

9.1 Introduction

A. After the Firm Commitment is issued, the closing of a Section 232 project is a collaborative effort primarily among the ORCF Closing Coordinator (hereinafter referred to as the “Closer”), the HUD Closing Attorney (hereinafter referred to as the “HUD Attorney”), the Lender’s Attorney, and the Lender. This Chapter focuses mostly on the closing roles and requirements of the Closer and the Lender. In addition to the requirements set forth in this Chapter, more detailed requirements for the Lender’s Attorney and HUD Attorney are distributed by the HUD Office of General Counsel. The contents within this Chapter are not intended to be and must not be interpreted as legal guidance.

B. **Lender’s Responsibilities.** Lenders ~~are strongly encouraged to will~~ engage and be represented by competent legal counsel throughout the loan application and closing document preparation and submission process. Lenders should not rely on personnel other than their legal counsel, and legal support staff under the careful oversight of legal counsel, in preparing and submitting closing documents. It is HUD’s experience that Lenders that rely on personnel other than those with proper legal training and experience often submit incomplete closing documents with numerous errors. This practice unnecessarily consumes HUD staff time and greatly increases the chances for disruptive and delayed closings, which ultimately becomes more expensive to the parties. At the HUD Closing Attorney’s discretion and in accordance with professional responsibility standards, the HUD Closing Attorney may decline to communicate with anyone other than the Lender’s attorney with respect to the transaction.

9.2 The ORCF Closer

ORCF utilizes a Closer for all of its closings. A Closer will be assigned to a project after the Firm Commitment has been issued. The Closer serves as the main point of contact for ORCF and will work closely with all of the parties to ensure that ORCF program and administrative requirements are satisfied prior to closing. The Closer’s responsibilities include, but are not limited to, the following:

39 **A. Draft Closing Documents.**

- 40
- 41 1. Upon assignment, the Closer will send an introductory email to the Lender and the
- 42 Lender's Attorney with directions on the delivery of the draft closing documents to
- 43 the Closer. If the closing documents are incomplete or substantially incorrect, the
- 44 project may be marked inactive, removed from the Closer's assignments, and placed
- 45 back in the closing queue. Once a complete/acceptable closing package is received
- 46 and verified, the project will be marked as active and reassigned to a Closer as
- 47 availability allows.
- 48
- 49 2. ~~The appropriate closing Portal Submission: A complete electronic draft Closer~~
- 50 ~~package, as required by the checklist, must be placed in front, on top of the closing~~
- 51 ~~package. (Closing document checklists are referenced in Appendix 9.1.) Documents~~
- 52 ~~must be tabbed according uploaded to the corresponding number on the checklist.~~
- 53 ~~A#ORCF Portal. Legal documents must be submitted in one hard copy package.~~
- 54 ~~electronically to the HUD Closing Attorney.~~ The closing package must also contain
- 55 evidence that all Special Conditions have been satisfied. (Closing document
- 56 checklists are referenced in Appendix 9.1.)
- 57
- 58 3. HUD anticipates that the documents in every submission are the final drafts of
- 59 documents that all parties to the transaction have agreed upon prior to submission. If
- 60 documents need additional review by the parties or by third parties, then the
- 61 submission must be held until all issues can be resolved and final draft versions of
- 62 documents can be submitted for HUD review.
- 63
- 64 4. The closing package must include both a clean copy of each document and a redline
- 65 of the document against the HUD form where applicable. If a document is being
- 66 resubmitted in response to HUD comments, that second submission must include both
- 67 a clean copy of the document and a redline against the earlier submission. All
- 68 proposed changes must be approved by both the Closer and HUD Attorney.
- 69
- 70 For changes proposed to OMB approved HUD forms, Lender must submit a detailed
- 71 explanation to justify the requested changes. The request will be reviewed by the
- 72 Closer and HUD closing attorney, as appropriate, and in their sole discretion, may
- 73 recommend approval to the appropriate HQ office. Final approval for changes to a
- 74 HUD-form may only be granted by Headquarters. All proposed changes to non-HUD
- 75 forms must be approved by the Closer or the HUD closing attorney, as applicable.
- 76
- 77 5. The Closer will review the draft closing documents to ensure that all programmatic
- 78 requirements are met, all Special Conditions have been satisfied, and any repairs have
- 79 been acceptably completed with adequate evidence. The Closer will notify the
- 80 Lender, the Lender's Attorney, and the HUD Attorney of any deficiencies. The HUD
- 81 Attorney will perform a similar, but legal, review and will notify the Closer and
- 82 Lender's Attorney of any deficiencies. All deficiencies must be cured prior to
- 83 establishing a closing date. Failure to cure deficiencies will lead to a canceled or
- 84 delayed closing.

85
86 6. Piece-meal deficiency responses will not be accepted. Instead, responses to
87 deficiencies must be submitted together in one e-mail or package with a written
88 explanation. The written explanation must clearly identify which documents are
89 attached and what changes have been made.
90

91 **B. Amendments to the Firm Commitment.** Requests to amend the Firm Commitment must
92 be submitted to the Closer on Lender letterhead; the request must list the proposed
93 amendments and attach the proper documentation. The Closer will review and, if
94 appropriate, prepare, execute, and distribute the amendment.
95

96 **C. Completion of Repairs.** If required by the Firm Commitment, the Closer will ensure that
97 repairs are completed. The Closer will review evidence of completion, including supporting
98 photographs and invoices, and the Borrower's Certification— ~~Completion of Critical~~
99 ~~Repairs (Form HUD-91118-ORCF).~~ For ~~non~~Non-critical or Borrower elected repairs, the
100 Closer will review the Escrow Agreement for Non-critical; Deferred Repairs (Form HUD-
101 92476-ORCF) and list of repairs to be completed. For ~~non~~Non-critical or Borrower elected
102 repairs completed prior to closing, the Closer will review evidence of completion
103 (photographs and invoices) and the Borrower's Certification-~~Full or Partial~~ Completion of
104 Non-Critical Repairs (Form HUD-92117-ORCF). If any remaining repair items are not
105 completed, the Closer will review and approve a request for amendment to the Firm
106 Commitment with a revised list of repairs.
107

108 **D. Survey and Title.** If necessary, the Closer will coordinate resolution of any issues related to
109 the title and ALTA survey. ORCF expects covenants that run contrary to the Fair Housing
110 Act or other civil rights laws to be removed. To avoid delays in closing, the parties should
111 discern early whether such covenants exist and, if so, immediately commence necessary
112 actions to remove them. Initiating this effort obviously involves having a title search
113 conducted early in the application process. In the event that, despite such timely and ardent
114 effort, the parties are not able to timely obtain removal of the covenant, then, in order to
115 avoid a closing delay, ORCF would expect those efforts to be clearly documented and would
116 expect documents to be executed affirmatively acknowledging the unenforceability of such
117 provisions and repudiating them. A certification signed by the parties involved, certifying
118 they will work to have the covenants removed post-closing as expeditiously as possible, is
119 required prior to Closing.
120

121 **E. Management Conference Call.** If applicable, the Closer will ensure that a conference call
122 between the ORCF servicing Account Executive for the project and the Borrower occurs
123 prior to closing.
124

125 **F. Closing Statements and Cost Certifications.** The Closer will review and examine all
126 closing statements and, if applicable, cost certifications (e.g., the Borrower's Certificate of
127 Actual Cost (Form HUD-2205A-ORCF). The Closer will review all supporting documents
128 such as the payoff letters and invoices.
129

130 G. **Execution of ORCF Closing Documents.** Once all program and legal requirements are
131 met, the Closer will work with the Lender’s Attorney, the Lender, and the HUD Attorney to
132 ensure that HUD signatory closing documents are signed by the appropriate ORCF
133 Authorized Agent in advance of the closing. Documents must not be sent for ORCF’s
134 signature without prior, express approval from the Closer.
135

136 H. **Closing Date.** Administrative clearance for closing will be provided by the ORCF Closing
137 Coordinator and the HUD Closing Attorney. The Closer will work with the HUD Attorney
138 and the other parties to help determine a closing date. A closing date may be canceled or
139 delayed if program or legal requirements are not fully satisfied.
140

141 I. **Amounts Due to HUD.** The Closer will confirm the correct amount of the Mortgage
142 Insurance Premium (MIP) due at closing and, if applicable, the Inspection Fee, and/or an
143 additional Application Fee. All such payments shall be made through Pay.gov prior to
144 closing and evidenced by appropriate receipts. See Section 9.5 below for more information
145 on required fees and refunds.
146
147

9.3 The Lender

148
149 The following are key responsibilities of the Lender in the closing process. In addition, it is the
150 Lender’s duty to keep the Closer informed of any special circumstances related to the closing.
151

152 A. **Execution of Firm Commitment.** The Lender should execute and have the Borrower
153 execute the Firm Commitment within 10 business days of receiving the Firm Commitment.
154 Acceptance of Firm Commitments executed beyond 10 business days is subject to ORCF
155 approval.
156

157 B. **Amendments to the Firm Commitment.** Material changes to a transaction may require
158 amendments to the Firm Commitment. Any material adverse conditions or changes to any
159 facts or circumstances that would make any information submitted, or which should have
160 been submitted, with the application for mortgage insurance (including without limitation
161 any such information relating financial statements, rent rolls, reports, investigations or other
162 credit risks) incomplete or inaccurate must be disclosed to ORCF. ORCF considers such
163 information to determine whether an amendment to the Firm Commitment is required and/or
164 whether the deal may proceed. No part of the Firm Commitment may be amended without
165 the prior approval of ORCF. To amend the Firm Commitment, the Lender must submit a
166 written request on letterhead to the Closer setting forth the specific changes requested. This
167 request must include documentation to support the requested change(s). When possible, all
168 requested changes to a Firm Commitment must be combined into one request in order to
169 minimize the number of amendments.
170

171 1. **Extensions.** Firm Commitments may be extended for periods of time depending on
172 project type; however, processing and underwriting conclusions must be current at the
173 time of any extension. For 223(f) projects, the Closer may extend the Firm
174 Commitment for one 60-day period. For 223(a)(7) projects, the Closer may extend

175 the Firm Commitment for one 90-day period. For new construction projects, the
176 Closer may extend the Firm Commitment in 30-day increments. Extension requests
177 beyond these periods require review and approval by the assigned project ORCF
178 Workload Manager. The Lender's request to amend the Firm Commitment must
179 provide a justification acceptable to HUD that the extension of the Firm Commitment
180 is warranted and necessary in order to accomplish closing by the end of the extension
181 period. Requests for extension must include the following statement (if true): "*The*
182 *requested delay is not likely to change significantly the underwriting data on which*
183 *the commitment was based or to undermine the feasibility of the project due to a*
184 *change in the market, inflation, or other factors affecting cost.*" If, at the expiration
185 of the extension period, the closing fails to occur, HUD reserves the right to consider
186 the application withdrawn. In that case, the application must be updated and
187 submitted as a new application in order to receive further consideration.
188

- 189 2. **Interest Rate Changes.** ORCF suggests that the interest rate not be locked without
190 confirmation that the closing is moving forward. Locking the interest rate prior to
191 such confirmation will be at the Lender and Borrower's own risk. HUD will not
192 close a transaction without all program and legal requirements being fully satisfied
193 solely to accommodate a security delivery or obligation deadline. Once the interest
194 rate has been locked, a request to amend the Firm Commitment must be submitted.
195 Such a request must include a revised, signed Maximum Insurable Loan Calculation
196 (Form HUD-92264A-ORCF).
197

- 198 C. **Satisfaction of Special Conditions.** Evidence of satisfaction of all Special Conditions listed
199 in the Firm Commitment must be provided prior to closing and must be submitted with the
200 draft closing document package. The Closer will provide a Special Conditions Matrix to
201 keep track of the status and documentation related to each Special Condition. -The following
202 apply to 232 New Construction, Substantial Rehabilitation and 241:
203

- 204 1. Deferred Submission items (see the Lender's Architectural Reviewer and Cost Analyst's
205 Statement of Work, Section IV.A.12) and/or any additional changes must be identified by
206 addendum(s), must be reviewed by the underwriter of record, and approved by HUD 15
207 days prior to Initial Closing.
208
- 209 2. The addendum(s) must include a list of drawing numbers and page numbers with a
210 description of the change(s). Addendum(s) must be clearly noted, and all drawings and
211 specifications affected must have sheets and pages revised and replaced. Addendum(s)
212 shall have no effect on cost or value. The Architect of record and the Lender's
213 construction analyst must review the addendum(s) for acceptability.
214

215 D. **Evidence of Completion of Repairs.**
216

- 217 1. Critical Repairs: All critical repairs must be completed prior to closing. Evidence of
218 completion includes a signed and dated Borrower's Certification -- Completion of
219 Critical Repairs ([Form HUD-91118-ORCF](#)) along with clear, supporting photographs

and invoices. Other items may be requested by the Closer as needed in order to verify that all repairs have been completed.

2. ~~Non-Critical~~ or Borrower Elected Repairs: Completion of ~~non~~Non-critical repairs prior to closing is encouraged. If the ~~non~~Non-critical/Borrower elected repairs are not completed by closing, they must be completed within 12 ~~months~~ of closing. An Escrow Agreement ~~for~~ Non-critical, Deferred Repairs ([Form HUD-92476-ORCF](#)) must be established, which includes the list of repairs.

3. ~~2.~~ If all, or a portion of, the ~~non~~Non-critical/Borrower elected repairs have been completed prior to closing, the Lender must submit a signed Borrower's Certification-Full or Partial Completion of Non-Critical Repairs. As with critical repairs, clear, supporting photographs and invoices demonstrating proof of completion must be attached. For the remaining repair items, a request to amend the Firm Commitment must be submitted with an attached, revised list of repairs. See above for more information on amendments.

4. ~~3.~~ See Production, Chapter 10.16 for more information on repairs.

E. **Evidence of Insurance.** Prior to closing, evidence must be provided showing that the project has all required fidelity, property, and professional liability insurance coverages. The insurance coverages must be current and in conformance with all ORCF requirements. If a policy will expire within ~~one month~~ 30 days of closing, proof of renewal will be required. See Production, Chapter 14, Insurance Requirements, for details on insurance coverage.

F. **Closing Statements and Cost Certifications.**

1. Closing statements, sometimes referred to as settlement statements, are required for all closings. The final version of the closing statement must be signed by both the Lender and the Borrower and presented prior to closing. At a minimum, the statements must include the following: amounts to be paid to satisfy Borrower's obligations for existing indebtedness; repairs, if any; financing fees; HUD fees; legal expenses; title and recording costs; third-party costs; interest rate premium payments, if any; bond premium payments; other allowable costs; and any Lender-required escrows for taxes, insurance, or other items. The statement must also include any cash contribution by the Borrower. For Section 223(a)(7) projects, the closing statement must be supported by current payoff letter(s) and invoices. The closing statement must show the transfer amount of the Reserve Fund for Replacement and any additional initial deposit amount, if required. Also, for Section 223(a)(7) projects, the Closer will compare the amount of the transfer of the current replacement reserves on the Closing Statement to the amount in the Lender Narrative. If the amount has decreased by \$20,000 or 20%, the Lender will be asked to recalculate the necessary reserve for replacement deposits. The Lender must provide a letter certifying that the Lender has recalculated the necessary reserve for replacement deposits, considered any changes to the current reserve for replacement since the time of the original firm application, and, that based upon that review, the Lender has notified the Closer of any necessary increases to the initial deposit to the

266 reserve for replacement account or monthly deposit. The ORCF Underwriter must
267 approve any changes to the reserve for replacement requirements. For changes to
268 Reserve amounts, a revised Reserve for Replacement Funding Schedule may be
269 required. ORCF would not anticipate any further changes to the Reserve for
270 Replacement Schedule or required deposits after Closing. Note: security extension
271 fees are not an allowable mortgageable cost.
272

- 273 2. If a Borrower’s Certificate of Actual Cost (also known as a “Cost Certification”) is
274 required, it must include the supporting documents such as current payoff letter(s)
275 and invoices. The Cost Certification must be signed by the Borrower and will be
276 reviewed and approved by ORCF. See Production, Chapter 11.15 for more
277 information.
278

279 G. **Fees.** The Lender must ensure that all fees due at closing are properly prepared and
280 delivered at closing. Any missing or incorrect fee may result in a delayed closing. See
281 Section 9.5 on Fees Due.
282

283 H. **Lender and Lender’s Attorney.** The Lender must at all times work closely with its attorney
284 to ensure all closing requirements are met in a timely manner.
285

286 I. **Lender’s Certificate/Request for Endorsement.** The Lender will be required to execute
287 either a Lender’s Certificate or a Request for Endorsement, which include several
288 certifications. It is the Lender’s responsibility to perform any necessary due diligence to
289 allow the Lender to make such certifications accurately.
290
291

9.4

General Closing Logistics

292
293 A. Type of Closing. ORCF closings ~~may take place with all parties present, a “table will be~~
294 conducted electronically.
295

296 No later than the morning two days before closing,” or remotely, a “by mail, Lender’s
297 Counsel shall provide the HUD Attorney with the closing.” There may also be a “skeleton
298 closing,” wherein only one or some documents via electronic means. The electronic copy
299 must include separate files for each document, with file names that reflect the title of the
300 parties attend. Although “by mail” or “skeleton” closings are encouraged, the HUD Attorney
301 will make the final determination on the type of document and the order of the applicable
302 closing checklist, preferably in searchable PDF format. Lender’s Counsel must ensure that
303 the closing docket submitted to conduct and will provide the Lender the HUD Attorney at
304 closing is consistent with the draft submission(s) previously reviewed and Lender’s Attorney
305 appropriate instructions. By mail closings are conducted at the discretion of the approved by
306 the HUD Attorney and may be limited in circumstances where incomplete or substantially
307 incorrect documents are received or certain circumstances demonstrate the need the Closer,
308 and that no modifications to the closing documents (form and non-form) have a table closing.
309 been made without the HUD Attorney’s actual knowledge and prior approval.
310

311 ~~A.B.~~ Under no circumstances ~~should~~will the endorsed ~~note~~Note be provided to the FHA
312 Lender prior to closing.

313
314 ~~B.C.~~ **Date of Closing.** The closing date will be set by the HUD Attorney after consultation
315 with the Closer. The closing date will only be set once all programmatic and legal
316 requirements have been fully satisfied. The closing may be cancelled if documents are not
317 satisfactory or if any programmatic or legal requirement is not met: at least four business
318 days before closing. All closing documents must be dated with the same date, to the extent
319 possible, which may be prior to the date the Note is endorsed by HUD for insurance.
320 However, the following documents must be dated the date of endorsement (whether Initial,
321 Initial/Final, or Final Endorsement, as applicable, as such terms are defined in the HUD Firm
322 Commitment): 1. Title insurance policy; 2. Incumbency Certificates; 3. All required legal
323 opinion letters; 4. Lender’s Certificate (form HUD-92434-ORCF); 5. Request for
324 Endorsement of Credit Instrument and Certificate of Borrower, Lender and General
325 Contractor (form HUD-92455-ORCF); 6. Estoppel Certificates; and 7. Certificate of No
326 Material Adverse Change..

327
328 ~~C.D.~~ **Documents to be signed by ORCF.** The documents to be signed by ORCF, such as the
329 Healthcare Facility Note (Form HUD-94001-ORCF), the Healthcare Regulatory Agreement
330 – Borrower (Form HUD-92466-ORCF), and any other documents required in the transaction,
331 will be signed by ORCF in advance of the closing. Once the Closer ~~has~~and the HUD
332 Attorney have approved the documents for signature, the Closer will coordinate ORCF’s
333 execution of the documents. The Lender and Lender’s Attorney must ensure that the
334 documents have been properly prepared and are received by ORCF in sufficient time for
335 execution and shipment. The documents must be in final form before sending them for
336 ORCF signature, and the documents must be the exact versions approved by all parties,
337 including HUD. ORCF will execute a maximum of four copies of the documents; however,
338 to cut down on administrative time two copies are strongly encouraged. Any changes to loan
339 documents, including the endorsed Note, after HUD has signed or approved the documents
340 must be specifically approved in writing by the HUD Closer and HUD Closing Attorney
341 before the changes are made.

342
343 ~~D.A.~~ **Recording Documents.** Documents ~~may~~should be recorded in advance of the closing
344 with prior approval from the HUD Attorney and Closer. At

345
346 ~~E.~~ **Closing Day.** ~~The HUD Attorney will lead a “table” or “skeleton” closing. If closing “by~~
347 ~~mail,” the Lender’s Attorney, Lender, Owner, Borrower, Borrower’s Attorney, Operator,~~
348 ~~Operator’s Attorney, and other related parties must submit documents bearing evidence of~~
349 ~~recording from the recorder’s office or copies certified by the title company to be true and~~
350 ~~correct copies of each of the recorded documents. The title company’s certification should~~
351 ~~include the date of recording, the document recording information, and the recording~~
352 ~~location.~~

353
354 ~~E.F.~~ **Closing Day.** ~~readily available by telephone should any question or problem arise. Once~~
355 ~~the closing package is submitted and until the endorsed Note is released by HUD, the HUD~~
356 ~~Attorney and Closer will begin reviewing the closing package upon submission and will~~

357 disseminate any comments to Lender's Attorney so that documents can be revised before the
358 endorsed Note is delivered on the Closing Day. All documents must be satisfactory to HUD,
359 be in complete and final form, and be the exact same versions as previously submitted and
360 approved. All HUD requirements must be satisfied. At the conclusion of the closing, on the
361 Closing Day, HUD ~~Attorney~~ will deliver the endorsed Healthcare Facility Note to the
362 Lender's Attorney either in person or by mail according to the Lender's instructions.

363
364 G. Closing Document Copies. ~~After closing, the Lender's Attorney must provide a compact~~
365 ~~disk, or a Zip file, containing scanned copies of~~ The HUD Attorney will download the
366 documents accepted by the HUD Attorney at the closing. The The HUD Attorney will then
367 share the documents (via OneDrive, Sharepoint, email or otherwise) with the Closer, who
368 will provide upload the details on where documents to send Transaccess. Unless approved in
369 writing by HUD, the disk version accepted by HUD at the closing controls in the event of any
370 conflict or file inconsistency with documents retained by the Lender's Attorney.
371
372
373

9.5

Fees Due and Refunds

- 374
375 A. **Mortgage Insurance Premium (MIP).** A first year MIP fee is due at closing. The amount
376 of the fee is listed in the Federal Register, published annually on or about July 1, and varies
377 per type of program under which the loan is insured and will be set forth in the Firm
378 Commitment.
379
380 B. **Inspection Fee.** The Inspection Fee varies by program. See Production, Chapter 2, General
381 Program Requirements, under each program section for specific amounts and formulas.
382
383 C. **Additional Application Fee.** If the mortgage amount has increased since the initial
384 submission of the Application or the issuance of the Firm Commitment, an additional
385 application fee will be required, which will be set forth in the Firm Commitment
386 Amendment.
387
388 D. **HUD Application Fee Refunds.** If the mortgage amount has decreased since the initial
389 submission of the Application or the issuance of the Firm Commitment, the Lender may
390 request a refund of the application fee after closing. Requests for refunds must be sent to
391 OHPrefunds@hud.gov and must include the project name and FHA number in the subject
392 line with the Request of Overpayment of Firm Application Exam Fee (Form HUD-91112-
393 ORCF) attached. Refunds are sent via electronic transfer.
394
395

9.6

Closing Section 232/223(a)(7) and Section 232/223(f) Loans

396
397 ~~There are several types of~~ A loan insured under Section 232 pursuant to Section 223(a)(7) loans,
398 which are refinances is the refinance of an existing FHA ~~loans such as~~ Insured Mortgage. The

399 original loan may have been a new construction, substantial rehabilitation, 223(f) ~~and/or~~ 241(a-)
400 loan.

401
402 A loan insured under Section 232 pursuant to Section 223(f) is the refinance or purchase of a
403 residential care facility project, which may or may not be currently FHA-insured.

404
405 The Closer checklists and ~~to~~ the HUD Attorney checklists which set forth the documents
406 required to close these loans are identified in Appendix 9.1. When sending the draft closing
407 documents for HUD review, place the appropriate checklist on top of the closing package;
408 additionally, please tab and organize the corresponding documents to match the checklist.

409
410 The closings of these two types of loans are similar. A few key differences are:

- 411
412 1. No repair Inspection Fee is required for loans processed under Section 223(a)(7).
- 413
414 2. A cost certification, the Borrower's Certificate of Actual Cost, is required for all Section
415 223(f) loans. This document is only required for Section 223(a)(7) projects that have
416 repairs but did not submit a PCNA. See Production, Chapter 11.15 for full details on cost
417 certifications. All cost certifications will be reviewed and approved by ORCF.
- 418
419 3. A closing statement is required for all Section 223(a)(7) and Section 223(f) loans;
420 however, for Section 223(f) loans, supporting documentation does not have to be attached
421 to the closing statement if it is provided with the Borrower's Certificate of Actual Cost.
- 422
423 4. Total Lender's Fees are limited to 2.0% of the mortgage amount for a Section 223(a)(7)
424 loan; they are limited to 3.5% for a Section 223(f) loan. Fees may be up to 5.5% for bond
425 transactions.
- 426
427 5. The repair escrow coverage for a Section 223(a)(7) loan is 10% of estimated costs; the
428 coverage is 20% for a Section 223(f) loan.
- 429
430 6. Prior to the closing of a Section 223(f) loan, a conference call between the Borrower and
431 the servicing ORCF Account Executive must be scheduled. This is not required when the
432 loan is insured under Section 223(a)(7).
- 433
434 7. The Borrower on the existing loan must be the same as the Borrower on the 223(a)(7)
435 loan. If there will be a new Borrower on the 223(a)(7) loan, the new Borrower will need
436 to assume the existing loan to be refinanced with the 223(a)(7) loan and comply with
437 ORCF's CHOP requirements.

9.7

Closing New Construction, Substantial Rehabilitation, Section 241(a) Loans

441
442 Loans insured under Section 232 for New Construction or Substantial Rehabilitation are for the
443 complete construction of a project or for substantial repairs or improvements to an existing
444 project.

445
446 A loan insured under Section 241(a) is a supplemental loan to an existing loan insured by FHA
447 to allow for an addition or improvements to a project.
448

449
450 For the above loans, the closings are either Insured Advances or Insurance Upon Completion. If
451 the loan is for Insured Advances, there are two closings: an initial closing prior to the start of
452 work and a final closing after the completion of the work. If the loan is for Insurance Upon
453 Completion, there is only one closing. Because of the complexities of these types of closings,
454 the following sections provide more closing information.
455

456
457

9.8

Initial Closings: Required Forms and Documentation

458
459 In addition to the documents listed below, see Appendix 9.1 for the reference to the checklist of
460 documents required to close these types of loans. Note: there is only one checklist for both the
461 Closer and the HUD Attorney.
462

463 A. **Construction Contract** (Form HUD-92442-ORCF). These contracts may be either Lump
464 Sum or Cost Plus. See Production, Chapter 11.13.A for more information on these contract
465 requirements.
466

- 467 1. Attach the Contractor's and/or ~~Owner's~~Mortgagor's Cost Breakdown (Form HUD-
468 ~~232892328-ORCF~~) as Exhibit A to the contract. This form must be approved and
469 signed by ORCF with the Firm Commitment.
470
- 471 2. Attach the Supplementary Conditions of the Contract for Construction (Form HUD-
472 92554-ORCF). ~~The Davis-Bacon Wage Determination~~ must be included in the
473 specifications. The Closer will confirm with HUD's Office of ~~Labor Standards~~
474 ~~Davis-Bacon~~ and ~~Labor Standards (DBLS) Enforcement~~ that the Davis-Bacon Wage
475 Determination is current as of the date of initial ~~endorsement~~closing. The Lender
476 must ~~certify~~confirm in writing that the most current and applicable wage decision has
477 been incorporated in the Construction Contract and Specifications prior to closing.
478 See Appendix 4.1, Labor Standards and Enforcement Protocol for information on
479 coordinating with ~~Labor Standards and Enforcement~~the office of DBLS.
480
- 481 3. ~~Attach the An~~ Incentive Payment Addendum ~~is incorporated in the Construction~~
482 ~~Contract~~ (Form HUD-~~9244392442-ORCF~~), if the Borrower and contractor have
483 agreed to such a payment, and there is no Identity-of-Interest between the Borrower
484 and contractor.

485
486 B. **Owner-Architect Agreement** (AIA Document B108). The Agreement must include the
487 HUD Amendment to the B108 (Form HUD-92408-ORCF), which contains a section for
488 disclosing parties in an identity-of-interest relationship with the Architect. If there are no
489 such parties, then the form should indicate “none.” See Production, Chapter 4.2, Exhibit
490 C, for additional information. The Architect administering the Construction Contract shall
491 not have any identity of interest with Owner, Contractor, and/or any Project subcontractor, or
492 with the Design Architect of record. This form must be reviewed and accepted at the Firm
493 Commitment stage.

494
495 C. **Assurance of Completion.** Documentation and HUD review will vary depending on the
496 type of assurance of completion provided. Except for letters of credit, the HUD Attorney
497 must review each type of Assurance of Completion, including the form of bonds where used.
498

499 1. Letters of Credit. These may be used instead of cash for all assurances of completion
500 and escrows required at initial and final closing, or during construction, except for up-
501 front cash escrows. In any instance in which HUD allows the use of a letter of credit
502 (whether for assurance of completion or to satisfy other types of escrow or deposit
503 requirements), the following requirements apply:

504 a. Acceptance of a letter of credit is at the Lender's ~~discretion. However, option,~~
505 but when used, copies of the letterletters of credit must ~~always be:~~ attached to
506 the escrows and assurance agreements they collateralize.

507 i. Unconditional and irrevocable; ~~and for the term required by HUD;~~
508 and

509 ii. Issued by a banking institution; ~~and,~~
510 ~~i. Valid and collectible.~~

511 ~~b. —~~

512 b. The Lender is responsible for ensuring that letters of credit are current,
513 enforceable, and acceptable.

514 ~~b.c.~~ The Lender may not be the issuer of any letter of credit without prior written consent
515 of ORCF.

516 ~~e.d.e.~~ HUD will neither look at the letter of credit nor render an opinion as to its
517 enforceability or acceptability; ~~letters of credit are accepted at the Lender's sole~~
518 ~~discretion. See 24 CFR 200.63.~~

519
520 2. Assurance of Completion for On-Site Improvements. The Lender or Borrower may
521 impose higher requirements, but must require one of the following as a minimum:

522 a. Surety Bonds. The Payment Bond (Form HUD-92452A-ORCF) must be used
523 for payment bonds and the Performance Bond-Dual Obligee (Form HUD-
524 92452-ORCF) must be used performance bonds; unless otherwise required by
525 state law. Each bond must equal 100% of the ORCF estimate of the total for
526 all improvements (Line 53, Contractor's and/or ~~Owner's~~ Mortgagor's Cost
527 Breakdown (HUDForm-92328-ORCF). The following requirements must also
528 be satisfied:

529 i. The surety must be on the accredited U.S. Treasury list, Circular 570,
530 published annually in the Federal Register on or about July 1;

531 ii. The bonds must not exceed limits listed in Circular 570;

- 532 iii. GNMA may also be named as an obligor if GNMA securities are
533 being used;
- 534 iv. An original power of attorney from the surety company to its agent
535 must be attached to each bond and dated the same day as the bond;
536 and. A certification from the surety company attesting that the power
537 of attorney attached to the certification is an original, is also required;
538 and
- 539 v. Payment and Performance bonds are required for Assurance of
540 Completion of on-site improvements where payment for components
541 stored offsite has been approved.
- 542
- 543 b. Completion Assurance Agreement (Form HUD-92450-ORCF). This
544 agreement must be secured by a cash deposit (or unconditional, irrevocable
545 letter of credit) for the appropriate percentage of the ORCF estimate of
546 construction or rehabilitation cost, as described below:
- 547 i. ~~For projects of less than four stories,~~ ORCF requires a deposit of 15%
548 of the HUD estimate of construction or rehabilitation cost;
- 549 ii. For large and elevator projects, ORCF requires a deposit of ~~25~~15% of
550 the HUD estimate of construction or rehabilitation cost for projects
551 where the structure includes an elevator, or the structure is four or
552 more stories.
- 553
- 554 3. Assurance of Completion for Off-Site Improvements. See ~~Lender's Certificate~~Lender
555 Certification (Form HUD-92434-ORCF) for requirements. To assure the completion
556 of work which may not be financed with mortgage proceeds, HUD may require
557 submittal of one or more of the following is required items, each at the discretion of
558 the Closer and the HUD Attorney:
- 559 ~~a. A Public Body Agreement acceptable to HUD from the controlling~~
560 ~~jurisdiction giving assurance for installation of utilities, streets or other~~
561 ~~facilities without cost to the Borrower. The Borrower's attorney's opinion as~~
562 ~~to whether the agreement is binding on the public body and succeeding~~
563 ~~administrations is required;~~
- 564 a. Plans and specifications for the off-site improvements;
- 565 b. Contracts or other agreements governing the construction of the off-site
566 improvements;
- 567 c. Off-site Bond – Dual Obligee (Form HUD-92479-ORCF);
- 568 d. A cash escrow using an Escrow Agreement for Offsite Facilities, (Form
569 HUD-91071-ORCF), deposited with the Lender, a trustee, or an escrow agent
570 acceptable to HUD, or an unconditional, irrevocable letter of credit. The (the
571 amount must equal or exceed ORCF's estimate of the cost of offsite off-site
572 facilities;.);
- 573 e. A letter of credit (see 9.8.C.1.);
- 574 b.f. Evidence of the locality's plans for off-site improvements (if the municipality
575 or other governmental locality will be responsible for completion of those
576 improvements); and

577 ~~e.g. Where additional assurance is Other evidence as deemed necessary appropriate~~
578 ~~by ORCF, one of the following will be required:~~
579 ~~i. Offsite Bond Dual Oblige (Form HUD-92479-ORCF), or~~
580 ~~ii. A letter of credit.~~

- 581
- 582 D. **Building Loan Agreement** (Form HUD-~~92241~~92441-ORCF). This document sets out
583 the responsibilities, conditions, and operating terms between the Lender and the
584 Borrower, including the basis under which insured advances may be made during the
585 construction period.
- 586
- 587 E. ~~Lender's Certificate~~**Lender Certification** (Form HUD-92434-ORCF). All required
588 escrows, deposits, fees, and other amounts must be properly reflected in the Lender's
589 Certificate as well as information concerning other bond obligations, extension fee
590 agreements, and permanent loan commitments. Where permissible prepayment lockout
591 and/or penalty provisions are included in the Healthcare Facility Note, this form may
592 include conditions under which HUD may consider an override of such provisions. An
593 addendum to the Lender's Certificate may be used to clarify certain expenses.
- 594
- 595 F. **Agreement and Certification** (Form HUD-93305-ORCF). This obligates the Borrower
596 to certify its actual costs of project construction or rehabilitation costs, and to disclose
597 any identity of interest among project participants. It also obligates the Borrower to
598 agree to a reduction of the mortgage amount in certain instances.
- 599
- 600 G. **Application for Insurance of Advance Mortgage Proceeds** (Form HUD-92403-
601 ORCF). An initial draw of loan proceeds may be made on the day of initial closing upon
602 recordation of the Security Instrument, evidence it constitutes a first lien on the property,
603 and HUD's delivery of the initially endorsed Note. This form must be submitted to
604 ORCF for review and approval prior to closing. Supporting documentation including
605 invoices, receipts, or cancelled checks organized with tabs and a summary sheet for each
606 line item, must also be submitted with the draw. A final, fully executed copy of this form
607 must be submitted no later than three (3) days prior to initial closing. See Production,
608 Chapter 10, Construction Period, Appendix 10.2, Instructions for Approval, for additional
609 details.
- 610
- 611 H. **Escrow Agreement for Operating Deficits** (Form HUD-92476B-ORCF). Any
612 operating deficit escrow requirements prescribed in the Firm Commitment may be in the
613 form of cash, and/or one or more unconditional and irrevocable letters of credit ~~issued to~~
614 ~~the Lender by a banking institution.~~(See Production, Chapter 9.8.C.1).
- 615
- 616 I. ~~Escrow Agreement for Working Capital~~**Escrow** (Form HUD-92412-ORCF). When
617 the Firm Commitment requires a working capital deposit, the Borrower must deposit with
618 the Lender a cash escrow or one or more unconditional and irrevocable letter(s) of credit
619 (See Production, Chapter 9.8.C.1) at initial closing. See Production, Chapter 10.15.C.
- 620
- 621 J. **Minor Movable Equipment Escrow Agreement** (Form HUD-9443-ORCF). When the
622 Firm Commitment requires an escrow for minor moveable equipment, the Borrower must

623 deposit with the Lender a cash escrow or one or more unconditional and irrevocable letters
624 of credit ([See Production, Chapter 9.8.C.1](#)) at initial closing.

625
626 **K. Other Escrows.** Other escrows may be required by the Firm Commitment. Examples
627 include an Off-Site Escrow or a Demolition and Asbestos Removal Escrow.

628
629 **L. Fee Payment from Cash Available to Borrower.**

630
631 1. Fees Paid at Initial Closing. Excess mortgage proceeds may be used to pay
632 construction costs, permanent loan discounts, and other fees recognized by HUD
633 under paragraph 19 of the Lender's Certificate.

634
635 2. For New Construction, excess mortgage proceeds may also be allocated to the
636 following items:

637 a. ORCF's estimate of the "as-is" value of land or the actual latest arms' length
638 purchase price, whichever is less. The latest arm's length purchase price may
639 include the following connected costs:

640 i. Legal fees associated with acquisition of land, zoning, examination of
641 title on the purchase, or defense of title after the purchase;

642 ii. Prepaid special assessments;

643 iii. Interest on bridge loans to purchase property after the date of
644 submission of the initial application for mortgage insurance;

645 iv. Taxes;

646 v. Cost of improvements made to the project site by the Borrower;

647 vi. Cash escrow to cover offsite construction cost;

648 vii. Cost of any demolition reflected in the fair market value of the land
649 (note that payment is approved as demolition progresses);

650 viii. Construction and/or permanent loan discounts required to be paid at
651 initial closing; and

652 ix. Interest shortfall escrow, working capital deposit, initial operating
653 deposit, debt service reserve, non-realty items, and any permanent loan
654 discounts not required to be paid at initial closing.

655 b. The remaining balance may be used to fund approved change orders or be
656 held until final closing.

657
658 3. For rehabilitation of existing construction, excess mortgage proceeds may also be
659 allocated to ORCF's estimate of the "as-is" value of land or the Borrower's
660 acquisition cost/existing indebtedness, whichever is less, and items listed in 2 above.

661
662 4. Restricted Excess Mortgage Proceeds. Restricted excess mortgage proceeds are those
663 excess mortgage proceeds determined not to be available to the Borrower during
664 construction.

665 a. These funds cannot be used to satisfy escrow requirements and must be held
666 until final closing; and

667 b. These funds must be identified in an unused column of the Financial Record
668 of Mortgage Loan Transaction (Form HUD-92451) as restricted funds.

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5. Fees Paid After Initial Closing. Excess mortgage proceeds may be used to fund permanent loan discounts, including those for unitary loans, and construction and permanent loan extension fees for payment after initial closing to the extent recognized by ORCF under paragraphs 19(b), (c) and (d) of the Lender’s Certificate. In these instances, loan documents approved by ORCF must provide for the payment of such fees after initial closing, subject to the following:
- a. The Lender is required to escrow sufficient funds on the Borrower’s behalf to cover fees approved in the Lender’s Certificate, paragraphs 9(b), for payment after initial closing;
 - b. The Borrower is required to furnish a written agreement to ORCF that any disbursements from the escrow accounts must require ORCF written approval;
 - c. A letter of credit will not be accepted at initial closing for any of the amounts to be satisfied from excess mortgage proceeds; and
 - d. Such escrowed excess mortgage proceeds may be released when earned.

M. **Permits, Approvals and Plans.** All building and other permits, governmental approvals, and plans required to construct or to rehabilitate the Project improvements must be provided for ORCF review and approval prior to initial closing. Approvals and permits must be unconditional and consistent with the ORCF-approved plans and specifications.

N. **License.** Evidence must be provided at the initial closing that the application process for the facility license has begun, and upon completion of the project, as proposed, a license will be issued. The evidence must be confirmation from the appropriate governing authority. The HUD approved names and roles must be shown on the application for the license at initial closing and on the license at final closing.

O. **Easements and Use Agreements.** All easements and joint use agreements must be approved by ORCF and the HUD Attorney.

P. **Additional Agreements.** Any additional agreements that affect the property or financing of the project must be disclosed to ORCF, including, but not limited to, construction agreements; indemnifications, guarantees, and hold harmless agreements; and any other document or information that would require reprocessing of the Firm Commitment, increase Borrower’s cash requirements, or increase the General Contractor’s bond requirement, or impact the marketability, risk to the project, loan, or Borrower.

Q. **Accounts Receivable Financing.** If there is to be accounts receivable financing on new construction projects, final draft versions of the documents will be due at 70% completion. In no event should Accounts Receivable documents be executed without prior HUD consent.

R. **Deposit Account Control Agreement (DACA) and Deposit Account Instruction Service Agreements (DAISA).** ORCF requires that all project Owners and/or Operators maintain appropriate agreements, approved by HUD, perfecting a security interest in

715 project accounts. Final draft versions of the documents will be due at 70% construction
716 completion.

717 **S. Required Organizational Documents.** The following organizational documents must
718 be provided for the Borrower, Master Tenant and Operator. If the signature block for any
719 of these entities includes other entities (“upper tier entities”), organizational documents
720 for those upper tier entities must also be provided:

721
722 1. Incumbency Certificate. A certificate dated the date of closing, and signed by the
723 secretary or other authorized representative of the entity (which may be the individual
724 executing the loan documents), stating: The organizational documents attached to the
725 certificate are true and correct copies, and have not been amended, modified,
726 rescinded, or revoked, and remain in full force and effect; and The name(s) and
727 title(s) of the entity’s officers and key principals, with specimen signature(s) of the
728 individual(s) authorized to execute the loan documents.

729
730 2. Formation Documents. Copies of the entity’s filed formation documents, including all
731 amendments and subsequent filings, certified by the relevant jurisdiction’s Secretary
732 of State, or legal equivalent, within 60 days prior to closing, or such longer period
733 approved by the HUD Attorney.

734
735 3. Governing Document. Copy of the entity’s fully executed governing document,
736 including any and all amendments, and including the HUD-Required Provisions
737 found in the legal punchlist applicable to the closing in effect as of the date of Firm
738 Commitment.

739
740 4. Authorization. Evidence that the transaction is authorized, and that entity has
741 authority to execute the loan documents. If such authorization is not explicitly
742 provided in the entity’s governing document, this may take the form of a resolution,
743 written consent, or other legal equivalent, consistent with local law, custom, and the
744 entity’s organizational documents.

745
746 5. Status Certificate. A status certificate from the Secretary of State, or legal equivalent,
747 of the jurisdiction where Borrower is organized evidencing Borrower’s authority to
748 do business (e.g., a Certificate of Good Standing). This status certificate must be
749 dated within 30 days prior to closing, or a longer period if approved by the Closer. If
750 the entity is not organized in the state where the Project is located, a certificate from
751 the Secretary of State, or legal equivalent, in the Project state evidencing Borrower’s
752 authority to conduct business in the Project jurisdiction (e.g., a Foreign Status
753 Certificate). Unless required by state law, upper tier entities organized outside the
754 state in which the project is located do not need to submit evidence of authority to
755 conduct business in the project’s state.

756
757 **T. Title Insurance Policy.**

758 a. Schedule A. Schedule A details the coverage provided by the Title Policy.

759 i. Effective Date. The Title Policy effective date must be the same as the date of
760 HUD’s endorsement of the Note.

761 ii. Policy Amount. The amount of the title insurance coverage, shown in
762 Schedule A, must be the full amount of the FHA-insured Loan. Note: For new
763 construction and substantial rehabilitation loans, HUD requires that the Title
764 Policy insure the full amount of the FHA-insured Loan (e.g., the amount of
765 the Note); pending disbursement endorsements are permitted if the
766 endorsements are consistent with the requirements of this Section. HUD
767 insures all 223(f) transactions in full at the time of endorsement, thus pending
768 disbursement endorsements are not permitted for 223(f) Title Policies.

769 iii. Named Insureds. Schedule A, number 1 lists the insureds for the Title Policy.
770 Lender “and/or the Secretary of Housing and Urban Development, and their
771 successors and/or assigns, as their interests may appear” must be the named
772 insureds on the Title Policy. No other parties, e.g., subordinate Lenders, may
773 be named insureds.

774 iv. Estate or Interest in the Land. Schedule A, number 2 identifies the type of
775 estate encumbered by the Security Instrument. The identified estate must be
776 consistent with the Firm Commitment. By statute, Borrower’s estate or
777 interest in the Land must be fee simple or an eligible leasehold. In addition,
778 the Borrower’s statutorily required interest, Schedule A, number 2 must also
779 reference any appurtenant right, including beneficial easements. In such
780 instances, Borrower’s appurtenant right must be distinguished from
781 Borrower’s statutorily required interest (e.g., “fee simple as to [Borrower’s fee
782 simple or leasehold estate] and easement as to [beneficial easement]”).

783 v. Vested Title Holder. Schedule A, number 3 identifies the entity that holds title
784 to the Land. Generally, Borrower must be identified as the only vested title
785 holder in Schedule A, number 3. If the Firm Commitment evidences HUD’s
786 approval of an alternative (e.g., air rights, bifurcated ownership, or public
787 entity held fee subject or joined to the Security Instrument), the vested title
788 holder in Schedule A, number 3, must be consistent with the Firm
789 Commitment.

790 vi. Insured Mortgage. Schedule A, number 4 describes the instrument(s) that
791 create the mortgage insured in the Title Policy. Both the Security Instrument
792 and the Borrower’s Regulatory Agreement, because it is incorporated into the
793 Security Instrument, must be shown in Schedule A, number 4. The reference
794 to the Borrower’s Regulatory Agreement must state that the Borrower’s
795 Regulatory Agreement is incorporated by reference in the Security Instrument

796 (other legally equivalent phrasing may be used, subject to HUD Attorney
797 approval).

798 vii. Legal Description. The legal description of the Land used in the Title Policy
799 must exactly match the legal description in the Firm Commitment, on the
800 Survey, and in other closing documents except for minor stylistic differences
801 or immaterial reference language. Appurtenant interests shown in Schedule A,
802 number 2 may be listed as separate tracts, parts, or other legal equivalent.

803
804 b. Schedule B. Schedule B provides coverage of Exceptions.

805 i. Standard Exceptions. The Title Policy must not include standard exceptions
806 on Schedule B, unless a standard exception cannot be deleted under applicable
807 state law. Lender and Lender's Counsel are responsible for requesting deletion
808 of standard exceptions from the Title Policy. Affirmative coverage over these
809 matters is not permitted unless such coverage is the only available mitigation
810 under applicable state law. Standard exceptions, sometimes called general
811 exceptions, include, but are not limited to: Rights or claims of parties in
812 possession not shown by the Public Records; Easements, or claims of
813 easements, not shown by the Public Records; Encroachments, overlaps,
814 boundary line disputes, or other matters which would be disclosed by an
815 accurate survey or inspection of the Land; General exception for matters
816 shown on survey, or that would be shown on survey; Any lien, or right to a
817 lien, for services, labor, or material heretofore or hereafter furnished, imposed
818 by law and not shown by the Public Records (aka mechanic's liens); and
819 Taxes or special assessments which are not shown as existing liens in the
820 Public Records.

821 ii. Senior Record Exceptions. Schedule B must list items identified by title in the
822 land records. In most jurisdictions, title matters senior to the FHA-insured
823 mortgage are shown on a Schedule B-I. Senior record exceptions must either
824 be approved by the HUD Attorney (in consultation with the Closer), or
825 extinguished and removed, affirmatively insured over, or otherwise mitigated
826 to the satisfaction of the HUD Attorney and ORCF, as appropriate. No
827 monetary liens may supersede the FHA-insured mortgage, except
828 supplemental loans insured under Section 241, which will be subordinate, and
829 real estate taxes and assessments for current year that are not yet due and
830 payable.

831 iii. Project Survey Exception. While the general title exception for survey matters
832 is prohibited, minor survey matters expressly noted by the surveyor (e.g. a
833 specific fence encroachment not affecting Borrower's use of or liability for
834 the Land) may be listed as exceptions from coverage in Schedule B, subject to

835 ORCF approval, which may require affirmative coverage if available under
836 state law.

837 iv. Subordinate Record Exceptions. In most jurisdictions, matters subordinate to
838 the Security Instrument are shown on a Schedule B-II. The Borrower's (and, if
839 applicable, Operator's and Master Tenant's) UCC-1 Financing Statement(s)
840 recorded as a fixture filing in the real estate records of the Property
841 jurisdiction must be shown in Schedule B as subordinate to the Security
842 Instrument. Note: HUD does not require that the UCC-1 Financing Statement
843 filed with the Secretary of State, or legal equivalent, in the Borrower's
844 organizational jurisdiction be shown on Schedule B. The legal punchlist
845 describes other documents to be recorded, including Operator's Regulatory
846 Agreement, Operator's Assignment of Leases and Rents, Master Tenant's
847 Regulatory Agreement, Master Tenant's Assignment of Leases and Rents, etc.
848 All documents that are required to be recorded for the particular transaction
849 must be shown on Schedule B2.

850
851 c. Record Exceptions that Appear to Violate Federal Law or the Regulatory
852 Agreement. Exceptions that appear to violate Federal law or the Regulatory
853 Agreement, in whole or in part, must be extinguished as a matter of record and
854 removed from the Title Policy, except where determined by ORCF to be
855 impossible or impracticable. If removal is impossible or impracticable, the HUD
856 Attorney will request that the Title Policy or the title company state that the
857 conflicting provisions are unenforceable.

858
859 d. Affirmative Coverage (Endorsements) and Deletions to the Title Policy. The Title
860 Policy must include the affirmative coverage (coverage added to the standard
861 policy) and deletions listed below, and any other coverage required by the Closer
862 and the HUD Attorney, except where prohibited by applicable state law.

863 i. Affirmative Coverage, Endorsements. Affirmative coverage extends the
864 insurance provided through the Title Policy by covering additional risks of
865 loss or damage. Affirmative coverage is added to the Title Policy by
866 annotation (e.g., notation of additional coverage directly on a schedule), or
867 through the title company's issuance of standard form endorsements. The
868 affirmative coverage listed below is generally required. When a specific
869 ALTA endorsement number is listed but not available in the Project
870 jurisdiction, the HUD Attorney may accept a state approved endorsement
871 bearing a different form number, or alternative affirmative coverage, provided
872 that the coverage is substantially similar. The Closer, HUD Attorney, and
873 Lender are each permitted to require additional affirmative coverage not
874 required by this section based on the specific characteristics of the transaction.

- 875 a. Comprehensive Coverage over Restrictions, Encroachments, and Minerals.
876 ALTA Endorsements 9, 9-06, 9.7-06, 9.10-06 (also known as the Series 9,
877 Comprehensive Endorsement, or Comp 9), as applicable, to provide
878 affirmative coverage related to mortgage divestment, and violations of
879 restrictions, encroachments, and minerals. In many jurisdictions, the
880 comprehensive ALTA 9-06 is intended for use with improved residential
881 property but may also be issued for unimproved property (e.g., new
882 construction on vacant land). Other jurisdictions have authorized issuance
883 of a series 9 endorsement specifically for unimproved property. Note: Most
884 of the ALTA series 9 endorsements specifically exclude certain Schedule B
885 matters. For that reason, other affirmative coverage (notation or other
886 endorsement) will be required to extend coverage over such items in
887 Schedule B, as determined necessary by the Closer and HUD Attorney.
- 888 b. Private Rights. ALTA Endorsement 9.6.-06 – Loan Policy, to provide
889 affirmative coverage against loss or damage resulting from options to
890 purchase, rights of first refusal, rights of prior approval, and other private
891 charges or assessments.
- 892 c. Deletion of Arbitration. The Title Policy must provide affirmative coverage
893 that deletes Condition 13 of the ALTA jacket policy (arbitration). There is
894 no published ALTA form number for this endorsement.
- 895 d. Zoning. ALTA Endorsements 3.1-06 (completed structure/improved land),
896 or 3.2-06 (construction/unimproved land), as applicable, when Lender
897 elects to use a zoning endorsement as the requisite evidence of zoning
898 compliance. See Instructions to Opinion of Borrower's Counsel (form
899 HUD-91725-ORCF-INST). When the ALTA 3.2-06 is used, the plans and
900 specifications reference must be consistent with the Firm Commitment and
901 the Building Loan Agreement (i.e., the referenced plans and specs must be
902 consistent with the HUD-approved version).
- 903 e. Environmental Protection Lien. ALTA Endorsement 8.1-06, to provide
904 coverage related to lien priority of the Security Instrument vis-à-vis
905 environmental protection liens as defined in the endorsement. “None”
906 should be inserted after the colon (:) in the endorsement paragraph (b). If
907 any environmental protection liens are listed by title in paragraph (b), the
908 HUD Attorney must consult with the assigned HUD Environmental
909 Officer. Note: ALTA Endorsement 8.2-06 is not an acceptable alternative
910 as it applies to commercial property.
- 911 f. Leasehold. ALTA Endorsement 13.1-06 to provide additional coverage
912 when the Project is secured by a HUD-approved ground lease.
- 913 g. Access and Entry. ALTA Endorsements 17-06 (direct access), 17.1-06
914 (easement access), as applicable, to provide affirmative coverage related to

- 915 property access and entry. The access endorsement must be consistent with
916 the point(s) of access depicted on the Survey.
- 917 h. Tax Parcels. ALTA Endorsement 18-06 (for Land consisting of a single
918 parcel) or 18.1-06 (for Land consisting of multiple tax parcels or Land that
919 includes insured easements), as applicable, to provide affirmative coverage
920 related to tax parceling risk.
- 921 i. Contiguity. ALTA Endorsements 19-06 and 19.1-06, as applicable, to
922 provide additional coverage for Projects with contiguity risks (e.g.,
923 multiple or adjacent parcels, or beneficial easements).
- 924 j. Same as Survey. ALTA Endorsement 25-06 or 25.1-06, as applicable, to
925 provide coverage related to non-objectionable inconsistencies between the
926 record legal description (Land in Schedule A) and the boundaries identified
927 on the Project's survey. The survey reference in the endorsement must be
928 consistent with the date and number revision of the HUD-approved Survey.
- 929 k. Policy Authentication, Electronic Signature. ALTA Endorsement 39-06, as
930 applicable, to ensure coverage when the Title Policy will be issued
931 electronically or without wet-ink signatures.
- 932 l. Pending Disbursements. ALTA Endorsements 32-06 and 33-06, to provide
933 alternative coverage when the title company will only insure a new
934 construction or substantial rehabilitation loan by deleting Covered Risk
935 11(a) (mechanic's lien coverage) during the construction of the Project.
936 HUD only permits deletion of Covered Risk 11(a) and pending
937 disbursements title coverage for loans closed as new
938 construction/substantial rehabilitation Insurance of Advances. Pending
939 disbursements coverage is prohibited when HUD insures the total Loan
940 amount at endorsement or where mechanic's liens relate back to the start of
941 construction pursuant to state law.
- 942 m. Easements and Encroachments. ALTA 28 Series Endorsements, as
943 applicable, when easements or encroachments are shown on survey and
944 listed as senior to the Security Instrument in Schedule B.
- 945 n. Minerals and Other Sub-Surface Substances. ALTA Endorsement 35.1-06
946 (improved land), or ALTA Endorsement 35.3-06 (land under
947 development), as applicable, to provide affirmative coverage over Schedule
948 B exceptions for mineral or other sub-surface substance rights.
- 949 Note: The 35 series endorsements provide additional coverage that
950 is not afforded by the Series 9 comprehensive endorsement(s).
951 Other Resource Extraction. Endorsement, such as CLTA
952 Endorsement 103.5-06, to provide affirmative coverage when title
953 or survey show rights of third parties to subsurface resource

954 extraction or surface use of the Land (e.g., mineral or water
955 extraction, water irrigation, other resource reservations).
956 o. Utility Access. When required by the Firm Commitment or applicable
957 closing checklist, ALTA Endorsement 17.2-06 to provide affirmative
958 coverage related to a Project's access to standard utilities.
959 ii. Non-Standard Exception Deletions from Policy. The matters listed below
960 must be resolved prior to closing and deleted from the Title Policy.
961 Affirmative coverage is not permitted.
962 a. Taxes. Specific tax liabilities that are not yet due and payable may be listed
963 on Schedule B. However, all taxes that are liens and payable as of closing,
964 must be paid prior to closing.
965 b. Specified Mechanic's Liens. Previously recorded mechanic's liens shown
966 in Schedule B must be resolved, and the liens removed from the Title
967 Policy prior to closing.
968
969 e. Title Policy Issuance and Escrow Services
970 i. Title Agent Letter of Authority. Where the Title Policy is issued by a title
971 agent (i.e., not directly by the issuing title company), HUD requires a letter of
972 authority (aka agency verification letter). The agency verification letter must:
973 be on the letterhead of the Title Company issuing the Title Policy, be
974 addressed to HUD and the Lender; include Borrower's name, Project name
975 and number, policy amount, and title agent's name, and state that the title
976 agent is in good standing with the title company issuing the Title Policy.
977 Additionally, the agency verification letter must state that the title agent has
978 the authority to issue the Title Policy on behalf of the title company for the
979 project identified in the letter and must be valid as of the date of closing.
980 Lender's Counsel is responsible for obtaining any necessary updates to the
981 agency verification letter to ensure compliance with these requirements.
982 ii. Escrow Services and Closing Protection. HUD generally permits a local title
983 company branch, title agent, or approved attorney to provide additional
984 escrow services along with issuance of the Title Policy. The local branch, title
985 agent, or authorized attorney will close the transaction by ensuring that the
986 documents are recorded, disbursing the funds to the proper parties, and issuing
987 the Title Policy.
988 a. HUD requires a closing protection letter (e.g., ALTA Closing Protection
989 Letter (ALTA CPL – Single Transactions R-12-01-2015), or an equivalent
990 form letter authorized by the state regulatory body in the Project
991 jurisdiction) for all closings where a title agent, approved attorney, or
992 other individual not directly employed by the issuing title company will

perform escrow services and/or manage original documents required for closing.

- b. The title company issuing the Title Policy must issue the CPL to Lender and HUD, as their interest may appear. Any liability limitation stated in the CPL must be equal to or greater than the amount of the FHA-insured Loan.
- c. The CPL ensures that the title agent, approved attorney, or other third-party escrow agent is authorized to perform the escrow services on behalf of the title company, and to indemnify the Lender for actual losses caused by certain misconduct of the closing agent (subject to specific exceptions and exclusions therein). The CPL must state that the protection afforded by the CPL is valid as of the date of closing. Lender's Counsel is responsible for obtaining any necessary updates to the CPL to ensure compliance with these requirements.
- d. HUD will only accept third-party escrow services and related CPLs when such services and coverage are permitted by state law of the Project jurisdiction.

U. Litigation Disclosure. Litigation docket searches for the Borrower, Operator, and Master Tenant and the general partner, managing member, or similar controlling person(s) or entity(ies) of the Borrower, Operator and Master Tenant, must be conducted in the state, federal district, and bankruptcy courts of the Project jurisdiction and in the jurisdiction of their principal places of business. All litigation identified by a required docket search and any other claim threatened in writing and known to Borrower or Borrower's Counsel (including litigation arising after the date of the litigation docket search but prior to closing), must be disclosed to the Closer and HUD Attorney in writing. This disclosure must be accompanied by an explanation from the entity and/or an assessment of risk by the entity's attorney to the reasonable satisfaction of the Lender and HUD. The explanation/assessment must describe the nature of the litigation or claim, the status of the proceeding, and whether insurance is/will cover potential liability. Lender's Counsel is responsible for obtaining any information requested by the HUD Attorney or ORCF.

9.9

PreconstructionPreConstruction Conference

A PreconstructionPreConstruction Conference is required prior to the start of construction. The PreconstructionPreConstruction Conference must be scheduled within one week of initial closing. The Lender is responsible for arranging and facilitating the

1031 ~~Preconstruction~~PreConstruction Conference. The signing of the Plans and Specifications
1032 generally occurs at the ~~Preconstruction~~PreConstruction Conference. The signing may also be
1033 conducted ~~at Closing~~on the day of closing. See Production, Chapter 10, Construction Period, for
1034 more information.
1035
1036

9.10

Tax Credits

1037
1038 A. For more information, see Production, Chapter 12, LIHTC and Other Tax Credit Program
1039 Guidance.
1040

1041 Specific to loans involving tax credits, the initial closing documents must include:
1042

- 1043 1. A final detailed Sources and Uses statement of total development costs,
1044 reflecting any revisions to hard and soft costs as reflected on the Firm Commitment's
1045 Maximum Insurable Loan Calculation. If any funding sources have changed, a
1046 revised Applicant/Recipient Disclosure/Update Report is also required.
1047
- 1048 2. All documents must include conflict language giving the HUD documents supremacy
1049 over other documents. Documents may not include indemnification provisions,
1050 except as otherwise permitted by outstanding HUD guidance.
1051
- 1052 3. A copy of the tax syndicators equity and construction schedule milestones must be
1053 included at initial closing.
1054

1055 B. Tax Credit Equity Contribution:
1056

- 1057 1. The required initial equity investment will be reflected in the Firm Commitment as a
1058 Special Condition; the initial installment must be advanced at initial closing.
1059
- 1060 2. Application for Insurance of Advance Mortgage Proceeds. Approval of costs to be
1061 funded will be based on those approved in the Firm Commitment, or, if applicable,
1062 approved amended Sources and Uses Statement.
1063
- 1064 3. After the first installment of LIHTC Equity is distributed at initial closing, the
1065 subsequent contributions must be made at a time and in a manner during construction
1066 to ensure that the underwriting requirements in the Firm Commitment are maintained
1067 and met for actual costs.
1068

1069 C. Tax Credit Equity Bridge Loans:
1070

- 1071 1. Tax credit-~~equity~~ syndicators or investors (with or without an Identity of Interest with
1072 the Section 232 Lender) may make equity bridge loans to LIHTC, Historic, or New
1073 Markets Tax Credit projects during the construction or substantial rehabilitation
1074 period before the property's placed-in-service date. The bridge loan may be
1075 evidenced by a promissory note on HUD's form of surplus cash note (Surplus Cash

1076 Note, Form HUD-92223-ORCF from the Borrower and may be secured by a pledge
1077 of the tax credits or of the limited partnership interest but may not be secured by a
1078 lien on the real estate. After the placed-in-The pledge of a limited partnership must
1079 include a statement that the partnership interest may not be transferred, nor may the
1080 transferee exercise any power of attorney over the partnership interest without the
1081 prior written consent of HUD and compliance with HUD requirements for a Change
1082 of Participants (CHOP) and previous participation clearance. After the placed-in
1083 service date, the bridge loan must be released and retired by the pay-in of the
1084 investor's equity.

- 1085
- 1086 2. An equity bridge loan is a means of securing the Borrower's cash contribution that is
1087 required to complete construction before the tax credits are available to be claimed by
1088 the equity investor. The placed-in-service date is the date when the newly
1089 constructed or rehabilitated property has been completed and its units have been
1090 occupied by income qualified tenants. This is also when the tax credits are officially
1091 able to be claimed by the equity investor, and, in the case of LIHTCs, -is evidenced
1092 by issuance of Low-Income Housing Credit Allocation and Certification (IRS Form
1093 8609). -However, at Final Closing, all funds needed to meet the Borrower's cash
1094 contribution must be in the transaction so the sources and uses will balance and the
1095 tax credit investors will pay in the equity to retire the equity bridge loan. The equity
1096 bridge loan must be retired no later than Final Closing.
- 1097
1098
1099

9.11

Final Closings: Required Forms and Documentation

1100
1101 Once construction has been completed and the certification of costs has been approved by
1102 ORCF, the loan must proceed to final closing. ORCF will issue a Maximum Insurable Mortgage
1103 Letter providing the final mortgage determination. Once the letter is issued, immediate
1104 preparation for final closing must begin. Final closing documents are to be submitted within 30
1105 days of the date of the Maximum Insurable Mortgage Letter. See Production, Chapter 11, Cost
1106 Certification, for complete information on cost certifications.

1107
1108 See Appendix 9.1 for the references to the checklist of required documents for a final closing.
1109 Note: there is only one checklist for both the Closer and the HUD Attorney.

1110
1111 **A. Deposit Account Control Agreement (DACA) and Deposit Account Instructions Service**
1112 **Agreement (DAISA).** For all Insurance of Advances projects where the DACA and/or the
1113 DAISA were not approved by HUD prior to initial closing, the final and executed DACA
1114 and/or the DAISA must be submitted to the Closer and the HUD Attorney when the project
1115 reaches 70% construction completion. The final and executed documents must be approved
1116 prior to HUD's approval of the Permission to Occupy.

1117
1118 **B. Title Evidence at Final EndorsementClosing.**

1119 Prior to ~~final-endorsement~~Final Closing, the Lender must provide HUD with a new title

1120 policy, or, if approved by the HUD Attorney, a title endorsement covering the following
1121 matters:

- 1122 1. Showing what, if any, matters have gone on record since the initial closing;
- 1123 1124 2. Changing the effective date of the title policy to the day of final closing;
- 1125 1126 3. If a Modification Agreement or Supplemental Mortgage and Consolidation
1127 Agreement are used, ~~insuring~~ensuring that the mortgage, as modified, or as
1128 supplemented and consolidated, remains in a first lien position. Should the title
1129 insurance company be unable to provide such endorsement, or should the
1130 endorsement show any lien intervening between the recordation of the original
1131 insured mortgage and the Supplemental Mortgage, ORCF will not endorse the
1132 mortgage for insurance at the increased amount;
- 1133 1134 4. Deleting the pending disbursements clause; and
- 1135 1136 5. Increasing the amount of title ~~coverage~~insurance if the mortgage amount increased.
- 1137 1138 6. ORCF will examine any exception to title, not shown in the title evidence accepted at
1139 initial closing, to determine whether or not it affects the value and/or marketability of
1140 the project. Any exception which affects the value and/or marketability of the project
1141 as determined by ORCF must be removed from the title policy or its effect insured
1142 against by the appropriate endorsement to the title policy.

1143
1144
1145 C. **Labor Standards and Enforcement Clearance.** The Office of Davis-Bacon and Labor
1146 Standards ~~and Enforcement~~ must confirm that all Davis-Bacon requirement have been
1147 satisfied. The Closer will request clearance for closing from the Office of Davis-Bacon and
1148 Labor Standards ~~and Enforcement~~. If there are outstanding Davis-Bacon violations, the
1149 Labor Standards ~~and Enforcement~~ Specialist will inform the General Contractor, the Closer,
1150 and the ORCF Construction Manager that deposits to the U. S. Treasury must be established
1151 as a condition of closing to ensure payment of wages. Final closing cannot proceed until the
1152 violations have been cleared. The Office of Davis-Bacon and Labor Standards ~~and~~
1153 Enforcement will provide approval to proceed to final closing. See Appendix 4.1, Labor
1154 Standards and Enforcement Protocol, for more information.

1155
1156 D. **Incomplete On-site Facilities.**

- 1157 1158 1. Conditions for Approval. It is ~~desirable~~required that all on-site construction be 100%
1159 complete before approval of a final advance of mortgage proceeds. However, there
1160 may be circumstances where it is necessary that approval of a final advance be given
1161 before 100% completion of on-site construction.
 - 1162 a. Approval of a final advance where minor items of on-site construction are
1163 incomplete will be given only in cases in which funds are placed in escrow to
1164 assure completion of such minor items, as provided in the Certificate of
1165 Mortgage Insurance in the Application for Insurance of Advance Mortgage

- 1166 Proceeds, and in the footnote on Request for Final Endorsement (Form HUD-
1167 92023-ORCF).
- 1168 b. Approval of a final advance of mortgage proceeds will be given only in those
1169 cases in which:
- 1170 i. The aggregate estimated cost of completing the items does not exceed
1171 2% of the principal amount of the mortgage.
- 1172 ii. Funds must be placed in escrow for the completion of minor items
1173 when immediate completion is inadvisable or impossible, due to
1174 weather or other conditions beyond control.
- 1175
- 1176 2. Escrow for Completion. With respect to all incomplete items, the amount held in
1177 escrow for completion must be at least 1.5 times the estimated cost of completion.
1178 The amount of any escrow must be sufficient to assure an incentive to complete the
1179 work, taking into consideration a possible rise in cost. Such escrow will be held by
1180 the Lender in accordance with the terms of the Escrow Agreement for Incomplete
1181 Construction (Form HUD-92456-ORCF), and ORCF will ascertain that the items to
1182 be completed are properly identified by attachment to the Application for Insurance
1183 of Advance of Mortgage Proceeds. See Production, Chapter 10.8.I for additional
1184 information.
- 1185

1186 **E. Incomplete Off-Site Facilities.**

1187

- 1188 1. Approval of a final advance of mortgage proceeds will be given only in those cases in
1189 which: All off-site utilities such as sewer, water, electrical, and gas facilities are
1190 installed and connected, and the buildings are served by safe and adequate all-weather
1191 facilities, either permanent or temporary, for the ingress and egress of pedestrian and
1192 vehicular traffic, including fire apparatus, and all other construction requirements
1193 have been acceptably accomplished ~~or acceptably assured~~ and accepted by the local
1194 authorities.
- 1195
- 1196 2. Completion of Off-Site Utilities. Until all off-site facilities are completely installed
1197 and connected, as applicable, and the required ingress and egress is provided, HUD
1198 will not process a request for the final advance. In such cases:
- 1199 a. Any Application for Insurance of Advance of Mortgage Proceeds submitted
1200 for processing will not be treated as approval of a final advance, nor will the
1201 submission of Request for Final Endorsement. Instead, the Application for
1202 Insurance of Advance of Mortgage Proceeds may be treated as an ordinary
1203 application for advance of mortgage proceeds and may be approved in an
1204 amount which, when added to previous advances of mortgage proceeds, will
1205 equal 90% of the total advances to which the Borrower will be entitled at
1206 100% completion.
- 1207 b. Following 100% completion of all off-site facilities, ORCF will require
1208 submission of a new Application for Insurance of Advance of Mortgage
1209 Proceeds for approval of the final advance and subsequent submission of an
1210 updated Request for Final Endorsement.
- 1211

1212
1213
1214 **F. Security and Start of Amortization.**
1215

- 1216 1. Non-Realty Items. All non-realty items must be covered by the mortgage lien or
1217 security agreement, or both, whether or not paid for with mortgage proceeds, so long
1218 as such items are reasonably necessary to operate the project for the Approved Use.
1219 Any items not secured at initial Closing must be secured at final closing.
1220
- 1221 2. Start of Amortization. Whether construction has been completed or not, amortization
1222 must start on the date specified in the Note, unless a deferment has been
1223 recommended by the Lender and approved in advance by ORCF. Any request for
1224 deferment of amortization will be reviewed by the Closer, ORCF Account Executive,
1225 and the HUD Attorney. If the request for deferment of amortization is approved by
1226 HUD, the deferment must be reflected in a modification to the endorsed Note.
1227

1228 **G. Change in Mortgage Amount.**
1229

- 1230 1. Decrease in Mortgage Amount.
1231 a. Modification Agreement. If there is a mortgage decrease based upon HUD's
1232 final mortgage determination, a draft Modification Agreement must be
1233 submitted prior to final closing. The Modification Agreement must amend the
1234 Security Instrument and set forth the new mortgage amount. HUD will
1235 endorse the HealthCareHealthcare Facility Note for the decreased mortgage
1236 amount.
1237 i. The following provision must be included in the Modification
1238 Agreement: Nothing in this Agreement shall waive, compromise,
1239 impair or prejudice any right HUD may have to seek judicial recourse
1240 of any breach of that certain Regulatory Agreement executed by the
1241 parties hereto, recorded on even date with the Security Instrument,
1242 which breach may have occurred prior to or may occur subsequent to
1243 the date of this Agreement. In the event that HUD initiates an action
1244 for breach of said Regulatory Agreement and recovers funds, either on
1245 HUD's own behalf or on behalf of the Project or the Borrower, those
1246 funds may be applied, at the discretion of HUD, to payment of the
1247 delinquent amounts due under the HealthCareHealthcare Facility Note
1248 or the Security Instrument or as a partial prepayment of the Healthcare
1249 Facility Note.
1250 ii. Prior to final endorsementclosing, the Modification Agreement must
1251 be properly executed and recorded in the real property records of the
1252 county in which the project is located.
1253 b. The Healthcare Facility Note may be modified, with an allonge, to set forth
1254 the decreased mortgage amount and the new amortization schedule. Any such
1255 modifications are subject to HUD approval.
1256 c. HUD must approve appropriate title evidence related to the modification(s), as
1257 set forth above.

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2. Increase in Mortgage Amount. If ORCF approves an increase in the mortgage amount, the following documents must be submitted to HUD for approval prior to final endorsement closing:
- a. Supplemental HealthCareHealthcare Facility Note.
 - i. The Lender must prepare a Supplemental HealthCareHealthcare Facility Note acceptable to HUD, entitled “Supplemental HealthCareHealthcare Facility Note.”
 - ii. This document must contain a cross-default provision with the original HealthCareHealthcare Facility Note.
 - iii. The principal amount of the Supplemental HealthCareHealthcare Facility Note must be for the amount of the increase to the mortgage, not for the new total mortgage amount.
 - iv. The amount of the payments to principal must be sufficient to amortize the increase amount over the mortgage term.
 - b. Supplemental Security Instrument.
 - i. The Lender must prepare a Security Instrument acceptable to HUD, entitled “Supplemental Security Instrument.”
 - ii. This document must contain a cross-default provision with the original Security Instrument.
 - iii. The Supplemental Security Instrument must encumber the entire project and must secure repayment of the Supplemental HealthCareHealthcare Facility Note.
 - c. Modification and Consolidation Agreement.

The Lender must prepare a Modification and Consolidation Agreement, acceptable to HUD, to be recorded in the real property records in the property jurisdiction. Such documents must evidence the following:

 - i. The original Healthcare Facility Note and the Supplemental Healthcare Facility Note will be deemed one indebtedness; and
 - ii. The original Security Instrument and the Supplemental Security Instrument will be deemed one indebtedness.
 - iii. The original Security Instrument shall be modified to provide for cross-default with the Supplemental Security Instrument.
 - iv. The original Healthcare Facility Note shall be modified to provide for cross-default with the Supplemental Healthcare Facility Note.
 - d. Borrower’s Attorney’s Opinion. The Borrower’s Attorney must give an opinion, in a format approved by HUD, with respect to the documents evidencing the increased mortgage amount. The Borrower’s Attorney opinion specifically supplements the opinion given at Initial Closing and addresses any modifications to the Loan documents that the HUD Closing Attorney has found to warrant an updated opinion, including without limitation, the following:
 - i. The enforceability of the documents evidencing any modification to the insured Loan’s terms, including a modification agreement, consolidation agreement, supplemental note, supplemental security instrument, supplemental UCC-1 Financing Statement, or any and all

- 1304 of the foregoing, and the continued first-priority position of the insured
1305 Loan's lien;
1306 ii. Any land use restrictive agreements or extended use agreements, or
1307 any other restrictive covenants, that have been placed on the property
1308 since Initial Closing, including those connected with LIHTC, if not
1309 covered in the initial opinion; and
1310 iii. Disclosure of any material modifications to the documents covered by
1311 the opinion given at Initial Closing, including any amendments or
1312 changes to the legal description.
1313 e. Title evidence approved by HUD.
1314

1315 **H. Application for Insurance of Advance of Mortgage Proceeds.** For the contractor's
1316 remaining retainage and any outstanding costs to be paid at final closing, the Borrower and
1317 Lender must execute this form. The form must be accompanied by a completed Contractor's
1318 Requisition (Form HUD-92448-ORCF), signed by the contractor and the architect.
1319

- 1320 1. If no items of on-site construction are incomplete, enter "None" in the space provided
1321 for the amount of the escrow deposit on the form.
1322
1323 2. If items of on-site construction are incomplete and an escrow deposit is required,
1324 attach an itemized list of incomplete items, and enter the amount of the escrow
1325 deposit required.
1326
1327 3. The Closer will determine if:
1328 a. any items of on-site construction are incomplete;
1329 b. any off-site facilities are incomplete;
1330 c. any revisions are required in connection with hazard insurance; and if
1331 d. the necessary non-realty items have been submitted.
1332
1333 4. The Closer will obtain ORCF approval signatures on the Application for Insurance of
1334 Advance of Mortgage Proceeds and the Contractor's Requisition. Electronic copies
1335 will be forwarded to the HUD Attorney and the Lender.
1336

1337 **I. As Built Survey.** The final as-built survey must be dated within 120 days of closing. The
1338 term "dated" means the surveyor's certification must show that the survey was made "on the
1339 ground" within 120 days prior to closing. The survey ~~accompanying this request~~ must show
1340 the exact location of all buildings, water, sewer, gas and electric mains, and all easements for
1341 such existing utilities. The survey must be prepared, signed, and sealed by a licensed
1342 surveyor and must include a certification in the format set out in the Survey Instructions and
1343 Owner's Certification Minimum Standard Detail Requirements for ALTA/NSPS Land Title
1344 Surveys.
1345

1346 **J. Permits, Licenses and Approvals.** All building and other permits, licenses, and
1347 governmental approvals required to own and operate the project must be provided for HUD
1348 review and approval including, but not limited to, the Certificate of Occupancy and the
1349 Certificate of Need.

- 1350
1351 K. **Lender Letter of Loan Status.** The Lender must submit a letter, dated the day of final
1352 closing, stating that the loan is current. This may be combined with the Current Payment
1353 Letter.
1354
1355 L. **Request for Final Endorsement.** An updated and fully executed Request for Final
1356 Endorsement ([HUD Form-92023-ORCF](#)) must be submitted and reflect any material change
1357 made from the time of cost certification.
1358
1359 M. **Insurances.** Proof of acceptable insurances for professional liability, property, and fidelity
1360 must be provided.
1361
1362 N. **Request for Release of Escrows.** To release any escrow for a change order, minor
1363 moveables, or working capital, submit a Request for Approval Advance of Escrow Funds
1364 (Form HUD-92464-ORCF).
1365
1366 O. **License.** The facility license must be current with the correct number of beds/units approved
1367 in the underwriting. [The facility license must not be set to expire within 30 days after the date](#)
1368 [of closing, the number of beds shown must be for the number of beds approved in the Firm](#)
1369 [Commitment and the entity name\(s\) must have been approved as the licensees in the](#)
1370 [underwriting.](#)
1371
1372 P. **Current Payment Letter.** The Lender must provide evidence [on company letterhead](#) that all
1373 impound payments, such as for debt service, Reserve for Replacements, and taxes and
1374 insurances, are current.
1375
1376 Q. **Secondary Financing.** If any secondary financing sources are utilized, the source and
1377 amount will be verified against what was approved in the approved cost certification. ([See](#)
1378 [Production, Chapter 3.15](#)).
1379
1380 R. **Lease.** The operating lease must be executed and meet all ORCF lease requirements. The
1381 Lender must also demonstrate that the amount of the lease payment conforms to ORCF's
1382 requirements. ([See Production, Chapter 8.6](#)).
1383
1384

9.12

Insurance Upon Completion – New Construction, Substantial Rehabilitation and Section 241(a)

1385
1386 Section 232 New Construction, Substantial Rehabilitation and 241(a) projects that are Insurance
1387 Upon Completion only have a final closing, which is addressed in Section 9.11 above.
1388
1389

9.13

Closing Section 223(d) Operating Loss Loans and Section 232(i) Fire Safety Equipment Loan Insurance Programs

1390
1391 A loan insured under Section 223(d) is an Operating Loss Loan provided to a project
1392 ~~owner~~Borrower with a current FHA-insured loan. To be eligible, a project must have
1393 experienced operating losses incurred during the first two years after project completion, or any
1394 other 2-year period within the first 10 years after completion. A credit subsidy is required for
1395 this type of loan. After the acceptance of the Firm Commitment, ORCF will request HUD
1396 obligate a credit subsidy. If HUD so obligates, the Firm Commitment will be extended 60 days
1397 after the date of obligation.

1398
1399 Section 232(i) sets forth the requirements for the Fire Safety Equipment Loan Insurance
1400 Program. This type of loan insurance is provided for nursing homes, skilled nursing facilities,
1401 assisted living facilities and intermediate care facilities to purchase and install fire safety
1402 equipment, ~~primarily fire sprinkler systems~~. Qualified loans must be secured by a lien that may
1403 be superior or inferior to other liens.

1404
1405 For both these types of loans, see Production, Chapter 2, Eligible Section 232 Mortgage
1406 Insurance Programs, and Chapter 3, Loan Sizing, for more details. Consult with the Closer for
1407 closing document requirements.