7.1).
223

224 ~~C. For final approval, certified copies of all executed and/or recorded documents, along with~~
225 ~~any additional items required in the initial approval letter, together with the final documents~~
226 ~~that were reviewed by HUD prior to initial approval, must be provided to the AE within 45~~
227 ~~working days from the date of the letter of initial approval, unless additional time is granted~~
228 ~~by ORCF in writing.~~
229

230 D. ORCF may grant final approval of the TPA Change of Ownership transaction after it has
231 approved the final documents and determined that any additional requirements included in
232 the ~~initial~~preliminary approval letter have been met.

233
234 E. ~~Records in HUD's database~~Historical records associated with the subject project will remain
235 in HUD's database and the project's Property ID and FHA loan number will stay the same.
236 There will also be no change in the FHA loan number.
237

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

249 G. The requirement for filing an audited financial statement is regulatory in nature and the Department
250 does not waive the requirement. However, there are times when a project is newly mortgaged close
251 to the end of a fiscal year. In these circumstances, the Borrower may request that the audit for the end
252 of the initial mortgage year be approved as a "stub period" report to be folded into the next full fiscal
253 year audit. Thus, the waiver request for submitting an audit would depend on the individual project's
254 fiscal year end date. If the FASS date is within 120 days of the project's fiscal year end, this is
255 considered a "stub period" and the owner may request that the Department consider a deferral of
256 the audit for this time period. The following fiscal year's audit would be performed on both the
257 following fiscal year and this additional "stub period." Guidance on how the owner may request a
258 stub period deferral can be found in the Industry User Guide for the Financial Assessment
259 Subsystem - Multifamily Housing (FASSUB 7.0), Chapter 9, Page 33, March 2013, revised January
260 2014.
261

262 The requirement for filing an audited financial statement is regulatory in nature and the
263 Department does not waive the requirement. However, when a project is newly mortgaged
264 close to the end of a fiscal year, the Borrower may request that the audit for the end of the

265 initial mortgage year be approved as a “stub period” report to be folded into the next full
266 fiscal year audit. The request for submitting a “stub period” report depends on the individual
267 project's fiscal year- end date. If the FASS date is within 120 days of the project's fiscal year
268 end, this is considered a “stub period, the owner may request that the Department consider a
269 deferral of the audit for this time period. The following fiscal year's audit would be
270 performed on both the following fiscal year and this additional “stub period.” Guidance on
271 how the owner may request a stub period deferral can be found in the Industry User Guide
272 for the Financial Assessment Subsystem - Multifamily Housing (FASSUB 7.0), Chapter 9,
273 Page 33, March 2013, revised January 2014.

274
275 G.H. It should be noted that the previous Borrower is not relieved of the obligation to file a
276 final financial statement from the start of their fiscal year to the day of legal ownership
277 change. The recording of new documents shall not release sellers of liability for pre-transfer
278 violations of their Regulatory Agreements or for (1) funds or property coming into their
279 hands which, by the provisions thereof, they are not entitled to retain; and (2) for their own
280 acts and deeds or acts and deeds of others that they have authorized in violation of the
281 provisions thereof.
282
283
284

7.6

Procedures for Processing a Full TPA Review Change of Participants Application

285
286 ~~After submission of the initial TPA application, as described above, the Mortgagee/Servicee shall~~
287 ~~contact HUD to schedule a conference call between the assigned AE, the prospective Borrower,~~
288 ~~and the Mortgagee/Servicee. Please see the TPA checklist on the Section 232 Program website.~~

289
290 ~~A. The following items need to be discussed in the initial conference call:~~

- 291 ~~1. Nature of the transaction,~~
- 292 ~~2. Organizational charts that describe the transaction (highly important),~~
- 293 ~~3. Identification of the type of TPA transaction,~~
- 294 ~~4. The applicable checklists and appendices to this chapter,~~
- 295 ~~5. Application requirements,~~
- 296 ~~6. The project's current physical and financial condition,~~
- 297 ~~7. Special considerations, such as accounts receivable financing and/or master lease~~
298 ~~requirements, and~~
- 299 ~~8. Experience of the new Borrower and its principals.~~

300
301
302 ~~Based on project data and history, the AE will review and assess each of the items in this section~~
303 ~~to determine the extent of review necessary provided in the application submission to achieve a~~
304 ~~thorough understanding of the Borrower's proposed transaction. All project files must be~~
305 ~~reviewed to evaluate the Borrower and proposed Lessee/Management Agent's Participant's~~
306 ~~previous performance and acceptability, the Lessee/Management Agent operations, financial~~
307 ~~compliance and performance and physical condition of the project using available data, such as~~
308 ~~Center for Medicare & Medicaid Services (CMS) star rating, and survey performance data. If~~

309 necessary, new or additional data must be gathered, being mindful that Lessee/Management
310 Agent, physical plant and financial operations are interrelated. If problems exist, they must be
311 identified in the application, along with proposals to adequately address the problems through the
312 TPA process.

313
314 Processing a. The review entails communications with buyers, sellers, counsel for buyers and
315 sellers, and the AE. It is imperative that replies are made as quickly as possible.

316 ~~B. Project Records~~

317
318 The review ~~and will include, but not be limited to,~~ analysis begins with a thorough examination
319 of the project records and database information, including Center for Medicare & Medicaid
320 Services (CMS) and Nursing Survey Risk Reports, as applicable. ~~If the physical condition data~~
321 ~~is outdated, the star rating is less than two stars, the Survey Risk Reports rating is high, or there~~
322 ~~is serious recurring or unresolved compliance or performance problems, a risk management plan~~
323 ~~must be provided as an exhibit in the TPA application. of the following:~~

- 324 1. The physical, financial and management operations must be fully acceptable, or
325 immediate corrections ~~are~~must be proposed and funded that are acceptable to ORCF.
326 Evaluation of the Department new participants will follow the requirements outlined
327 in Section II, Chapter 6.1 A-M of this handbook.
- 328 2. Capital improvement needs will be evaluated and conditions imposed by the ORCF to
329 ensure all capital repairs, upgrades, and replacements are made. A Borrower
330 Certification addressing when such work will be accomplished must be provided.
- 331 3. All known noncompliance and operating performance issues will be shared with the
332 Borrower as soon as possible after the AE receives the transfer application. ~~The~~
333 ~~Borrower must clearly understand that addressing~~Addressing each item to ~~the~~ORCF's
334 satisfaction ~~of the Department will be~~is required for initial approval.
- 335 4. Center for Medicare & Medicaid Services (CMS) and Nursing Survey Risk Reports,
336 as applicable, will be reviewed.
- 337 5. Legal Review of a Change of Ownership application by Office of General Counsel
338 (OGC). The AE and the HUD field attorney shall simultaneously review the
339 application based on the criteria set forth in this handbook. If the proposed
340 transaction is deemed acceptable by ORCF, a preliminary approval letter shall be
341 transmitted to the applicant. If the proposed transaction is unacceptable, the applicant
342 shall be notified accordingly and provided the reasons for such rejection.

343
344 NOTE: If the ~~TPA~~Change of Ownership includes a change in the Operator entity, then the
345 process will require the implementation of a new Healthcare Regulatory Agreement – Operator
346 (Form HUD-92466A-ORCF). This form includes requirements for a Risk Management Program
347 in Paragraph 7, and is applicable to all new Operators, irrespective of compliance or performance
348 risks detailed above.

355
356 ~~C. Proposed Owner/Operator/Management Agent~~

- 357
358 1. ~~Previous Participation Review. Controlling Participants, as defined in Housing~~
359 ~~Notice H 2016-15 (or successors thereto), must file a Previous Participation~~
360 ~~Certification either via the Active Partners Performance System (APPS) or via the~~
361 ~~Consolidated Certification. Detailed information on the Previous Participation~~
362 ~~Review process is found in the above CFR Subpart, and the associated Processing~~
363 ~~Guide.~~
- 364
365 2. ~~Requisite Experience. Prospective owners must satisfy ORCF that they bring~~
366 ~~sufficient experience and lessee/management expertise to successfully operate the~~
367 ~~project. HUD requires that a minimum of three years of owning, and/or operating~~
368 ~~similar or relevant projects be demonstrated for each of these entities. For a troubled~~
369 ~~project, ORCF will require an experienced Owner/Operator who has demonstrated~~
370 ~~the ability to successfully own and manage troubled projects. In cases where there~~
371 ~~will be significant repairs and/or upgrades, the prospective owner/managing entity~~
372 ~~must have sufficient experience, capability and capacity to timely complete the~~
373 ~~rehabilitation requirements.~~
- 374
375 3. ~~All organization documents that affect the transfer, including but not limited to the~~
376 ~~establishment of the new purchasing entity, alterations to existing ownership~~
377 ~~documents, lessee/management agreements, etc., must be reviewed to assure that~~
378 ~~none of the provisions of those documents conflict with HUD contracts, regulations~~
379 ~~or statutes.~~

380
381 ~~C. Procedures and Requirements for:~~

382 Additionally, as applicable, procedures and requirements for the following will also be reviewed:

- 383
384 1. Accounts Receivable Financing, see Production, Chapter 15 and Asset Management,
385 Chapter 10;
- 386
387 2. Master Lease, (new, modified, or releases/terminations), see Production, Chapter 13
388 and Asset Management, Chapter 9.
- 389
390 3. ~~Operating Lease and/or Management Agreement, see Asset Management, Chapter 8;~~
391 ~~and~~
- 392
393 4.3. Project Capital Needs Assessment (PCNA), see Asset Management, Chapter 3.
- 394
395 4.1. ~~Legal Review of TPA Proposals by Office of General Counsel (OGC). The AE and the HUD~~
396 ~~Attorney shall simultaneously review the application based on the criteria set forth in this~~
397 ~~handbook. If the proposed transaction is deemed acceptable by HUD, a preliminary~~
398 ~~approval letter shall be transmitted to the applicant. If the proposed transaction is~~
399 ~~unacceptable, the applicant shall be notified accordingly and provided the reasons for~~
400 ~~such rejection.~~

401 ~~[NOTE: The Purchaser is not authorized to transfer any interest in, take possession of, or~~
402 ~~assume the burdens and benefits of ownership of the project without the prior written~~
403 ~~approval of HUD. If this requirement is violated, HUD reserves the right to pursue all~~
404 ~~available administrative, legal, civil, and criminal remedies.]~~
405

406
407 ~~D. Opportunity for Update to Affirmative Fair Housing Marketing Plan (AFHMP). HUD~~
408 ~~requires a Borrower to review a project's AFHMP (where AFHMP was required during the~~
409 ~~firm application process of the existing loan) every five years. The TPA application review~~
410 ~~process provides the Office of Healthcare Programs an opportunity to inquire of the proposed~~
411 ~~Purchaser whether such reviews were performed and the results of such reviews. Any~~
412 ~~updated AFHMPs should be obtained for HUD's records. HUD may recommend that the~~
413 ~~AFHMP be updated to reflect changes in demographics or other relevant changes in the~~
414 ~~project's marketing area.~~
415

7.7

Procedures for Processing a Modified Review TPA

417
418 ~~A. Routine minimum documentation that must be submitted by the Borrower to the Lender~~
419 ~~when a modified review is required may be found on the Submission Checklist—Section~~
420 ~~232, Transfer of Physical Assets (TPA) Checklist for Full or Modified TPA (see Section 232~~
421 ~~Program website).~~
422

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

7.7

RESERVED

7.8

Procedures for Processing a Light Review

432
433 Types of transfer requiring a Light Review include, but are not limited to, transactions with the
434 following characteristics:

435
436 ~~A. Change of Internal Revenue Services (IRS) Reporting Structure (i.e., when a Borrower~~
437 ~~converts from a limited partnership to a limited liability company, but all principals remain~~
438 ~~the same and the Tax Identification Number is not changing).~~
439

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

7.8

RESERVED

7.9

Special Consideration

449 **Secondary Financing.** Any portion of the purchase price that is not paid in cash at the time of
450 purchase is considered to be secondary financing. Secondary financing must be junior
451 (subordinate) to the FHA-insured mortgage or deed of trust and can be recorded or unrecorded.
452 Secondary financing includes all deferred financing³, financing secured by the project, financing
453 secured by collateral other than the project, or unsecured financing. Please see Production,
454 Chapter 3.15.

455 ~~ORCF must make certain specific determinations when secondary financing is an element of~~
456 ~~the TPA.~~

- 457 ~~1. HUD policy permits the use of secondary financing in connection with transfers of~~
458 ~~projects in those situations that the ORCF determines that the proposal does not~~
459 ~~jeopardize HUD's security, does not conflict with HUD's legal or programmatic~~
460 ~~interests, and will not unduly burden the project with financial debt.~~
- 461 ~~2. If FHA insured secondary financing is proposed as part of the TPA or Section~~
462 ~~232/223(a)(7) refinance, it must meet the underwriting criteria of the applicable~~
463 ~~Section of the Act. The proposed documents must not conflict with a HUD held or~~
464 ~~FHA insured first mortgage or the Regulatory Agreement, or the language of any~~
465 ~~subsidy agreement. ORCF will approve the use of secondary financing in a TPA only~~
466 ~~when the following conditions are met:~~
 - 467 ~~a. ORCF will not approve any transfer that includes a lien against the project~~
468 ~~without the written approval of the first Lender;~~
 - 469 ~~b. Where the consent of the first Lender to allow secondary financing is~~
470 ~~obtained, the original signed consent document must be transmitted~~
471 ~~immediately to the Office of Asset Management at HUD Headquarters for~~
472 ~~inclusion in the project's safe instruments file;~~
 - 473 ~~c. Approval of the secondary financing will not increase HUD's exposure to~~
474 ~~financial risk or loss; and~~
 - 475 ~~d. Approval of the proposal would not violate the Department's obligation to~~
476 ~~provide housing at the least cost to the Federal government.~~

482 ~~3. **Subordination of Secondary Financing.** The second mortgage or security~~
483 ~~agreement must be subordinate to any HUD-held or FHA-insured mortgage, and~~
484 ~~comply with Production, Chapter 3.15. The following language, as appropriate, must~~
485 ~~be included:~~

486 ~~a. **Security Agreement.** Secured Party, for itself and its successors and assigns,~~
487 ~~covenants and agrees that all of its rights and powers under this security~~
488 ~~agreement are subordinate and subject to the rights of [identify mortgagee]~~
489 ~~under that certain [mortgage or deed of trust] dated [date] and recorded [date],~~
490 ~~office of recordation, and under that certain Security Agreement dated~~
491 ~~[closing date], and the rights of the Secretary of Housing and Urban~~
492 ~~Development under that certain Regulatory Agreement dated [original closing~~
493 ~~date] and incorporated by reference in the above-described mortgage.~~

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

503
504 ~~**Payment Only from Surplus Cash.** Notes evidencing secondary financing subordinate to~~
505 ~~FHA-insured or HUD-held financing must provide that any payments from project income can~~
506 ~~only be made from permissible distributions from surplus cash.~~

7.10

Monitoring

509
510 ORCF must ensure that each project is monitored after ~~initial~~preliminary approval or final
511 approval where applicable, to ensure that the conditions of approval are satisfied.

512
513 Monitoring should begin at the point when initial approval is issued and continue until such time
514 as all of the terms and conditions of the transfer have been satisfied. All required documents,
515 including the Regulatory Agreements, Riders, and/or Assumption/Assignment documents, if any,
516 must be executed in the form as reviewed and approved and conform to the terms and conditions
517 of initial approval within 45 business days, or with approved extensions of time.

7.11

Non-Compliance with Transfer

520
521 HUDORCF will use the TPA Change of Participants process as an opportunity to enforce
522 compliance with regulatory agreement requirements that are not being followed and will not
523 grant final approval of the transfer until all financial, physical, and legal requirements are met.

- 525 A. If a scheduled payment, repair, or other requirement of the TPA Change of Participant
526 transaction, is not made as agreed under the terms of the transfer, the AE assigned to monitor
527 the transfer must provide the Borrower with written notice of non-compliance and direct that
528 appropriate corrective action be taken within the reasonable period of time specified in the
529 written notice of non-compliance.
530
- 531 B. ~~B.~~ If the deficiency is not corrected within the period of time specified in the written notice
532 of non-compliance, the situation should be reported to the Workload Manager. The
533 Workload Manager should immediately consider all available options to enforce compliance.
534 Field and Regional Counsel may be consulted and, if necessary, OGC and/or the
535 Departmental Enforcement Center (DEC) may be requested to participate in developing a
536 plan of enforcement. The available remedies and Administrative Sanctions include: Civil
537 Money Penalty (as expressly authorized by 12 U.S.C. Sections 1735f-15(b)(1)), Limited
538 Denial of Participation (LDP), suspension, debarment, etc., as well as suit for specific
539 performance to enforce the conditions of the TPA Change of Participant transaction.
540
541

7.12

Project Capital Needs Assessment (PCNA)

- 542
543 A PCNA (in accordance with the Statement of Work as set forth in the Section 232 Handbook,
544 Production, Chapter 4, for a Limited Scope PCNA) and Reserve for Replacement (R4R)
545 Analysis are required with a TPA in Change of Ownership transaction in the following situations:
546
- 547 • A PCNA or comparable reserve analysis has not been submitted to HUD in the previous
548 10 years; or
 - 549 • If the Borrower wishes to halt R4R Deposits
- 550
551

7.13

Financial Statement Requirements

552
553 ~~When~~ If a Full Transfer of Physical Assets occurs ~~new Owner entity is approved by HUD,~~ the
554 ~~old Borrower~~ former Owner entity is not relieved of filing a final financial statement from the
555 beginning of their fiscal year until the legal ownership change. A final financial statement must
556 be filed within 90 days from the date of the actual Transfer of Physical Assets ~~entity change~~, and
557 if not timely filed, will be subject to Civil Money penalties ~~of \$42,500 (or the amount in effect at~~
558 ~~the time of the failure to file)~~ for each return not filed.