

10.1 Start of Construction

- A. General Contractor shall provide the Lender’s ~~Pre-construction~~PreConstruction Conference Coordinator (PCCC), U.S. Department of Housing and Urban Development (HUD) Office of Residential Care Facilities (ORCF) Construction Manager (CM), HUD Labor Relations Specialist, (LRS), and HUD Contract Inspector, (CI), letters indicating the date (actual date, not anticipated) of Initial Construction Start (the beginning of initial site clearing and preparation) and the date of Permanent Construction Start (permanent on-site building elements put in place, such aas footings and utility lines).
- B. Letters can be transmitted in PDF format, via email to all recipients.
- C. As there is no HUD form for these letters, the General Contractor shall use their letterhead.
- D. For Substantial Rehabilitation projects, the construction start date shall be the actual date that work begins on the project. This date shall be verified by the project ~~architect~~Architect.
- E. The HUD Contract Inspector must record the date of Initial Construction Start and the date of Permanent Construction on the HUD Representative’s Trip Report (Form HUD-95379-ORCF).

10.2 Early Start of Construction

Early Start of Construction may be authorized only in 241(a) transactions, only after a firm commitment has been issued, and only in accordance with established procedures found in Appendix 10.1. Where it occurs:

- A. A ~~Pre-construction~~PreConstruction Conference is required before the start of initial construction in accordance with Section 10.3 below;
- B. Construction inspections must be done in accordance with Section 10.4 below; and

39 C. Authorization of any insured advances cannot occur until the endorsed instrument is recorded
40 at Initial Closing.
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10.3

Lender Duties Related to the ~~Pre-~~ PreConstruction Conference

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44 A. Prior to the ~~Pre-construction~~PreConstruction Conference

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46 1. The lender will identify a ~~Pre-construction~~PreConstruction Conference Coordinator
47 (PCCC). -The Lender Narrative (or for Early Start, the Memo Requesting for Post-
48 Commitment. Early Start of Construction (Form HUD-9442-ORCF)) will include the
49 contact information for this person. (Note: If the Originating Lender will be assigning
50 the loan at Initial Closing, the Servicing Lender shall designate a PCCC who will
51 coordinate and conduct the ~~Pre-construction~~PreConstruction Conference as described
52 below).
- 53
54 2. The Firm Application package or Early Start Documents will include Division 00 73
55 00 (Master Format 2010 or latest revision) of the project specifications, which
56 includes the Supplementary Conditions of the Contract for Construction (HUD-
57 92554-ORCF) and the preliminary Davis-Bacon wage determination. The ORCF
58 Underwriter (UW) will forward this document and the Lender Narrative (or for Early
59 Start, the Memo Requesting Early Start of Construction) to the HUD ~~Regional~~-Labor
60 Relations ~~Officer (RLRO)~~Specialist (LRS)/designee. This document will include the
61 project location, number of stories, details on commercial areas, a statement as to
62 whether all units have both a kitchen/kitchenette and bathroom, and the contact
63 information for the PCCC.
64
- 65 3. The ~~RLRO~~LRS/designee shall notify the U/W via email either confirming that the
66 wage determination is correct, or advising that the wage determination must be
67 changed. If a change is required, the ~~RLRO~~LRS/designee shall attach an electronic
68 copy of the correct wage determination. Upon receipt, the U/W will email a copy to
69 the ORCF Construction Manager (CM) and to the PCCC.
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- 71 4. The wage determination is subject to modification and must be current as of the date
72 of Initial Closing/Early Start. The PCCC shall consult with the ~~RLRO~~LRS/designee
73 to obtain any wage determination updates for inclusion in the project specifications to
74 be signed at the ~~Pre-construction~~PreConstruction Conference.
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- 76 5. Prior to the ~~Pre-construction~~PreConstruction Conference, the PCCC will email the
77 ORCF CM to request the name and contact information of the HUD Contract
78 Inspector.
79
- 80 6. The PCCC will notify via email the following ~~Pre-construction~~PreConstruction
81 Conference attendees of the location, date, and time of the ~~Pre-~~

82 ~~construction~~PreConstruction Conference:

- 83 a. Borrower Representative
- 84 ~~b. Borrower's Architect~~
- 85 ~~b.~~ Borrower's Supervisory Architect
- 86 c. (same as Architect unless there is an identity of interest with the Borrower
- 87 and/or General Contractor)
- 88 ~~d. Regional General Contractor~~
- 89 ~~d.e.~~ Labor Relations ~~Officer~~Specialist / Designee
- 90 ~~e.f.~~ ORCF Underwriter (UW) (optional attendee)
- 91 ~~f.g.~~ ORCFHUD Contract Inspector
- 92 ~~g.h.~~ ORCF Account Executive (AE) (optional attendee)
- 93 ~~h.~~ ORCF Closing Coordinator (Closer) (optional attendee)
- 94 ~~i.~~ ORCF CM
- 95 ~~i.~~ ORCF Construction Manager (CM)
- 96 ~~j.~~ HUD Contract Inspector (CI)

97

98 If the PCCC wishes to have the meeting at the HUD office (corresponding to the

99 date/time of the Initial Closing), they shall contact the HUD Closing Attorney to

100 make arrangements. The HUD staff listed above shall either attend the ~~Pre-~~

101 ~~construction~~PreConstruction Conference in person or participate via conference call.

102 Should the ~~RLR~~RLRS/designee determine that they need to make a *separate*

103 presentation on Davis-Bacon requirements, the ~~RLR~~RLRS/designee shall advise the

104 PCCC.

105

106 B. The ~~Pre-construction~~PreConstruction Conference

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- 108 1. The format shall follow the Lender's ~~Pre-construction~~PreConstruction Conference
- 109 Agenda (available on the Section 232 Program website).
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- 111 2. The PCCC shall include the most recent Davis-Bacon wage determination in the
- 112 project specifications signed at the ~~Pre-construction~~PreConstruction Conference.
- 113 Note, if a revised Davis-Bacon wage determination is required, the change will be
- 114 made via addendum requiring subsequent changes to other documents such as the
- 115 Firm Commitment (Exhibit B: Index to Drawings and Specifications) and the
- 116 Construction Contract, which lists the Plans and Specifications.
- 117
- 118 3. At the ~~Pre-construction~~PreConstruction Conference, the "Suggested Format for
- 119 Signature Pages: Electronic HUD Set of Plans and Specifications" (Appendix 10.5),
- 120 and two (2) hardcopy sets of the plans and specifications, shall be prepared and
- 121 distributed as follows:
- 122
- 123 "HUD Inspection Set" of Plans and Specifications
- 124 • Legible, half-size set of Plans, and full-size Specifications manual, annotated,
- 125 "HUD Inspection Set" on each

- Both shall be signed and dated on the front sheet of the plans and cover of the specifications by the Architect, General Contractor, General Contractor’s Surety (if applicable), and the Borrower
- Sent to the HUD Contract Inspector

“HUD As-Built Set” of Plans and Specifications

- Full-size set of Plans, and full-size Specifications manual, annotated, “HUD As-Built Set” on each
- Both shall be signed and dated on the front sheet of the plans and cover of the specifications by the Architect, General Contractor, General Contractor’s Surety (if applicable), and the Borrower
- Given to the General Contractor
- This set is not to be used for construction purposes, but rather is red lined as any changes are made to the original documents.

“HUD Master Set” of Plans and Specifications

- “HUD Master Set – Plans,” cover sheet (Appendix 10.5) shall be executed, and electronically “attached” to the front of a PDF version of the Plans (Plans identical to those used for the Inspection and As-Built Sets above)
- “HUD Master Set – Specifications,” cover sheet (Appendix 10.5) shall be executed, and electronically “attached” to the front of a PDF version of the Specifications (Specifications identical to those used for the Inspection and As-Built Sets above)
- PDF’s shall be sent on a flash drive, ~~CD, or DVD~~, to the ORCF CM

4. Early Start: If plans and specifications are complete at the time of Early Start, they will be prepared as described above. If plans and specifications are not complete at the time of Early Start, they will be required to be signed prior to Initial Closing.

C. After the ~~Pre-construction~~PreConstruction Conference

1. The General Contractor shall notify the PCCC, Supervisory Architect, HUD Contract Inspector, and ORCF CM of the date that construction starts. See Section 10.1.A above.
2. Within one working day following the start of construction, the PCCC shall notify the ~~RLROLRS~~/designee, and the ORCF CM of the applicable wage determination being used for the project (attach to an email). In the event that construction did not begin within 90 days after Initial Closing, the ~~RLROLRS~~ (or his/her designee) shall determine whether the wage determination had been modified and whether any updates must be incorporated into the Construction Contract.

10.4

HUD Construction Monitoring

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A. Purpose of Inspection.

1. Inspection means the periodic observations made of construction at the site of a care facility project by a HUD ~~representative (inspector)~~ Representative (HUD Contract Inspector) for the purpose of protecting HUD's interests. Inspections are made to evaluate the General Contractor's and Architect's performance, to ~~obtain~~ confirm construction in accordance with the contract documents, and to report on conformance with prevailing wages and other contract requirements.
2. The instructions for inspection services, and the review of inspection deliverables, are described in the applicable Construction Inspection Services Contract, administered by HUD's Office of the Chief Procurement Officer (OCPO), and managed by the assigned ~~Government Technical Contracting Officer's~~ Representative (GTR)COR), Subordinate Contracting Officer's Representative (SCOR), and/or Government Technical Monitor (GTM ORCF Construction Manager (CM).

B. Access. At all times, HUD has the right of access to the property and the right to inspect all work performed and materials furnished to complete the project.

C. Upon HUD's issuance of the Early Start of Construction approval, or Initial Closing, the ORCF CM shall transmit the following executed documents, where applicable, to the assigned HUD Contract Inspector:

1. "HUD Inspection Set" of the Plans and Specifications
2. Firm Commitment, and Amendments
3. Construction Contract (Form HUD-92442-ORCF)
4. Contractor's and/or Mortgagor's Cost Breakdown, (Form HUD-92328-ORCF)
- 4.5. Owner-Architect Agreement (AIA Document B108)
6. HUD Amendment to B108 (Form HUD-92408-ORCF)
- 5.7. Design Architect's Architect Certification (Form HUD-91124-ORCF)
8. Design Professional's Certification of Liability Insurance (Form HUD-91123-ORCF)
- 6.9. Offsite Escrow Agreement and/or Offsite Construction Contract, if applicable
- 7.10. Demolition Escrow Agreement and/or Demolition Construction Contract, if applicable

216 8.11. Early Start of Construction approval, if applicable.
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219 D. Field Supervision. The ORCF CM shall ~~keep~~be kept informed of the general quality of
220 inspections and the performance of inspectors by maintaining close contact with their
221 work through job site visits. A regular routine for supervising field operations ~~should~~will
222 be established and followed. Required and suggested methods of field supervision
223 follow:
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225 ~~1. a minimum of two field review inspections should be made on each project to~~
226 ~~evaluate the performance of the HUD Contract Inspector. Field review~~
227 ~~inspections shall be recorded on a HUD Representative's Trip Report;~~
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229 ~~2.1.the~~The HUD Contract Inspectors may be accompanied during their rounds. This
230 method is particularly advantageous in training new inspectors;
231

232 ~~3.2.construction should~~Construction must be field reviewed where the use of
233 questionable methods of construction, materials, uncorrected non-compliance, or
234 other problems are reported; and
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236 ~~4.3.~~Projects shouldmust be field reviewed at construction stages where major problems
237 have occurred in that jurisdiction.
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239 4. Construction progress/draw meetings. During construction, the General Contractor,
240 Borrower, Borrower's Supervisory Architect, and the HUD Contract Inspector must
241 attend monthly job meetings at the job site when monthly draw requests for advances
242 are prepared. The Lender must review the draw initially for acceptability.
243

244 a. The Borrower's representative must be a member of the borrower entity,
usually a general partner or managing member.

245 b. The HUD Contract Inspector must:

246 i. Comment to the group on the quality of construction and of the
247 Supervisory Architect's observations and the Contractor's supervision.

248 ii. Comment on all known construction defects and deficiencies (non-
249 compliance).

250 iii. Explain that changes in the work from the contract documents (non-
251 compliance) must be resolved by approved change order requests for
252 the work done in accordance with the contract documents. All change
253 orders must receive prior approval before work commences, subject to
254 the change order.

255 iv. Inform parties of HUD policy for holdback of construction advances
256 until non-compliance is corrected.

257 v. Record on Form HUD-95379-ORCF the issues raised at the meeting.

258 c. Monthly meetings may also be used to resolve equal opportunity and labor
259 disputes. When such disputes are known, the HUD Office of Davis-Bacon
260 and Labor Standards (DBLS) and Equal Employment officers must be invited
261 to attend.

262
263 E. HUD Contract Inspector's Duties. The HUD Contract Inspector is a HUD Representative,
264 not a superintendent for the General Contractor or "clerk of the works" for the Borrower or
265 Architect. The HUD Contract Inspector, as HUD's agent, must endeavor in a tactful, helpful
266 and courteous manner to obtain construction that conforms to the drawings, specifications,
267 and sound construction practice within the scope of the contract. The HUD Contract
268 Inspector must be factual and specific in all statements in reporting and recording significant
269 construction developments observed.
270

271 1. Orientation. Upon assignment to a project, the HUD Contract Inspector will study
272 the drawings and specifications and become familiar with the conditions at the
273 site. If, during this examination or during construction, any nonconformity with
274 HUD requirements or site conditions not considered in the design is found, they
275 are to immediately notify the ORCF CM in writing with specific facts. The ORCF
276 CM will work with the Lender, Borrower, Supervisory Architect (Architect),
277 General Contractor and other related parties to resolve the non-compliance.
278

279 2. Facilities. The General Contractor (GC) must furnish the HUD Contract Inspector
280 with an enclosed working space. Adequate, but not elaborate, facilities should be
281 required as soon as actual construction begins at the site.
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284 3. Inspections. The HUD Contract Inspector shall make one job site visit each month
285 to coincide with monthly draws, except when HUD determines no inspection is
286 necessary due to the progress of the work in a particular period. Additional visits
287 may be required, as necessary due to follow-up or unforeseen conditions, as
288 approved by the ORCF CM in writing. Visits should be scheduled to observe
289 major construction operations without neglecting lesser operations. Sufficient
290 time must be allotted to each visit to make a complete inspection.

291 a. The major functions during inspection are to: Evaluate the construction
292 supervision of the General Contractor, and contract administration of the
293 Architect; report on occupancy, delays, disputes, and changes; review
294 completed units and execute the Form HUD-92485-ORCF, Permission
295 to Occupy as required; report any non-compliances with the contract
296 documents observed by the HUD Contract Inspector and/or the
297 Architect; determine that the amounts requested by the General
298 Contractor and recommended by the Architect for payment are
299 reasonable; conduct employee wage interviews using Form HUD-11;
300 and report on labor and EEO compliance.

301 b. Each inspection shall be recorded on a HUD Representative's Trip
302 Report, Form HUD-95379-ORCF and executed by the HUD Contract
303 Inspector.

304 c. Reporting requirements. Electronic copies of the following documents
305 executed during inspection must be promptly sent to the ORCF CM with
306 the HUD Representative's Trip Report, Form HUD-95379-ORCF:

- 307 i. Contractor's Requisition, Form HUD-92448-ORCF (see Chapter
308 10.8 for additional guidance):
309 ii. Original signed copies to be forwarded to the Lender by the
310 Architect.
- 311 d. Request for Construction Changes on Project Mortgages (Change
312 Order), Form HUD-92437-ORCF (see Chapters 10.9 -10.12 for
313 additional guidance):
314 i. Upon acceptable review the HUD Contract Inspector shall place
315 their initials and date in top right corner of first page.
316 ii. Original signed copies to be forwarded to the Lender by the
317 Architect.
318 iii. Lender will review and if approved, send to ORCF CM for final
319 approval.
320 iv. ORCF CM will send to Lender, Architect, Borrower, and HUD
321 Contract Inspector upon approval.
- 322 e. Permission to Occupy, Form HUD-92485-ORCF:
323 i. Original signed copies to be forwarded to the Lender by the
324 Architect.
325 ii. When all required signatures (Architect, Borrower, General
326 Contractor and HUD Contract Inspector) are affixed, Lender will
327 execute and send the document to the ORCF CM for final
328 approval.
329 iii. Upon execution by the ORCF CM (as FHA authorized agent),
330 copies are forwarded to Lender, Architect, Borrower, and HUD
331 Contract Inspector.
- 332 f. Request Approval Advance of Escrow Funds, Form HUD-92464-ORCF
333 (see Chapter 10.15 for additional guidance):
334 i. Original signed copies of completed work associated with Offsite,
335 Change Order or Demolition escrow to be forwarded to the Lender
336 by the Architect. The Architect and HUD Contract Inspector are
337 not required to execute Form HUD-92464-ORCF associated with
338 minor movables.
339 ii. Lender will review and if approved, send to ORCF CM for final
340 approval.
341 iii. ORCF CM will send to Lender upon approval.
- 342
- 343 4. Start of Construction. The HUD Contract Inspector will report the date of initial
344 construction start, and the date of permanent start of construction on Form HUD-
345 95379-ORCF. (see Chapter 10.1)
346 a. The date of the initial construction start, used for recording and reporting
347 purposes, is the "start of construction" as used in connection with labor
348 standards and prevailing wage requirements. This is defined as the
349 beginning of initial site clearance and preparation, provided these
350 activities are pursued diligently and are followed, without appreciable
351 delay, by other construction activities.

- 352 b. The date recorded as the start of permanent construction, used for the
353 purpose of determining the earning of the inspection fee, will correspond
354 to the first day that permanent on-site building elements were put into
355 place, such as footings and/or foundations, pilings, utility lines, etc.
356 c. While excavation is an integral part of foundation work, it does not
357 constitute a start of permanent construction.

358
359 5. Shop Drawings and Other Data. During the construction period, the HUD
360 Contract Inspector must check whether shop drawings are being submitted by the
361 General Contractor for approval by the Supervisory Architect as required by the
362 AIA General Conditions of the Contract. Upon request by the Architect or the
363 HUD Contract Inspector, the General Contractor will keep copies of tests,
364 certifications and any other data required by the contract documents onsite for
365 review.

366
367 6. Work Stoppage. The HUD Contract Inspector will report to the ORCF CM on
368 Form HUD-95379-ORCF any work stoppage. The reason for the work stoppage
369 should be stated, and when resumption of construction is anticipated.

370
371 7. Permission to Occupy (PTO). The HUD Contract Inspector will complete the
372 portion, "FHA Inspection Report," of the Permission to Occupy, Form HUD-
373 92485-ORCF, when submitted, to request permission to occupy specific living
374 units, commercial or other space. The Form is to be submitted when the HUD
375 Contract Inspector reports safe ingress and egress to the units and/or building, as
376 evidenced by a Certificate of Occupancy (CO) from the locality. In the event that
377 scheduling does not permit the HUD Contract Inspector to inspect the completed
378 units on a timely basis, then the ORCF CM may authorize the Architect to issue a
379 phased Permission to Occupy (PTO) on condition that the Inspector will inspect
380 the completed units at the next regularly scheduled site visit. Units and spaces
381 should not be occupied prior to approval by HUD. The required insurance forms
382 must be submitted with the PTO. The ORCF CM will approve the permission to
383 occupy. (See Chapter 10.7 for additional guidance)

384 a. The HUD Contract Inspector will also include the number of units
385 occupied prior to approval as a non-compliance, on the Form HUD-
386 95379-ORCF as well as the date occupancy took place.

387 b. Occupancy prior to the execution of Form HUD-92485-ORCF will be
388 reported by the ORCF CM to ORCF Direction of Production by written
389 memorandum.

390
391 8. Additional duties of the HUD Contract Inspector:

392 a. Advises the Architect administering the construction contract on HUD
393 requirements;

394 b. Reviews the Architect's job log;

395 c. Reviews copies of the Architect's decisions;

396 d. Reports on project construction progress to the ORCF CM on Form
397 HUD-95379-ORCF;

- 398 e. Notifies the ORCF CM, Architect and the General Contractor if an
399 identity of interest exists between the Borrower and the General
400 Contractor, or if it is determined that there are any essential variations in
401 the cost of the work installed, materials stored, and the request for
402 construction advances recommended by the Architect; and
403 f. Conducts interviews with an appropriate sampling of the laborers and
404 mechanics engaged, and records the interview information on Record of
405 Employee Interview, Form HUD-11, in connection with wage and labor
406 compliance in the construction of the project.

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408 9. Construction record. From the initial construction start through final 12-Month
409 Warranty inspection, the HUD Contract Inspector shall be responsible for
410 maintaining a record of construction that includes minutes of the PreConstruction
411 Conference as well as reports of required warranty inspections. All forms, reports,
412 decisions and documents relevant to construction or inspection reporting shall be
413 recorded in the binder in chronological order. All required documents shall be
414 electronically scanned and saved using an unaltered electronic means, such as a
415 .pdf file that is easily downloadable into existing HUD software. File names for
416 all scanned and saved contract deliverables shall utilize a HUD standardized file
417 naming protocol provided by the ORCF CM. The forms and documents listed
418 below shall be included in the Construction Inspection Record Binder, when
419 applicable.

- 420 a. HUD Master Set of Drawings and Specifications.
421 b. Off-site Drawings and Specifications.
422 c. Construction Contract, Form HUD-92442-ORCF.
423 d. Owner-Architect Agreement AIA Document B108 and HUD
424 Amendment to B108, Form HUD-92408-ORCF.
425 e. Construction Progress Schedule, Form HUD-5372.
426 f. Contractor's and/or Mortgagor's Cost Breakdown, Form HUD-92328-
427 ORCF.
428 g. HUD Representative's Trip Report, Form HUD-95379-ORCF
429 h. Contractor's Requisition, Form HUD-92448-ORCF.
430 i. Request Approval Advance of Escrow Funds, Form HUD-92464-ORCF.
431 j. Request for Construction Changes on Project Mortgages, Form HUD-
432 92437-ORCF, AIA G710, and Architect's supplemental instruction or
433 equivalent.
434 k. Letters, memoranda, notes, and worksheets.
435 l. Architect's Field Reports.
436 m. Permission to Occupy, Form HUD-92485-ORCF.
437 n. Record of established escrows including amounts escrowed and a
438 complete list of unfinished construction items, record of call back
439 inspections and recommendations for monies to be released.

440
441 10. Projects of Insurance upon Completion: The HUD Contract Inspector will report
442 the percentage of completion of the project on Form HUD-95379-ORCF within 5

443 business days of the inspection. This percentage is an approximation for general
444 information and is not used for disbursement.

- 445
446 11. Off-site inspection. The HUD Contract Inspector checks all off-site construction
447 for conformity with the terms of the contract and reports work progress by
448 percentages on Form HUD-95379-ORCF. Progress or completion is also reported
449 on Request Approval of Advance of Escrow Funds, Form HUD-92464-ORCF.

450
451 F. Reporting and dealing with serious construction problems. The ORCF CM must identify and
452 report, by electronic mail, to the ORCF Direction of Production, all insured Healthcare
453 projects under construction or in the guarantee period that have serious construction defects
454 or other serious construction related problems. This information will be used to reply to
455 inquiries, as an "early warning system" on troubled projects, and to determine if assistance by
456 the ORCF CM is necessary.

- 457
458 1. The HUD Contract Inspector must identify all construction problems that may
459 delay completion or lead to foreclosure or assignment of the mortgage to HUD by
460 using Form HUD-95379-ORCF, HUD Representative's Trip Report, such as:

- 461 a. Work stoppage.
462 b. Builder abandons job.
463 c. A change in the General Contractor, Borrower or Supervisory Architect
464 during construction.
465 d. Construction defects untreated for 30 days of the first notification to the
466 General Contractor.
467 e. Builder cannot or will not correct any construction defect or latent
468 defect.
469 f. Use of questionable methods of construction or materials.
470 g. Extended periods of bad weather, strikes, etc.
471 h. Controlling jurisdiction issues a stop work order.
472 i. Slow start or progress of off-site work that would impair project
473 occupancy.
474 j. Other conditions of such nature or magnitude as to potentially cause a
475 default and warranting attention by HUD personnel.
476 k. Work being performed that is not in compliance with HUD approved
477 plans and specifications.
478 l. Architect does not report all observed non-compliance with HUD's
479 approved plans and specifications, per the job set.
480 m. Architects' inadequate performance and misrepresentation on Field
481 Reports.

- 482
483 2. The ORCF CM must prepare a referral memorandum to the ORCF Direction of
484 Production when a delay in completion may lead to foreclosure or assignment of
485 the mortgage.

- 486
487 3. The referral memorandum must include full details of the construction related
488 problem, including:

- 489 a. A copy of Form HUD-95379-ORCF, which identifies the problem.
490 b. The HUD Contract Inspector's opinion of the cause and recommendation
491 for correction.
492 c. A report of actions by the ORCF CM.
493 d. A report of actions by the Borrower, Architect, General Contractor, and
494 bonding company (when appropriate).
495 e. A plan of action to be undertaken by ORCF if the mortgage is assigned
496 to HUD during construction or foreclosure is initiated by the Lender.
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498 4. Only the initial report is required unless the ORCF Direction of Production
499 requests further action or follow-up by the ORCF CM.
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10.5

Architect's Duties in Administering Construction Contract

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503 The Architect's duties shall be in accordance with ~~Item 6, of the Lender's Pre-~~
504 ~~construction~~PreConstruction Conference Agenda (available on the Section 232 Program
505 website), including:

- 506
507 A. Provide services in accordance with ~~the~~AIA Document B108, Owner-Architect Agreement
508 and HUD Amendment to B108 (Form HUD-92408-ORCF) and ORCF's program
509 obligations.
510
511 B. Have no identity of interest with the Borrower or General Contractor. An identity of interest
512 is defined in the Construction Contract (Form HUD-92442-ORCF).
513
514 ~~C. Ensure~~C. The Architect administering the construction contract shall
515 ensure construction is carried out in accordance with the contract documents.
516
517 1. Restrict materials, products, and equipment to those specified.
518
519 2. Restrict all deviations to those ~~substantially~~-consistent with the ~~original design~~
520 ~~concept~~HUD approved Construction Documents (Master Plans), including form,
521 color, and texture. The Architect will immediately inform the Borrower, Lender, or
522 Lender's Representative and the HUD Contract Inspector of any changes to plans and
523 specifications.
524
525 3. When arriving at the net amount due on every requisition, compare the cost of the
526 work and materials with the cost to complete the project. Current and previous
527 payment must relate to the total cost for completion.
528
529 4. Restrict substitution of items of a different design or size from those specified to
530 those that are equivalent in utility (i.e., durability, quality, and ease of maintenance).
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532 5. Restrict substitution of any material differing in composition or appearance from the
533 one specified to one which is equivalent in its attributes (i.e., character, quality,
534 durability, and ease of maintenance).

536 ~~6. Keep a log.~~ Maintain an Architect's Log on the site that is readily available to
537 the Borrower and HUD Contract Inspector.

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539 D. Architect's ~~supplemental instructions.~~ Supplemental Instructions (ASI). The
540 ~~architect~~ Architect administering the construction contract may issue field orders using
541 American Institute of Architects' (AIA) Document G710, Architect's Supplemental
542 Instructions, or a similar form.

543
544 1. Supplemental instructions must not involve a change in contract sum or contract time.

545
546 2. Uses of supplemental instructions:

547 a. ~~a.~~ Directive to General Contractor to bring construction into
548 compliance with the contract documents.

549 b. ~~b.~~ Interpretation or clarification of the contract drawings and
550 specifications.

551 c. ~~c.~~ Order minor changes in the work, not involving cost

552 d. ~~d.~~ Accept specified "equivalent" materials.

553 e. ~~e.~~ Record other "field orders" that are not construction changes.

554
555 E. The Architect administering the construction contract is responsible for reporting in writing
556 the results of periodic visits to the construction site. The Architect's Field Report ~~should and~~
557 Log must provide information regarding assessment of the progress of the work and a record
558 of the actions taken to ~~insure~~ ensure that the work is being accomplished in the best interests
559 of all the parties.

560
561 1. The AIA Document G711, Architect's Field Report, may be used, or a similar other
562 format.

563
564 2. A Field Report of each visit shall show as a minimum the following:

565 a. Date of inspection

566 b. HUD project identification and location

567 c. Time, weather, and temperature range

568 d. Estimated percent of completion

569 e. Work in progress and conformance with the General Contractor's Progress
570 Schedule or any work stoppage / slow down

571 d. Any changes to plans and specifications which modifies the HUD Inspection
572 set (Construction Documents)

573 f. ~~Persons~~ Appropriate number of persons present at ~~work~~ the jobsite by trade

574 g. Observations and items to verify for construction defects uncured for more
575 than 30-days

576 h. Information or action required for any deficiencies noted on the Field Reports

577 i. Firm name and signature of the Supervisory Architect

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3. The Architect shall maintain an up-to-date “Architect’s Log” that is readily available to the Borrower and HUD Contract Inspector. Architect’s Log must include the Architect’s assessment of the progress of the work and a record of the actions taken to ensure that the work in being accomplished per the contract documents. Include the following in the Architect’s Log:
- a. Architect’s Field Reports (AIA G711 or similar format) & Consultants’ Field Reports;
 - b. Meeting Notes (if separate from the Field Report);
 - c. Proposal Requests (PR), Architect Supplemental Instructions (ASI) & Change Order (CO) logs;
 - d. Copy of the HUD PreConstruction Conference handouts – for reference during construction.

10.6

Architect’s Adequacy

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The provision for the Architect's administration of the construction contract is covered by the Owner-Architect Agreement, AIA Document B108, HUD Amendment to AIA Document B108, and by the General Conditions of the Contract for Construction, AIA Document A201. It is the responsibility of the HUD Contract Inspector to determine the adequacy of the Architect's administration. The adequacy of the Architect’s administration in this context is results-oriented, meaning the construction fully complies with the contract documents; the determination of adequacy will not be based on the number of visits or the length of time spent by the Architect on the job.

- A. Deficient administration. If the Architect does not immediately report all observed non-compliances with contract documents and unacceptable performances by the General Contractor, and exploit all avenues to obtain compliance with the contract, then the Architect's administration of the construction contract will be considered deficient. The Architect is not responsible for actual construction, construction means, methods, techniques or other related responsibilities of the General Contractor. However, the Architect must keep the Lender, Borrower and HUD informed of the progress of the work, including any unauthorized changes or deviations to the approved plans and specifications, and endeavor to guard the Borrower and HUD against defects and deficiencies in the construction.
- B. Reasons for termination of services. Inadequate performance, undue delay, misrepresentation, failure to act on the part of the Architect or the Architect’s associates and employees, and any other material breach of Owner-Architect Agreement shall be reason for the termination of the Architect's services on the project and may adversely affect the firm's acceptability on future projects.

- 619 C. ORCF actions. The HUD Contract Inspector shall bring to the attention of the Architect
620 specific areas in which services are considered deficient. Sufficient time and appropriate
621 assistance shall be given to obtain necessary compliance.
622
- 623 1. When the Architect's performance is *first* observed as deficient, in addition to the
624 HUD Representative's Trip Report, the ~~inspector~~HUD Contract Inspector shall also
625 prepare a written memorandum to the ORCF CM of the deficiency advising of any
626 planned actions or assistance. The memorandum should recommend that future
627 requests for Architectural inspection fees be disallowed until performance improves
628 to an acceptable level.
629
 - 630 2. An immediate follow-up by the ORCF CM is always required. Conferences with the
631 HUD Contract Inspector, the Supervisory Architect, and the Lender should be
632 arranged, and a target date established for the Architect to obtain compliance. The
633 ORCF CM shall inform ORCF Management of current problems and of established
634 target dates for corrections. Deficiencies related to misrepresentation, undisclosed
635 identity of interest and known illegal kick-backs should be immediately referred to
636 HUD's Office of Counsel with a copy to ORCF. All actions shall be clearly
637 documented.
638
- 639 D. Request for contract termination. When compliance with the Owner-Architect Agreement
640 and HUD Amendment cannot be obtained within thirty (30) days, ORCF Management shall
641 request termination of the Architect's contract in accordance with the provisions of the
642 Owner-Architect Agreement. Upon termination, the Architect shall be entitled to no more
643 than the prescribed portion of the fee determined by the percentage to which construction
644 was completed on the date that the Architect was removed from the project. The Borrower
645 may pursue other legal remedies for the Architect's failure to perform, including the recovery
646 of any monetary damages.
647
- 648 E. Contract termination. The Borrower will hire an independent Architect who is acceptable to
649 all parties to continue the administration of the project construction documents. In no event
650 will HUD or the HUD Contract Inspector ~~does not~~ assume the Architect's responsibilities or
651 assume any liability for the Architect's work.
652
653

10.7

Permission to Occupy, Final Trip Report, and Warranty Inspections

- 654 A. Permission to Occupy.
- 655
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657 Permission to Occupy —~~Project Mortgages~~ ~~(Form HUD-92485-ORCF)~~ must be executed by
658 the ~~HUD~~ ORCF CM before the Borrower permits occupancy of any dwelling unit, care
659 facility unit, or other project service facility.
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1. Physical completion – The work or portion thereof, for which Permission to Occupy is approved, must be sufficiently completed in accordance with the contract documents so the Borrower can occupy or utilize the identified portion of the work for its intended use.
 - a. Support facilities (utilities, disability access, vehicular access and parking, fire & life safety equipment, etc.) must be in place.
 - b. Acceptability of each unit and facility for which a Permission to Occupy is requested must be established:
 - i. Property must be inspected and Permission to Occupy – Project Mortgages must be signed by the Borrower, Supervisory Architect, General Contractor, and HUD Contract Inspector (CI).
 - ii. Minor items that do not preclude occupancy are permitted but must be listed as an attachment to the Permission to Occupy – Project Mortgages.
 - iii. The General Contractor is fully responsible for any incomplete or improperly performed contract work whether or not listed.
 2. Documents Submission – The Lender must sign the Permission to Occupy – Project Mortgages agreeing with the request and stating that insurance risks have been covered for the project. The Borrower must include the following documents with the completed Permission to Occupy – Project Mortgages:
 - a. A Certificate of Occupancy or equivalent permit from the governing municipal or other local authority for all units and facilities on the Permission to Occupy, and any other required permits or authorizations;
 - b. A valid and current Certificate of Property Insurance, Certificate of Fidelity Insurance, and Certificate of Professional Liability Insurance from the Borrower’s insurance company;
 - c. Satisfaction of any Firm Commitment Special Conditions related to the Permission to Occupy, if applicable.
 3. Partial Occupancy Approval:
 - a. Favorably consider partial occupancy of units as they become available; where vandalism could be minimized, needed project income is provided, an earlier rent-up date could be achieved, utility costs for occupied units can be metered separately from the General Contractor’s utilities, etc.;
 - b. Approve a series of Permission to Occupy as units or facilities become available, e.g., individual buildings on multi-building projects, or individual floors or wings on larger buildings;
 - c. Approve a single Permission to Occupy for all units where dictated by management considerations, e.g. very small projects;
 - d. Discussion shall be held during the ~~Pre-construction~~PreConstruction Conference regarding the handling of all Permission to Occupy submittals.
 4. Signatures, Approval, and Permission:
 - a. Permission to Occupy – Project Mortgages is signed by the Borrower, Supervisory Architect, General Contractor, and HUD Contract Inspector (CI);

- 707 b. Approval — The ORCF CM checks either, “as reported above,” or “as
708 modified by me,” and signs and dates above “Chief Architecture and
709 Engineering,” and “Deputy,” as the Federal Housing Administration’s
710 “Authorized Agent^{22,23}.”
711 c. Distribution: Lender, General Contractor, Borrower, Supervisory Architect,
712 HUD Contract Inspector, ORCF Closer, HUD Attorney, and ORCF AE.
713

714 B. Final Construction Completion / Final Trip Report.
715

716 The Architect and HUD Contract Inspector make the final inspection upon written request of
717 the General Contractor.
718

- 719 1. The Architect determines that all punch list items have been completed unless they
720 are beyond the control of the General Contractor. (Items of delayed completion)
721
- 722 2. The inspector prepares the final inspection report on HUD Representative’s Trip
723 Report. The HUD Contract inspector:
724 a. Reports onsite construction complete though there may be items of delayed
725 completion;
726 b. Lists and describes any items of delayed completion and estimate of cost of
727 completion for each item. (Note: Escrow must not be less than 150 percent of
728 the estimate to complete and must not exceed 2 percent of the mortgage.
729 Work must be completed within 12 months of the date of the Final Trip
730 Report);
731 c. Lists any offsite work and reports percentage of completion for each;
732 d. Includes the following endorsements:
733 i. "Construction acceptably completed." (If there are items of delayed
734 completion, add, "subject to escrow of funds to assure completion of
735 listed items of delayed completion.")
736 ii. "All offsite sewer, water, electrical and gas facilities are complete,
737 connected and operable, and safe, adequate, all-weather ingress and
738 egress provided." (If offsite item incomplete, adds, "except as stated
739 at the time of inspection.")
740
- 741 3. The ORCF CM reviews the Final Trip Report, and if acceptable, signs and dates the
742 Report, and distributes copies to: Lender, Borrower, General Contractor, Supervisory
743 Architect, HUD Contract Inspector, ORCF Closer, ~~HUD Attorney~~, ORCF AE
744 assigned to the project, and HUD Labor Relations Specialist.
745

746 C. Warranty Inspections.
747

748 A minimum of two inspections are made of all work to discover and require correction of
749 latent defects (defective or nonconforming work not observed during construction) within
750 one year of the date of the Final Trip Report.
751

- 751 1. The HUD Contract Inspector schedules warranty inspections.

- 752 a. First must be within nine months of final completion and shall provide for
753 inspection of the entire project.
754 b. Other inspections may be necessary to assure inspection of seasonal items
755 such as heating and landscaping.
756 c. The last inspection must be not later than the 10th day of the 12th month to
757 check previously reported defects and correction; and discover any additional
758 defects.
759
- 760 2. The inspector reports each warranty inspection on HUD Representative's Trip
761 Report.
762 a. If work is acceptable, state, "All observable work acceptable at the time of this
763 inspection."
764 b. If unacceptable, list latent defects.
765 i. Describe each item.
766 ii. Recommend method of correction.
767 iii. Estimate current cost of correction.
768 iv. To assure completion, an escrow of 150% of cost (determined by the
769 Supervisory Architect) will be required for latent defects.
770 c. Check any item of delayed completion and list completed and uncompleted
771 items under a separate heading.
772 d. Note any improper maintenance or casualty damage under a separate heading.
773
- 774 3. The ORCF CM reviews each warranty inspection, and if acceptable, signs and dates
775 the Report, and distributes copies.
776
777

10.8

Insurance of Advances and Related Matters

- 778
779 A. General.
780 Insurance of advances is the process of releasing HUD insured mortgage funds and other
781 funds necessary for the construction, acquisition, and/or refinancing of the project. The
782 following general criteria apply to advancing such funds.
783
- 784 1. All escrowed funds for on-site improvements (with the possible exception of
785 grant/loan proceeds furnished by a government agency or instrumentality or tax credit
786 proceeds) must be disbursed before mortgage proceeds. See Appendix 10.2 for
787 instructions on grants/loans and tax credits.
788
- 789 2. The amount of construction funds approved and advanced for insurance must be
790 consistent with construction progress approved by the HUD Contract Inspector.
791
- 792 3. Other mortgageable items must be supported with proper bills and/or receipts before
793 funds can be approved and advanced for insurance.
794

- 795 4. The amount advanced for construction items completed must be adjusted for a 10
796 percent retainage.
797
- 798 5. The final amount approved for insurance must be supported by certified costs
799 recognized in the cost certification review.
800
- 801 B. The Application for Insurance of Advance of Mortgage Proceeds (Form HUD-92403-ORCF)
802 is initiated by the Borrower. The initial and final advances are submitted by the Lender to
803 HUD for review and approval. Interim advances are initially submitted to the Lender for
804 review, and finally approved by the Lender (including those advances requesting a Partial
805 Release of Retainage), based upon the approval of the Supervisory Architect and the HUD
806 Contract Inspectors' Inspector's approval of the construction amount using the Contractor's
807 Requisition —Project Mortgages—(Form HUD-92448-ORCF). (Mortgagee signs the
808 Application for Insurance of Advance of Mortgage Proceeds, and Contractor's Requisition —
809 Project Mortgages as described in C. below.)
810
- 811 C. For the initial and final advances, the ORCF Closer Closing Coordinator (CC) and ORCF
812 Workload Manager (WLM) sign the Application for Insurance of Advance of Mortgage
813 Proceeds, and Contractor's Requisition — Project Mortgages, in the following spaces:
814
- 815 1. CC signs in Mortgage Credit Examiner box, and WLM signs as Authorized HUD
816 Official, for the Application for Insurance of Advance of Mortgage Proceeds, and
817
 - 818 2. CC signs as Chief Mortgage Credit, and WLM signs under Director, Housing
819 Development, for the Contractor's Requisition — Project Mortgages.
820
 - 821 3. Supporting materials to the Application for Insurance of Advance of Mortgage
822 Proceeds include supporting bills/receipts and the Contractor's Requisition — Project
823 Mortgages, if requesting construction funds.
824
- 825 D. The Lender's role in processing the Application for Insurance of Advance of Mortgage
826 Proceeds is as follows.
827
- 828 1. 1.—Completes application indicating and approving:
829 a. Amount requested by Borrower;
830 b. Approximate disbursement date;
831 c. Amount to be advanced from mortgage proceeds for work completed;
832 d. Amount disbursed from Borrower's front money escrow, if any; and
833 e. Total loan proceeds disbursed including current request.
834
 - 835 2. 2.—Submits initial and final application to ORCF Closer for review and approval.
836
 - 837 3. 3.—Processes and approves interim advances and change orders for acceptability.
838
 - 839 4. 4.—Ensures clear title before advancing thean approved disbursement.
840

841 5. ~~5.~~—Notifies HUD and Borrower in writing if clear title does not exist.

842
843 6. Notifies HUD in writing if known unauthorized changes to plans, specifications and
844 increased costs exists prior to next advance.

845
846 7. Makes site visits (as needed) to resolve any issues which may adversely affect the
847 underwriting of the loan.

848
849 E. Stages of Advances.

850
851 In cases involving insurance of advances, HUD and the Lender’s processing of the advance
852 is divided into the following stages:

853
854 1. Initial advance. Refers to the first application and coincides with the Initial Closing of
855 the credit instrument. The initial advance will be reviewed by the ORCF Closer, and
856 executed by the ORCF Closer and ORCF WLM. The Lender shall submit the
857 Application for Insurance of Advance of Mortgage Proceeds, Application for
858 Insurance of Advance of Mortgage Proceeds, with supporting documentation for HUD
859 approval.

860
861 2. Interim advances. Interim advances are subsequent applications up to completion of
862 the project. Interim advances will be processed and approved by the Lender.

863
864 3. Next to Final Advance. When HUD has consent from ~~the~~Lender, Borrower, and
865 surety, if any, all but 2 ½% of the construction retainage may be released.
866 Note: This only applies to non-identity of interest General Contractors or where the
867 General Contractor’s identity of interest is a project ownership of less than 5 percent.

868
869 4. Final Advance. It is any remaining balance of mortgage proceeds at Final Closing.
870 This advance takes into consideration funds necessary to set up the escrows for
871 “Items of Delayed Completion” and “To Be Paid in Cash Items”. The final advance,
872 using the Application for Insurance of Advance of Mortgage Proceeds, is to be
873 processed by HUD.

874
875 F. Instructions for Approval of Initial/Interim Advances. These instructions can be found in
876 Appendix 10.2.

877
878 G. General Contractor’s Monthly Requisition and Related Matters. See Appendix 10.3 for
879 instructions on completing the Contractor’s Requisition – Project Mortgages, and related
880 matters.

881
882 H. Next to Final Advance. The final advance is requested when construction is acceptably
883 complete, even though there may be items of delayed completion.

884
885 1. It may provide for the release of the General Contractor’s retainage provided the
886 conditions in Section 10.15.D have been met.

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2. The balance of the off-site escrow may be released provided:
 - a. The off-site sewer, water, electrical and gas facilities are completely installed and connected; and safe and adequate all-weather facilities for ingress and egress are provided;
 - b. All other required off-site construction, if any, is completed;
 - c. Otherwise, completion is to be assured by a cash deposit in an amount equal to 150 percent of the HUD estimate of the cost of such off-site construction.
- 896 I. Final Advance. The Application for Insurance of the Final Advance requests any remaining
897 balance of mortgage proceeds. It ensures that:
898
1. The Borrower's cost certification has been approved and the Maximum Insurable Mortgage Letter has been issued approving the final maximum mortgage amount. See Production, Chapter 11.
 2. The Application for Insurance of Advance of Mortgage Proceeds is accompanied by a completed Contractor's Requisition – Project Mortgages, with required Contractor's Prevailing Wage Certificate, if the General Contractor's retainage has not been previously disbursed. Refer to Section 10.15.D for instructions on releasing the General Contractor's retainage.
 3. The sum to be approved for advance is the balance of the mortgage proceeds, based on the final approved ~~Mortgagor's~~Borrower's Certificate of Actual Cost (Form HUD-92330-ORCF).
 4. Establishment of the escrow under the provisions of the Escrow Agreement for Incomplete Construction (Form HUD-92456-ORCF).
 5. Request for Final Endorsement ~~of Credit Instrument~~ (Form HUD-92023-ORCF), or Commitment to Insure Upon Completion (Form HUD-92453-NH), have been submitted and reviewed.
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- 920 J. For instructions on establishing the escrow for the Borrower's unpaid construction costs
921 under the provisions of the Escrow Agreement for Non-Critical Deferred Repairs (Form
922 HUD-92476-ORCF), see Production, Chapter 9.
923
- 924 K. Keeping the mortgage in balance.
925 Soft cost overruns such as interest, taxes, MIP, and insurance resulting from construction
926 delays at the fault of the General Contractor (i.e., poor performance) are funded from the
927 liquidated/actual damages clause in the construction contract. This clause is not a penalty. It
928 instead provides a source of funds to cover the increased soft costs. When the interest
929 allocation is near exhaustion, HUD ~~should~~must be notified immediately. The Lender should
930 follow the following procedure:
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1. When the interest allocation is near exhaustion, ask the Architect and the HUD Contract Inspector to estimate an expected completion date.
 - a. Compute the minimum liquidated damages for the period between the completion date specified in the construction contract, as adjusted by approved change orders, and the assumed completion date.
 - b. When the interest allocation has been exhausted, Developer's fee if applicable, or the working capital escrow should be used to keep interest current.
 - c. Transfer the computed liquidated damages amount from column I, Construction, to Column G, Carrying Charges and Financing, on the Financial Record of Mortgage Loan Transaction ([Form HUD-92451-OHF](#)).
 - d. Allocate full amount to interest, initially.
 - e. Funds may be used for MIP, taxes, or insurance payments, if requested, after the funds for these line items and non-profit Developer's fee, if applicable and working capital escrow are exhausted. However, funds transferred from the construction account may be used to cover only the cost of these items attributable to the period in Paragraph 1 above, specified in the construction contract and the assumed completion date.
 2. Notify the Borrower, General Contractor, HUD and surety, if any, by certified mail of the amount and the reason for the transfer.
 3. Require written acknowledgment from HUD and surety, if any, before transferring funds.
 4. The amount of transferred funds must be reflected on subsequent Contractor's Requisition -- Project Mortgages' as a decrease to item 7, Sum of Cost Breakdown Items Plus Inventories of Materials.
 5. After review of the cost certification documents, if the full amount of transferred funds was not needed to cover the cost of interest, MIP, taxes, and insurance attributable to the period identified, the balance will be transferred back to the construction account.
 6. In processing the Contractor's Requisition -- Project Mortgages, before releasing the General Contractor's retainage, make adjustment for the lesser of actual or liquidated damages determined in the cost certification review.
 7. This procedure should be invoked only if, after consulting with ORCF Management, it can be confirmed that the problems causing the delay will be remedied within a reasonable time.

10.9

Construction Change Orders – General

976
977 A. General Instructions. Construction contract changes (change orders) must be requested by
978 the Borrower through the Lender. Request for Construction Changes on Project Mortgages
979 (Form HUD-92437-ORCF) is used for on-site changes during construction in all projects
980 involving Insurance of Advances of Mortgage Proceeds, and Insurance Upon Completion,
981 when the change involves a change in the scope of work, or a change in construction time.
982 Multiple construction changes may be placed on a single form. However, both a construction
983 change(s) and a time extension change may not be listed on the same form. Forms must be
984 signed by the Borrower's Supervisory Architect, the Borrower, and the General Contractor,
985 and the Lender (including the as well as reviewed by the HUD Contract Inspector prior to
986 being forwarded to the Lender by the Architect. The Lender (along with Lender's
987 Architectural Reviewer, Cost Analyst, Appraiser, and Mortgage Credit Specialist, as
988 necessary). ~~The Contract Inspector)~~ shall review ~~the change order for technical~~
989 ~~acceptability, ensure adequate funds are available to cover cost, and for duplication within~~
990 ~~the drawings if approved, sign and approve or disallow prior to submission send~~ to the Lender
991 ~~for approval~~ ORCF CM. Final change order approval and distribution is made by the ORCF
992 CM. All change orders must receive prior approval by HUD in the form of a CO before
993 work is commenced.
994

- 995 1. The General Contractor shall maintain a Change Order Log, showing the status of
996 potential Change Orders. An updated copy must be kept on site, in the construction
997 office, and a copy provided to the HUD Contract Inspector whenever changes are
998 made to the Log.
999
- 1000 2. The project Architect shall draft and assemble attachments for each Change Order
1001 clearly describing each change, and the reason for the change. Required attachments
1002 for physical changes include:
 - 1003 a. Appropriate modifications to the contract drawings and specifications,
 - 1004 b. An Architect's narrative confirming that the change(s):
 - 1005 i. ~~Conforms~~ conforms to the original intent of the contract drawings and
1006 specifications; or
 - 1007 ii. is necessary to overcome an impediment to construction; or is a
1008 betterment, an equivalent, or an addition desired by the Borrower,
 - 1009 iii. is permissible under the applicable zoning, building, housing, and
1010 other codes, ordinances and/or regulations, as modified by any and all
1011 waivers obtained from appropriate officials; ~~;~~
 - 1012 iv. incorporates foundation designs that reflect site soils limitations and
1013 design recommendations included in the foundation soils report and
1014 any other geotechnical reports (if applicable); ~~);~~
 - 1015 v. complies with the HUD Minimum Property Standards; all applicable
1016 accessibility laws for persons with disabilities, including the Fair
1017 Housing Accessibility Guidelines, and the Uniform Federal
1018 Accessibility Standards (~~Direct link:~~
1019 <http://portal.hud.gov/hudportal/documents/huddoc?id=AccessMatrixSee232.docx>); ~~;~~ as well as any state or local law that requires higher
1020 accessibility requirements; and all other applicable HUD Standards,
1021

- 1022 guidelines and criteria,
- 1023 vi. complies with the applicable State Energy Efficiency Design Code,
- 1024 vii. for Substantial Rehabilitation, structures ~~in~~must meet seismic ~~zones 3~~
1025 ~~and 4 meet three fourths (3/4) of the seismic force level~~ resistance
1026 ~~contained in ASCE 31-03: Seismic Evaluation of Existing Buildings,~~
1027 ~~requirements published by the~~ American Society of Civil Engineers, ~~as~~
1028 ~~determined by a registered engineer familiar with lateral force design~~
1029 ~~(if applicable), (ASCE) and its affiliate the Structural Engineering~~
1030 ~~Institute (ASCE/SEI) for ASCE 41-13. For additional guidance see~~
1031 ~~Chapter 4.1,~~ and
- 1032 viii. incorporates noise attenuation measures which are sufficient to
- 1033 mitigate interior noise levels to an “Acceptable” level and complies
- 1034 with the recommendations of the Noise Engineer (if applicable).
- 1035 ~~b. e. Backup~~backup documentation for amount(s) requested consisting of
- 1036 itemized
- 1037 ~~b. c.~~quantities and costs (including itemized Builder’s Fees).
- 1038
- 1039 3. After the General Contractor ~~or~~and Supervisory Architect has drafted the Change
- 1040 Order, and included all necessary attachments, the HUD Contract Inspector ~~will~~shall
- 1041 review the change order ~~in the field~~during an inspection for technical acceptability
- 1042 and for duplication within the drawings. ~~If, and approve or disallow items as~~
1043 ~~necessary. Upon completion of the review, the HUD Contract Inspector shall place~~
1044 ~~their initials and date in top right corner of the first page. The Lender (along with~~
1045 ~~Lender’s Architectural Reviewer and, Cost Analyst (per the instructions below), and~~
1046 ~~Lender’s, Appraiser, and Mortgage Credit Specialist (as required by the instructions~~
1047 ~~below), will then review and process the Change Order. The Change Order is then~~
1048 ~~reviewed, as necessary) shall review, and signed by the Lender, who then ensure~~
1049 ~~adequate funds are available to cover cost and if approved, signs and sends the~~
1050 ~~complete Change Order package~~ to the ORCF CM for final review and approval.
- 1051 Copies of the fully executed Change Order will then be distributed as listed below in
- 1052 10.9.M. All change orders must receive prior approval before work subject to the
- 1053 change order is commenced.
- 1054
- 1055 4. Approve change orders only when they are necessary, a betterment, or an equivalent.
- 1056 The following information shall appear in the Change Order submission:
- 1057 a. Classification (necessity, betterment, etc.);
- 1058 b. Qualification for payment from the contingency reserve, or Borrower cash
- 1059 escrow;
- 1060 c. Whether change order results from error, omission, or negligence on the part of
- 1061 the Architect, General Contractor, or Borrower.
- 1062
- 1063 5. Do not approve any change orders submitted after the final HUD Contract Inspector’s
- 1064 Final Trip Report, ~~(100%),~~ except where:
- 1065 a. The change order pertains to “Items of Delayed Completion,” or
- 1066 b. Prior written approval is given by the ORCF CM.
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6. Surety approval must be secured in writing before approving any change or aggregate of changes that increase the contract price 10 percent or more. There is no consent requirement where the project's assurance of completion is by a cash escrow or letter of credit.
 7. Change Orders must be submitted in a timely manner: during construction. HUD regulations Policy prohibit processing of change orders after the 100% Final Trip Report.
 8. The form selected must be signed by:
 - a. Borrower,
 - b. General Contractor,
 - c. Architect, and
 - d. Lender
 9. All offsite changes must be:
 - a. Requested in a letter or other format acceptable to ORCF. The Form HUD-92437-ORCF, Request for Construction Changes on Project Mortgages, shall not be utilized for this purpose.
 - b. The request will be otherwise documented and processed in the same manner as on-site changes.
 10. HUD will endeavor to promptly review all requests submitted. All construction change requests must be reviewed, signed, and dated by the ORCF CM.
 11. Voiding Changes. If an approved change is not made, it must be nullified by a Request for Construction Changes on Project Mortgages restoring the drawings and specifications to the status prior to the change request or to a status acceptable to HUD.
 12. Unapproved Changes. When there are unapproved changes in construction, the HUD Contract Inspector is required to modify the amount of the General Contractor's requisition to cover any additional costs related to the unapproved construction including, without limitation, those required to remove work that does not conform to the plans and specifications as approved by HUD originally or in accordance with approved Change Orders.
- B. General Change Order Policies.
1. Changes must be accurately reported and accounted for pursuant to U.S. Criminal Code, Section 1010, Title 18, U.S.C.
 2. The Change Order process is not to be implemented as a means for making fundamental alterations to a project as approved and underwritten, particularly with respect to retaining its full operational functions, amenities, and value.

- 1114 3. HUD does not initiate any changes but may require them as a condition of
1115 approval in connection with a change proposed by the Architect, Borrower, or
1116 General Contractor.
1117
1118 4. All proposed changes must be reviewed and approved in writing by the Lender
1119 and HUD before related work begins.
1120
1121 5. Any change that is made without formal approval, even though tentatively agreed
1122 to as technically acceptable, must be recorded by the HUD Contract Inspector as a
1123 noncompliance. This stands until, and unless, the Request for Construction
1124 Changes on Project Mortgages; is approved, and also affects payment of
1125 advances.
1126

1127 C. Change Order Classification.
1128

- 1129 1. Necessary changes are those that arise from:
1130 a. Latent conditions that differ from conditions contemplated by the construction
1131 documents;
1132 b. Changes in the applicable codes, ordinances, etc. after:
1133 i. Initial closing for insured advances;
1134 ii. Firm Commitment for insurance upon completion;
1135 c. Errors or omissions by the Architect;
1136 d. Physical damages to completed construction.
1137
1138 2. Betterment changes are those that are economically justified. They must either:
1139 a. Increase net income;
1140 b. Reduce long-term project maintenance and/or operating expenses;
1141 c. Otherwise enhance the value of the mortgaged property.
1142
1143 3. Equivalent changes are those proposed because:
1144 a. Specified item is not readily available and the substitution provides equivalent
1145 or better utility, or
1146 b. Proposed substitution reduces the contract price but provides equivalent or
1147 better utility and performance.
1148

1149 D. Additive Change Orders. An Additive Change Order does not give any explicit or implied
1150 assurance that an increase in the insured mortgage amount will be granted.
1151
1152

- 1153 1. Require the Borrower, except for “necessary” change orders on substantial
1154 rehabilitation projects, to escrow funding with the Lender for any additive change
1155 order where HUD first estimates that the aggregated change orders equal or exceed a
1156 \$5,000 increase in the construction contract price, and for all subsequent additive
1157 change orders.
1158 a. Excess mortgage proceeds, if available, may be used to fund the escrow for
1159 “necessary” and “betterment” change orders. However, any excess mortgage

- 1160 proceeds used to fund the escrow for General Contractor estimated costs in
1161 excess of HUD estimated costs, or HUD estimated costs in excess of General
1162 Contractor estimated costs, may not be disbursed until ~~final closing~~Final
1163 Closing.
- 1164 b. Permit Lender to accept a third-party letter of credit instead of a cash deposit,
1165 subject to the Lender agreeing to provide the cash equivalent, where the letter
1166 of credit is not immediately met.
- 1167 c. Recognize the cost of third-party paid change orders at cost certification,
1168 where there are available mortgage savings.
- 1169
- 1170 2. On substantial rehabilitation projects, approve payment from the established
1171 contingency reserve in an amount not to exceed the HUD cost estimate for
1172 “necessary” additive change orders. “Betterment” change orders are not eligible for
1173 payment from the contingency reserve.
- 1174 a. Require an escrow for any amount that the General Contractor’s cost
1175 estimate exceeds the HUD estimate.
- 1176 b. Authorize use of excess mortgage proceeds, if available, to satisfy the escrow
1177 requirement Excess mortgage proceeds, if available, may be used to fund the
1178 escrow for “necessary” and “betterment” change orders. However, any
1179 excess mortgage proceeds used to fund the escrow for General Contractor
1180 estimated costs in excess of HUD estimated costs, or HUD estimated costs in
1181 excess of General Contractor estimated costs, may not be disbursed until
1182 final closing.
- 1183
- 1184 3. Approve the following forms for Borrower’s application of funds for completed
1185 additive change orders:
- 1186 a. Request ~~for Approval of Advance of Escrow Funds (Form HUD-92464-~~
1187 ORCF), where an escrow is used. Note: This form must be submitted to
1188 HUD for approval.
- 1189 b. The Application for Insurance of Advance of Mortgage Proceeds, where a
1190 rehabilitation project’s contingency funds or ~~non-profit’s Developer’s fee or~~
1191 excess mortgage proceeds are used.
- 1192
- 1193 E. Deductive Change Orders.- Where the HUD estimated decrease in contract price for any
1194 aggregation of change orders:
- 1195
- 1196 1. Remains less than 2-1/2 percent of the contract price reduce the “final” Contractor’s
1197 Requisition – Project Mortgages, by the appropriate amount.
- 1198
- 1199 2. Equals or exceeds 2-1/2 percent of the contract price and for all subsequent deductive
1200 change orders regardless of the amount:
- 1201 a. Reflect the decrease in the Contractor’s Requisition – Project Mortgages, Item
1202 (8).
- 1203 b. Reduce the original mortgage amount at cost certification, where required.
- 1204
- 1205 F. Changes that adversely affect income are a basis for change order rejection, except where it is

1206 a necessary change order and the situation is unavoidable.

1207

1208 G. Extension of Contract Time.

1209

1210 1. Approve an extension only where:

1211 a. The delay was beyond the General Contractor's control (e.g., strikes, differing
1212 site conditions, bad weather exceeding the average for the season, etc.) and is
1213 documented or associated with an approved change order,

1214 b. The extension request was submitted within the limit provided by the contract
1215 and the general conditions for delays beyond the General Contractor's control,
1216 and submitted concurrently with any requested changes in the work, and

1217 c. The request is accompanied by a surety's written consent. There is no consent
1218 requirement where the project's assurance of completion is by a cash escrow or
1219 letter of credit.

1220

1221 2. Require funding for the increased cost for overhead, interest, taxes, insurance, MIP,
1222 and General Contractor's general requirements by use of a cash escrow, or excess
1223 mortgage proceeds, or non-profit's Developer's fee, if applicable, or from contingency
1224 reserve.

1225

1226 3. HUD enforces liquidated damages in accordance with the contract.

1227

1228 4. Required documentation. Within 21 days of the date a construction delay occurs, the
1229 General Contractor must document it with the Architect and include:

1230 a. Date of occurrence and number of calendar days it covered.

1231 b. Effect on construction progress.

1232 c. Cause of the delay. If the cause is of a continuing nature, submit the extension
1233 request when the cause ceases, but still record the initial date of occurrence and
1234 its effects on construction.

1235 d. Extension request must also include written consent of the surety and conform
1236 to AIA Document A201.

1237

1238 H. Changes to Items of Delayed Completion. These are the only construction contract changes
1239 that ORCF can approve after project completion. All others require ORCF consent.

1240

1241 I. Emergency changes.

1242

1243 1. The only time a change can be made without prior written approval of the Lender and
1244 HUD is in emergencies that:

1245 a. Endanger life or property; or

1246 b. Halt construction.

1247

1248 2. In these instances, the Architect must notify the Lender and HUD and, as soon as
1249 possible, submit a Request for Construction Changes on Project Mortgages.

1250

1251 J. Insurance Upon Completion. The Request for Construction Changes on Project Mortgages,

1252 are processed in the same way as Insurance of Advance cases, except as modified:

- 1253
- 1254 1. An escrow is not required for additive change orders. The Borrower:
- 1255 a. Must be able to provide the additional funds required; and
- 1256 b. Must not have any outstanding obligation in connection with construction other
- 1257 than the insured mortgage at the time the mortgage is presented to HUD for
- 1258 insurance upon completion.
- 1259
- 1260 2. Surety approval is not required for the approval of additive change orders regardless
- 1261 of the percentage of contract increase.
- 1262
- 1263 K. Changes to offsite construction must be requested by letter or other acceptable format. The
- 1264 Request for Construction Changes on Project Mortgages may be used as a general guide, but
- 1265 the form itself may not be utilized for this purpose.
- 1266
- 1267 L. Other Changes. These changes necessitated by error, omission, or negligence of Architect,
- 1268 Borrower, or General Contractor must be so recorded by the ORCF CM or HUD
- 1269 architectural staff or Contract Inspector, Inspector, on the Request for Construction Changes
- 1270 on Project Mortgages.
- 1271
- 1272 1. Record the reason for the determination.
- 1273
- 1274 2. Indicate that the cost effect must not be included in the mortgage amount.
- 1275
- 1276 M. Distribution of fully executed Change Orders: Lender, Borrower, Supervisory Architect,
- 1277 General Contractor, and HUD Contract Inspector.
- 1278
- 1279

10.10

Change Orders – HUD Contract Inspector Instructions

- 1280
- 1281 A. For specific situations, see the appropriate subject heading.
- 1282
- 1283 NOTE: For projects involving insurance upon completion, references here to "contract
- 1284 requirements" or "contract documents" include the conditions and provisions of the
- 1285 commitment if there is no construction contract.
- 1286
- 1287 B. Contemplated changes are first discussed among the Architect, General Contractor, Borrower,
- 1288 Lender, and HUD Contract Inspector.
- 1289
- 1290 C. The HUD Contract Inspector will make a preliminary determination of technical acceptability
- 1291 before a change order is submitted for approval ~~of~~to the Lender and the HUD ~~Office~~ORCF
- 1292 CM. (This preliminary determination neither commits HUD to the change, nor relieves the
- 1293 Architect ~~or,~~ the General Contractor or the Lender from completing the process described
- 1294 below.)

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10.11

Change Orders – Lender’s Architectural Reviewer and Cost Analyst’s Instructions

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- A. Architectural Reviewer. Review all requested changes for technical acceptability.
- B. Cost Analyst.
1. Construction changes:
 - a. The Lender’s Cost Analyst will produce a cost estimate for each construction change request submitted by the Borrower. Apply current data to accepted or amended change order quantities. Include amounts for general requirements and builder’s overhead and profit using the percentage of each from the “Replacement Cost” tab of the Maximum Insurable Loan Calculation ([Form HUD-92264A-ORCF](#)) at Firm commitment.
 - b. Compare estimate with Borrower’s estimate. If reasonable, use Borrower’s figure, otherwise use [HUDHUD’s](#) estimate.
 - c. Complete cost entries on the Request for Construction Changes on Project Mortgages and forward completed form to the Lender’s Appraiser and Mortgage Credit Specialist, if applicable (see “Lender’s Appraisal and Mortgage Credit Instructions,” below)
 2. Approved time extensions:
 - a. Calculate additional general requirements cost due to extension of time.
 - i. Divide cost of general requirements from the approved Contractor’s and/or Mortgagor’s Cost Breakdown ([Form HUD-232892328-ORCF](#)) by the number of months estimated for construction from the “Replacement Cost” tab of the Maximum Insurable Loan Calculation at Firm commitment. Sixty-five percent ([65%](#)) of this amount is the estimate per month of additional general requirements.
 - ii. Use one quarter of the monthly estimate per week.
 - iii. There is no cost effect for extensions of time for less than one week (seven calendar days).
 - b. Complete cost entries on the Request for Construction Changes on Project Mortgages and forward completed form to the Lender’s Mortgage Credit Specialist (see “Lender’s Appraisal and Mortgage Credit Instructions,” below)

10.12

Change Orders – Lender’s Appraisal and Mortgage Credit Instructions

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1334

- A. Appraisal.

- 1335 1. The Lender’s Appraiser must review all requested changes that may affect
1336 marketability, value, income, or maintenance or operating cost. The Lender’s
1337 Appraiser must identify and explain any estimated increase or decrease in net project
1338 income on the reverse of the Request for Construction Changes on Project Mortgages.
1339
1340 2. If applicable, per A.1 above, the Lender’s Appraiser must forward a Maximum
1341 Insurable Loan Calculation reflecting the new data for the Lender’s Mortgage Credit
1342 Specialist’s re-determination of the maximum insurable mortgage.
1343

1344 B. Mortgage Credit.

1345 1. Processing.

- 1347 a. If the Borrower’s or General Contractor’s estimate for the change order exceeds
1348 HUD’s estimate, the difference must be escrowed with the Lender. Excess
1349 mortgage proceeds, if available, may be used to satisfy this requirement.
1350 Conversely, that portion of HUD’s estimate which exceeds the Borrower’s or
1351 General Contractor’s estimate must be restricted and held until Final Closing to
1352 ensure funds to complete the project.
- 1353 b. Process the cost and appraisal findings and show the cumulative effect on cost
1354 of all approved change items.
- 1355 c. Additive Change Orders. Do not give any explicit or implied assurance that an
1356 increase in the insured mortgage amount will be granted when approving
1357 construction changes.
- 1358 i. Require the Borrower, except for “necessary” change orders on
1359 substantial rehabilitation projects, to fund escrow ~~funding~~ with the
1360 Lender for any additive change order where HUD first estimates that
1361 the aggregated change orders equal or exceed a \$5,000 increase in the
1362 construction contract price, and for all subsequent additive change
1363 orders.
- 1364 1. Excess mortgage proceeds, if available, may be used to fund
1365 the escrow for “necessary” and “betterment” change orders.
1366 However, any excess mortgage proceeds used to fund the
1367 escrow for General Contractor estimated costs in excess of
1368 HUD estimated costs, or HUD estimated costs in excess of
1369 General Contractor estimated costs, may not be disbursed until
1370 ~~final-closing~~ Final Closing.
- 1371 2. Permit Lender to accept a third-party letter of credit instead of
1372 a cash deposit, subject to the Lender agreeing to provide the
1373 cash equivalent, where the letter of credit is not immediately
1374 met.
- 1375 3. Recognize the cost of third-party paid change orders at cost
1376 certification, where there are available mortgage savings.
- 1377
- 1378 ii. On substantial rehabilitation projects, approve payment from the
1379 established contingency reserve in an amount not to exceed the HUD
1380 cost estimate for “necessary” additive change orders. “Betterment”

- 1381 change orders are not eligible for payment from the contingency
1382 reserve.
- 1383 1. Require an escrow for any amount that the General
1384 Contractor's cost estimate exceeds the HUD estimate.
 - 1385 2. Authorize use of excess mortgage proceeds, if available, to
1386 satisfy the escrow requirement, subject to the disbursement
1387 limitations in 1 a. above.
- 1388 iii. Approve the following forms for Borrower's application of funds for
1389 completed additive change orders:
- 1390 1. Request for Approval of Advance of Escrow Funds, where an
1391 escrow is used. Note: This form must be submitted for
1392 approval.
 - 1393 2. The Application for Insurance of Advance of Mortgage
1394 Proceeds, where a rehabilitation project's contingency funds
1395 excess mortgage proceeds are used.
- 1396 d. Deductive Change Orders. Where HUD estimated decrease in contract price
1397 for any aggregation of change orders:
- 1398 i. Remains less than 2 ½ percent of the contract price, reduce the "final"
1399 Contractor's Requisition — Project Mortgages, by the appropriate
1400 amount.
 - 1401 ii. Equals or exceeds 2 ½ percent of the contract price and for all
1402 subsequent deductive change orders regardless of the amount:
 - 1403 1. Reflect the decrease in the Contractor's Requisition – Project
1404 Mortgages, Item (8)
 - 1405 2. Reduce the original mortgage amount at cost certification,
1406 where required.
- 1407 e. Recalculate the maximum insurable mortgage when any approved construction
1408 change or changes adversely affect net income, e.g., a change that causes an
1409 increase in operating costs.
- 1410 i. Lender's Appraiser completes a Maximum Insurable Loan Calculation
1411 with an updated income and expense analysis.
 - 1412 ii. Re-determine the maximum insurable mortgage.
 - 1413 iii. If the re-determined mortgage is lower than the original mortgage
1414 amount, as a condition of approval of the change order, indicate in
1415 item 3b of the Request for Construction Changes on Project Mortgages
1416 that subsequent Contractor's Requisition — Project Mortgages, must
1417 be reduced by the greater of:
 - 1418 1. The difference in mortgage amounts;
 - 1419 2. The net increase in costs resulting from acceptable construction
1420 changes.
- 1421 f. Extensions of time.
- 1422 i. Lender's Architectural Reviewer, and Cost Analyst are responsible for
1423 determining whether the delay was beyond the General Contractor's
1424 control and, if so, the length of the approved time extension.
 - 1425 ii. Calculate the cost increase due to the extension:

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1. Compute pro-rata daily rate ~~for~~of interest, (based on interest rate), taxes and insurance by using estimates in the “Replacement Cost” tab of the Maximum Insurable Loan Calculation. as amended, and multiply these rates by the approved time extension.
2. An additional year of MIP will be required if the approved time extension, when added to the estimated construction term plus the 2 months included in the “Replacement Cost” tab of the Maximum Insurable Loan Calculation plus previously approved time extensions, will require an additional MIP payment during the construction period.
3. Add the additional general requirements, if any, noted by the Lender’s Cost Analyst on the change order request.

NOTE: Only Item 3 above amends the construction contract price on the Request for Construction Changes on Project Mortgages.

- iii. Determine the source of funds for any increase due to the extension, i.e., cash, excess mortgage proceeds ~~or non-profit’s Developer’s fee~~, or contingency reserve funds.
 - iv. Requests for release of excess mortgage proceeds or contingency reserve funds set aside to fund time extensions are submitted on the Application for Insurance of Advance of Mortgage Proceeds.
 - v. Releases from a cash deposit are made using the Request for Approval of Advance of Escrow Funds.
 - vi. These funds may be released only after the account for the soft cost item(s) being requested has been exhausted on the Financial Record of Mortgage Loan Transaction.
2. Requests for disbursement of contingency reserve funds and non-profit’s Developer’s fee for completed change order items are made on the Application for Insurance of Advance of Mortgage Proceeds. All requests:
 - a. Must be accompanied by a certification by the Borrower’s supervisory Architect and the HUD Contract Inspector that all the work covered by the change order has been acceptably completed in accordance with contract documents;
 - b. Must include the Borrower’s certification relative to payment to the General Contractor contained on the Request for Approval of Advance of Escrow Funds;
 - c. Must include the criminal certification contained on the Request for Approval of Advance of Escrow Funds for certifications made in paragraphs a and b above;
 - d. Are subject to a 10 percent retainage.
 3. Change orders funded from excess mortgage proceeds. Excess mortgage proceeds may be used to fund either “necessary” or “betterment” change orders.

- 1472 a. These funds may be used to fund HUD’s estimate of increased costs as well as
1473 any portion of the General Contractor’s estimate which exceeds the HUD
1474 estimate. The portion which exceeds HUD’s estimate must be restricted until
1475 Final Closing.
1476 b. Funds are released in the same manner as contingency reserve funds.
1477
- 1478 4. Releasing Cash Deposit. The Borrower submits through the Lender the Request for
1479 Approval of Advance of Escrow Funds when construction covered by a cash deposit
1480 is complete and acceptable to HUD.
1481 a. The Borrower’s supervisory Architect and the HUD Contract Inspector must
1482 certify on the Request for Approval of Advance of Escrow Funds that all work
1483 and materials covered by the change order are satisfactory and consistent with
1484 contract drawings.
1485 b. If construction costs were paid in full with other than the cash escrow or
1486 excess mortgage proceeds before submitting the disbursement request to HUD
1487 for approval, the Borrower must submit a receipt of payment signed by the
1488 General Contractor.
1489 c. If construction costs will be paid after HUD’s approval for the release of the
1490 funds deposited for the construction change, before the next Application for
1491 Insurance of Advance of Mortgage Proceeds is submitted, the Borrower must
1492 submit a receipt of payment signed by the General Contractor.
1493
- 1494 5. Change Order Summary Sheet showing cumulative cost of all executed change orders
1495 ~~should~~must contain, at least:
1496 a. The date the change order was received by the Lender and signed by the
1497 Borrower, Architect and General Contractor;
1498 b. The date HUD received the change order;
1499 c. The date the Lender’s Mortgage Credit Specialist processed the change order;
1500 d. The Borrower’s or General Contractor’s estimate of cost for the change order;
1501 e. HUD’s estimate of cost for the change order;
1502 f. The amount of change orders to be funded from contingency reserve, non-
1503 profit’s Developer’s fee, or excess mortgage proceeds;
1504 g. The required cash escrow deposit, if any;
1505 h. The HUD percentage of cost increase or decrease.
1506
1507

10.13

Labor and Fair Housing and Equal Opportunity (FHEO)

- 1508
1509 A. Wages
1510
1511 1. Payrolls. General Contractor payrolls are submitted directly to the designated HUD
1512 Labor Relations Specialist weekly for each week in which contract work is
1513 performed.
1514

- 1515 2. On-site interviews. The ~~ORCF CM forwards~~ HUD Contract Inspector submits PDF
1516 copies of the Record of Employee Interview (HUD-11), ~~which are submitted by the~~
1517 ~~HUD Contract Inspector,~~ to the ORCF CM. The HUD 11's are forwarded to Office
1518 of Davis-Bacon and Labor ~~Relations Staff~~. Standards staff.
1519
- 1520 B. Labor violations. The ORCF CM shall advise the Office of Davis-Bacon and Labor
1521 ~~Relations Staff~~ Standards staff of continuing minor infractions that cannot be resolved or of
1522 any identified or suspected major violations.
1523
- 1524 C. FHEO violations. The ORCF CM shall advise the applicable HUD Director of FHEO of
1525 continuing minor violations that cannot be resolved or of any identified or suspected major
1526 violations.
1527
1528

10.14 Surveys

1529 ALTA/ACSM Surveys must be performed by a licensed surveyor ~~and show the exact location of~~
1530 ~~on-site improvements, including utility lines and easements, as described in~~ accordance with
1531 the Survey Instructions and Borrower's Certification, Form HUD-91111-ORCF, and as outlined
1532 below:
1533

- 1534
- 1535 A. The General Contractor must give the Borrower and HUD surveys:
- 1536
- 1537 1. At any time the Borrower or HUD requires, and
1538
- 1539 ~~2. When construction is complete ("as-built" survey).~~
1540 2. An As-Built ALTA/ACSM Survey is required for both Construction Completion
1541 (Final Trip Report) and Final Closing. The ALTA/ACSM As-Built Land Title
1542 Survey, including all above ground and below ground improvements, shall be in
1543 accordance with the Survey Instructions and Borrower's Certification, Form HUD-
1544 91111-ORCF.
1545
- 1546 B. The HUD Contract Inspector, when uncertain of the location of construction or stored
1547 materials in relation to property lines or easements, may ask the Architect to require a survey
1548 with the next General Contractor's requisition.
1549
- 1550 C. If encroachments are found, the HUD Contract Inspector must notify the ORCF CM by
1551 memorandum explaining the conditions. (Encroachments may jeopardize the entire property
1552 as security for an insured mortgage.)
1553
1554

10.15 Escrowed Funds, Letters of Credit, Deposits, Retainage and Related Matters

1555

- 1556 A. Borrower's Application for Escrowed Funds.
1557
1558 1. Request for Approval of Advance of Escrow Funds, must be used where the escrow is
1559 to ensure completion of offsite improvements, demolition, additive change orders,
1560 minor movable equipment, critical, non-critical or Borrower elected repairs (under the
1561 Section 223(f) program and Section 223(a)(7) programs), or Borrower's unpaid
1562 construction items at Final Closing.
1563
1564 2. The Borrower initiates and forwards the Request for Approval of Advance of Escrow
1565 Funds to the Lender for its review before submitting the disbursement request to
1566 HUD for approval.
1567
1568 3. Require the HUD inspector to reflect the percentage of acceptably completed escrow
1569 work on the HUD Representative's Trip Report, and forward a copy after review to
1570 the Lender for use in reviewing the Request for Approval of Advance of Escrow
1571 Funds.
1572
1573 4. Do not authorize advances in excess of the documented percentage completed, less
1574 previous payments and a 10 percent retainage.
1575
- 1576 B. Release of letters of credit. In the event of a claim:
1577
1578 1. Assignment. HUD will not accept an assignment of the letter of credit to HUD from the
1579 Lender.
1580
1581 2. Un-drawn Balance. HUD will treat any un-drawn balance from a letter of credit or
1582 escrow agreement as cash held by the Lender.
1583
1584 3. Cash equivalent. The Lender is required to provide cash equal to the un-drawn
1585 balance, if demand on a letter of credit is not met.
1586
- 1587 C. Working Capital Deposit is established with the Lender at initial closing. It may be funded
1588 by cash, letter of credit or excess mortgage proceeds, if any.
1589
1590 1. Purpose. The deposit is used to:
1591 a. Defray cost of pre-operations marketing and initial rent-up. This includes:
1592 sales and advertising, model furnishing, and equipment and supplies essential
1593 to initial rent-up, etc.;
- 1594 b. Escrow funds for items due during the first operating year that project income
1595 is not expected to cover, including real estate taxes, permanent property
1596 insurance premiums, ground rents and assessments;
- 1597 c. Cover shortfalls in interest, taxes, property insurance premiums, ground rents
1598 and assessments during construction after funds available under the Building
1599 Loan Agreement are exhausted;

- 1600 d. Potentially allocate funds to the Reserve for Replacement (R4R) account for a
1601 project with low income housing tax credits, where acceptable to the
1602 Borrower and HUD;
- 1603 e. The new construction contingency portion of the escrow will be used for
1604 change orders and cost overruns.
1605
- 1606 2. Control and Release of Escrow. The Lender controls disbursements from the escrow,
1607 subject to HUD approval where appropriate (where required by escrow agreement),
1608 except where the Borrower certifies at firm commitment that any balance of the
1609 escrow will be applied to the reserve for replacements or additional betterments on a
1610 LIHTC, Historic Tax Credit, or New Markets Tax Credit project. In reviewing a
1611 Borrower's request for release of part of the escrow, consider the following:
- 1612 a. Borrower's request for the release of such escrow funds must be by letter to
1613 the Lender, rather than on the Application for Insurance of Advance of
1614 Mortgage Proceeds;
- 1615 b. None of the escrow can be used to defray any of the hard costs of construction
1616 applicable to the "Total for All Improvements." in the "Replacement Cost" tab
1617 of the Maximum Insurable Loan Calculation;
- 1618 c. Avoid premature disbursements and unnecessary expenditures;
- 1619 d. As portions of a project are ready for occupancy, a partial disbursement may
1620 be permitted for reasonable opening expenses: however, it must be determined
1621 that the escrow is not exhausted before the entire project is complete;
- 1622 e. ORCF may require that the deposit be used to cover any shortfall in interest,
1623 taxes, property insurance, ground rent and assessments;
- 1624 f. Fully document all expenditures from the escrow.
1625
- 1626 3. Final Release of Escrow.
- 1627 a. The Lender may release any balance in the working capital escrow to the
1628 Borrower 12 months after Final Closing where the project is not in default and
1629 when the project has demonstrated to ORCF's satisfaction that the project has
1630 achieved break-even occupancy for each of six consecutive months. Break-
1631 even occupancy is defined as 1.0 debt service coverage, based on all sources
1632 of Project income including ancillary income.
- 1633 b. The Lender must hold this escrow until any project financial problems are
1634 resolved (e.g., has not reached sustaining occupancy, has poor liquidity or
1635 high payables, is operating at a deficit or is near default).
- 1636 c. If the project mortgage is in default, the Lender should use any balance of the
1637 working capital escrow to cure a default, where a default occurs before the
1638 Escrow's release.
- 1639 d. The working capital new construction contingency will be refunded to the
1640 Borrower at Final Closing, if not used.
1641
- 1642 D. Amount of General Contractor's 10 percent retainage and release. The retainage provides an
1643 incentive for the General Contractor and Borrower to promptly complete the project, submit
1644 cost certification and reach ~~final closing~~Final Closing.
1645

- 1646 1. Amount of retainage. The Building Loan Agreement requires the Lender to retain at
1647 least 10 percent of the construction proceeds from each advance. The construction
1648 contract also provides for 10 percent retainage from the General Contractor's monthly
1649 payments for acceptably completed work, acceptably stored materials, and where
1650 applicable, components acceptably stored offsite. The requirement for contingency
1651 release is as follows:
- 1652 a. The General Contractor has no identity-of-interest with the Borrower greater
1653 than a 5 percent equity interest;
 - 1654 b. If applicable, prior written consent from the surety company must be attached
1655 to the request for release; ~~and~~
 - 1656 c. There are no questions regarding the General Contractor's performance
1657 concerning the quality of work, compliance with the contract and any change
1658 orders or work in progress; ~~and~~
 - 1659 d. Assuming these conditions are met, the existing standard of 10% retainage
1660 will be required only until 90% completion. After 90% completion, the
1661 requirement will be 5% retainage until 100% completion and 2.5% retainage
1662 until the loan reaches Final Closing.
- 1663
- 1664 2. Release of retainage for identity of interest General Contractor. Except as provided in
1665 paragraphs 4 and 5 below, do not release any part of the retainage until ~~final-closing~~Final
1666 Closing for a General Contractor with an identity of interest.
- 1667
- 1668 3. Release of retainage for non-identity of interest General Contractor. Release the General
1669 Contractor's retainage or remaining balance at the next to last advance, where
1670 requisitioned on the Application for Insurance of Advance of Mortgage Proceeds, and
1671 subject to compliance with the following:
- 1672 a. General Contractor's cost certification, where required, has been reviewed and
1673 approved;
 - 1674 b. General Contractor has disclosed its final obligations on the Request for Final
1675 Endorsement of the Credit Instrument;
 - 1676 c. All work under the construction contract has been inspected and approved by
1677 the controlling jurisdictions and/or authorities;
 - 1678 d. Certificates of occupancy or other required approvals for the dwelling units,
1679 and non-dwelling facilities, where applicable, have been issued by
1680 governmental authorities having jurisdiction. Separate buildings for
1681 community rooms, rental offices, laundry rooms, etc., commonly require
1682 certificates of occupancy;
 - 1683 e. Permission ~~To~~o Occupy ~~--~~ Project Mortgages has been issued by HUD for all
1684 units;
 - 1685 f. All Davis-Bacon payroll requirements have been satisfied;
 - 1686 g. The ALTA/ACSM As-Built Survey, has been submitted to HUD, per
1687 the prepared in accordance with Form HUD-91111-ORCF, Survey Instructions
1688 and Borrower's Certification (, has been submitted to HUD-91111-ORCF),,
1689 and
 - 1690 h. Retain, where applicable, an adequate amount for the following:

- 1691 i. Items of delayed completion in an amount equal to 150 percent of the
1692 HUD Inspector's cost estimate for completion,
1693 ii. Any owed or contested amounts indicated by mechanics,
1694 subcontractor, supplier, or equipment lessor liens, etc.
1695 iii. Lessor of the liquidated damages or actual damages computed at cost
1696 certification, and
1697 iv. Net effect of negative change orders.
1698
- 1699 4. Early partial release of retainage.
1700 After 90 percent construction completion, the ORCF CM may approve the partial release
1701 of the General Contractor's retainage, and suspend further withholding of retainage from
1702 payments due, where:
- 1703 a. The General Contractor has no identity of interest or the General Contractor's
1704 only identity of interest is a project ownership of less than 5 percent;
1705 b. The General Contractor, Borrower and mortgagee request the early release of
1706 the retainage in accordance with Appendix 10.4, and attach the request to the
1707 Application for Insurance of Advance of Mortgage Proceeds; ~~and~~
1708 c. The surety, if any, has provided written consent to the release; ~~and~~
1709
- 1710 d. The ORCF CM determines that:
- 1711 i. The General Contractor's general performance warrants partial release
1712 of the retainage without conditions, and
1713 ii. There are no significant outstanding Labor Standards / Davis-Bacon
1714 issues (if applicable), or
1715 iii. Partial release of the retainage with conditions, e.g., measures to assure
1716 immediate distributions to subcontractors or others would be in the
1717 mutual interest of all participants.
1718 e. The un-disbursed retainage must equal or exceed 5 percent of the contract
1719 amount.
1720
- 1721 5. Projects in difficulty. Release of part of the General Contractor's retainage before 90
1722 percent contract completion may be granted only to prevent a default of the construction
1723 loan and only if it would solve the project's problems and enable it to reach construction
1724 completion.
- 1725 a. Review the General Contractor's performance including:
- 1726 i. The completed work must be satisfactory;
1727 ii. The percentage of completed contract work must be sufficient to
1728 ensure project completion within the specified contract time; and
1729 iii. Do not release any retainage if there are serious, unresolved questions
1730 concerning:
- 1731 1. Quality of work,
1732 2. Compliance with the contract, including outstanding change
1733 orders, or
1734 3. Work is progressing behind the General Contractor's
1735 construction schedule, as amended by approved change orders.

- 1736 b. Require a written consent for the early release of retainage from the surety, if
1737 any, the Borrower and ~~mortgagee~~Mortgagee.
1738
- 1739 E. Release of the Initial Operating Deficit. ORCF's AE will consider Lender requests for initial
1740 operating deficit draws during lease-up. The Lender's request must be accompanied by:
1741
- 1742 1. A review and analysis of the monthly accounting reports detailing progress on lease
1743 up as compared to the lease up projections used in underwriting, and
1744
 - 1745 2. An updated calculation of the sufficiency of the escrow. This analysis and calculation
1746 is particularly important if the project is experiencing substantial variations from its
1747 lease up projections.
1748
 - 1749 3. Unused portions will be returned to the Borrower twelve months after ~~final~~
1750 ~~closing~~Final Closing and when the project has demonstrated to ORCF's satisfaction
1751 that the Project has achieved a debt service coverage ratio (including the Mortgage
1752 Insurance Premium) of at least 1.45 for each month of three consecutive months. The
1753 Lender is responsible for ~~insuring~~ensuring that escrow funds are released solely for
1754 project operating needs.
1755
1756

10.16

Completion of Repairs Pursuant to Section 223(f) and 223(a)(7)

- 1757
- 1758 A. Required Repairs are documented by the Lender's Needs Assessor. A list is prepared which
1759 categorizes repairs into critical repairs and non-critical repairs.
1760
- 1761 1. Critical repairs must be completed before closing. Critical repairs are any individual
1762 or combination of repairs required to correct conditions that:
 - 1763 a. Endanger the safety or well-being of residents, visitors or passers-by;
 - 1764 b. Endanger the physical security of the property;
 - 1765 c. Adversely affect project or unit(s) ingress or egress;
 - 1766 d. Prevent the project from reaching sustaining occupancy;
 - 1767 e. Require correction of accessibility deficiencies (See Accessibility Matrix
1768 available on the Section 232 Program website. ~~Direct link:~~
1769 ~~[http://portal.hud.gov/hudportal/documents/huddoc?id=AccessMatrixSec232.d](http://portal.hud.gov/hudportal/documents/huddoc?id=AccessMatrixSec232.docx)~~
1770 ~~oex~~)-Direct link:
1771 ~~[https://www.hud.gov/federal_housing_administration/healthcare_facilities/resi](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/underwriting/223a7)~~
1772 ~~[dential_care/underwriting/223a7](https://www.hud.gov/federal_housing_administration/healthcare_facilities/residential_care/underwriting/223a7)~~
1773
 - 1774 2. Non-critical Repairs consist of all repairs other than Critical Repairs. Non-critical
1775 Repairs may, at the request of the Borrower, be completed after closing.
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 - 1777 3. Completion of repairs.

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- a. Completion of repairs before closing. Lender shall submit a completed Owner's/Borrower's Certification - Completion of Critical Repairs (Form HUD-91118-ORCF), to HUD for review and approval.
- b. Completion of repairs after closing. See Asset Management, Chapter 3.2.4 for details regarding Non-Critical Repair Escrows.

- 4. Payment for Repairs.
 - a. Repairs completed before closing: No mortgage proceeds may be advanced.
 - b. Repairs completed after closing: Shall be funded from the Non-Critical Repair Escrow established at Initial Closing.

B. Repair completion. All work must be acceptably completed before the loan closing, except for the following:

- 1. Exterior Repairs, that cannot be completed because of weather conditions, may be completed after closing, with prior ORCF approval. Include amount(s) to be escrowed.
- 2. Non-critical repairs may be completed after closing when the commitment provides for it and a completion escrow is established at closing, except that:
 - a. All critical repairs must be completed before closing, and
 - b. An additional deposit must be made to the operating deficit account for delayed repairs which will delay or interrupt occupancy or income for any period.

10.17 Major Movable Equipment – Requisitions, Inspections, and Changes to Equipment Schedule During Construction

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A. Requisitions.

- 1. The Borrower prepares the Application for Insurance of Advance of Mortgage Proceeds, indicating the total amount of Major Movable Equipment delivered to the site and installed or stored onsite.
- 2. Related attachments will include:
 - a. A summary sheet, and detailed lists all Major Movable Equipment purchased and installed/stored on site within the past month;
 - b. All invoices for equipment purchased.

NOTE: *Deposits* for Major Movable Equipment are not eligible for funding from mortgage proceeds.

B. Inspection of Major Movable Equipment.

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The HUD Contract Inspector:

1. Confirms delivery and installation (or acceptably stored on site) of Major Movable Equipment and the invoice amounts;
2. Will only approve payment for equipment actually delivered and installed/stored on site, and may change the listed equipment and requested amount on the Application for Insurance of Advance of Mortgage Proceeds accordingly, to agree with actual delivery and installation / storing;
3. Initials the summary sheet, and documents their observations and conclusions in the HUD Representative's Trip Report.

C. Changes to the Major Movable Equipment (MME) Schedule during construction.

1. Lender requires the Borrower to submit a revision of the itemized MME list. The revised MME list should itemize which specific MME items are being replaced, and contain a complete description and cost of the MME items that have been chosen as replacements.
2. The Borrower presents the revised MME list to the Lender for review. The Lender reviews the revised MME list and certifies that the replacement MME items are of equal quality and will perform the intended function of the MME items being replaced. Lender forwards a copy of the revised MME list and certification to the ORCF CM.
3. The ORCF CM forwards a copy of the revised MME List to the HUD Contract Inspector.

Note: If a revised MME item costs more than the item being replaced, the price differential *may* be paid from the Working Capital Escrow.