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Section III Asset Management

Chapter 9

New or Modification of Master Lease Structure

9.1 Introduction

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10 As indicated in Production, Chapter 13, HUD has worked diligently to ensure that its insurance
11 fund remains stable by addressing the concentration of credit within the same ownership and/or
12 operating structures. ~~In 2001, HUD issued new processing procedures for multiple facility~~
13 ~~applications.~~ Although each facility is still evaluated individually, borrowers and operators face
14 increased scrutiny when they seek financing for multiple facilities ~~within an 18-month~~
15 ~~timeframe.~~ Additional guidance ~~was also provided in Mortgage Letter 2014-06 regarding and~~
16 ~~criteria for a Master Lease and Portfolio transactions/or an addendum to a Master Lease are set~~
17 ~~forth in Production, Chapter 13.4.~~

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19 ~~Criteria for a master lease and/or an addendum to a master lease are set forth in Production,~~
20 ~~Chapter 13.4.~~

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22 The ~~master lease~~Master Lease structure allows for any rental deficiencies at one facility to be
23 supported by income from other facilities included in the ~~master lease~~Master Lease. A ~~master~~
24 ~~lease~~Master Lease does not, however, pool the assets of all facilities for underwriting a single
25 mortgage loan for multiple facilities. Each individual loan must meet HUD's underwriting
26 standards on its own merit.

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28 This Chapter is applicable to all applications to modify an existing Master Lease structure or any
29 requests for a new Master Lease structure for existing FHA-insured facilities. Production,
30 Chapter 13 is applicable to Master Leases in connection with FHA-insured loan applications ~~and~~
31 ~~Change of Participants.~~

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33 The Mortgagee/Servicer must notify HUD anytime one or more properties which are part of a
34 Master Lease are encountering rental deficiencies. The Mortgagee/Servicer must inform HUD
35 of how the situation will be handled when the remaining facilities are unable to make up the
36 rental deficiencies of the failing facilities.

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9.2

Program Considerations

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In addition to the key provisions identified in Production, Chapter 13.3, ORCF will review the following conditions for approval of an application with a Master Lease structure:

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- A. Each loan will have a separate note for each borrower and each note will be secured by its own security instrument. The Master Tenant and Operators shall not engage in any other businesses or activity, including the operation of any other rental project, or incur any liability or obligation except as may be permitted by HUD in connection with the project.
- B. The Master Tenant and Operators shall execute the applicable HUD Regulatory Agreements, to address various ownership and operational responsibilities with respect to the mortgaged property.
- C. The Master Lease and all subleases (sometimes collectively referred to herein as “Leases”) shall be subordinate to the FHA-Insured Security Instrument/Mortgage/Deed of Trust (Form HUD-94000-ORCF) (“Security Instrument”) and must be approved by HUD prior to execution. The Leases may not be modified or amended without the prior written consent of HUD and, unless there is a qualified non-disturbance agreement in place, they may be terminated by HUD, at HUD’s election ~~once in the event that~~ HUD takes title to the project. If requested timely by Borrower/Lessor and included in the documentation for the transaction, HUD will agree to allow an amendment to the Security Instrument providing that notice of such default be given to the Master Tenant contemporaneously with the giving of notice to the Borrower/Lessor.
- D. HUD will also consider the financial and physical condition of the facilities, and whether the facilities are in compliance with State and HUD requirements.

9.3

Documents for Submission and Review

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- A. **New Application.** For new Master Lease structure applications submitted by existing FHA-insured facilities, see the submission requirements in Production, Chapter 13.
- B. **Modification Applications.** For modifications to an existing HUD-approved Master Lease, the Modified Master Lease Checklist (available on the Section 232 Program website) should be followed.
- C. ~~**Requests for Release.** For the release of individual projects from an existing HUD-approved Master Lease, the required procedures and documentation must be provided, and approved by ORCF. Guidance will be made available on the Section 232 Program website.~~

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~~An application for a new master lease structure or the modification to (or release from) an existing master lease structure must be assembled, reviewed for completeness, accuracy and eligibility, and submitted by the Mortgagee/Service to ORCF with a recommendation for approval. A checklist of the required application exhibits as well as the instructions for submitting the application will be posted on the Section 232 Program website.~~

9.4

Pre-Application Conference

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It is recommended that all parties participate in a pre-application conference prior to the submission of a formal application for modification of an existing Master Lease. The following information or issues should be discussed during this meeting or conference:

- The details of the application;
- The requirements on the Submission Checklist - Section 232 New or Modification of Master Lease;
- The existing Master Lease Structure and the proposed modification thereof;
- The layers of financing and necessary documentation related thereto; and
- The names and financial interest of all principals, as defined in 24 CFR Part 200, including, but not limited to the Borrower(s), Master Tenant and operators.

9.5

Master Lease Release

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The parties' ability to have a project released from an existing Master Lease depends upon the terms of the Master Lease documents themselves. In particular, the Master Lease Subordination, Non-Disturbance and Attornment Agreement (Form HUD 92333-ORCF) speaks to this, at Section 5 thereof, "Master Lease Release." Additionally, the processes for obtaining such a release, set forth in [Asset Management Chapter 3.3.2 – Prepayment Procedures] would apply. If approved for release, the Operator of the project being removed from an existing Master Lease will be required to amend the Master Lease documents remaining in effect to reflect the correct composition of the Master Lease portfolio, and to terminate all agreements with the Master Tenant. The Master Lease Termination Checklist is available on the Section 232 Program website.