

CHAPTER 6. HFA CLOSING AND HUD ENDORSEMENT OF LOAN

6-1 HFA CLOSING. Before disbursement of loan advances in periodic advances cases, and in all cases after completion of construction, repairs or substantial rehabilitation (or completion of processing for existing projects requiring no repairs), the HFA must hold a closing and submit a closing docket with required documentation to the local HUD Office with jurisdiction for the project's location. The submission will include, among other things, the mortgage note which the local HUD Office Manager will endorse for insurance. Prior to closing, the HFA must ensure that the following property and mortgage requirements have been met:

- A. PROPERTY REQUIREMENTS -- REAL ESTATE. The mortgage must be on real estate held:
 - 1. In fee simple;
 - 2. Under a renewable lease of not less than 99 years;
or
 - 3. Under a lease executed by a governmental agency, or other lessor approved by the HFA, that has a term at least 10 years beyond the end of the mortgage term.
- B. TITLE.
 - 1. Eligibility of title. Marketable title to the mortgaged property must be vested in the mortgagor on the date the mortgage is filed for record.
 - 2. Title evidence. The HFA must receive a title insurance policy (or other acceptable title evidence in the jurisdiction if title policies are not typical) that ensures that marketable title is vested in the mortgagor, that a survey acceptable to the HFA has been performed, and that no existing impediments to title concern, or exist on, the property.
- C. MORTGAGE PROVISIONS.
 - 1. Form. The mortgage and note must be executed on a form approved by the HFA for use in the jurisdiction in which the property is located. The note must provide that the mortgage is insured under Section 542(c) of the Housing and Community Development Act of 1992 and the regulations set forth at 24 CFR Part 266, in effect on the date of endorsement. The note must also specify the risk of loss assumed by the HFA and by HUD.
 - 2. Mortgagor. The mortgage must be executed by a mortgagor determined eligible by the HFA.

3. First lien. The mortgage must be a single first lien on property that has first priority for payment and that conforms with property standards prescribed by the HFA.
4. Single asset mortgagor. The mortgage must require that the mortgagor is a single asset, sole purpose mortgagor.
5. Amortization. The mortgage must provide for complete amortization (i.e., regularly amortizing) over the term of the mortgage.
6. Use restrictions. The mortgage must contain a covenant prohibiting the use of the property for any purpose other than the purpose intended on the day the mortgage was executed. The conversion of a project from rental to cooperative is not a "change in use" as that term is employed in the mortgage since the property will continue to have a residential use both before and after conversion.
7. Hazard insurance. The mortgage must contain a covenant, acceptable to the HFA, that binds the mortgagor to keep the property insured by one or more standard policies for fire or other hazards stipulated by the HFA. A standard mortgagee clause making loss payable to the HFA must be included in the mortgage. The HFA is responsible for ensuring that insurance is maintained in force and in the amount required by this paragraph and the mortgage. The HFA must ensure that the insurance coverage is in an amount which will comply with the coinsurance clause applicable to the location and character of the property, but not less than 80 percent of the actual cash value of the insurable improvements and equipment. If the mortgagor does not obtain the required insurance, the HFA must do so and assess the mortgagor for such costs. These insurance requirements apply as long as the HFA retains an interest in the project and final claim settlement has not been completed or the contract of insurance has not been otherwise terminated.
8. Modification of terms. The mortgage must contain a covenant requiring that, in the event that the HFA and owner agree to a modification of the terms of the mortgage (e.g., to reflect a reduction of the interest rate if reductions are realized in the underlying bond rates for the project), Section 8 rents would be reduced in accordance with HUD guidelines in effect at the time.
9. Regulatory Agreement. The mortgage must contain a provision incorporating the Regulatory Agreement

by reference.

10. HUD adjustment of mortgage amount. The HFA may also wish to include a provision permitting declaration of a default if a mortgagor fails to remit excess mortgage proceeds when HUD review of advances or cost certification results in a mortgage reduction.

D. MORTGAGE LIEN AND OTHER OBLIGATIONS.

1. Liens. At the initial and final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that the property covered by the mortgage is free from all liens other than the insured mortgage, except that the property may be subject to an inferior lien(s) as approved by the HFA as long as the insured mortgage has first priority for payment.
2. Contractual obligations. At the final closing of the loan, the mortgagor and the HFA must certify, and the HFA must determine, that all contractual obligations in connection with the mortgage transaction, including the purchase of the property and the improvements to the property, are paid. An exception is made for obligations that are approved by the HFA and determined by the HFA to be of a lesser priority for payment than the obligation of the insured mortgage.

- E. EXECUTION OF REGULATORY AGREEMENT. The HFA and the mortgagor must execute and record a Regulatory Agreement in a form acceptable to the HFA. The Regulatory Agreement must include an addendum requiring the mortgagor to comply with the requirements of the Risk-Sharing program for as long as the Commissioner insures the mortgage.

6-2 SUBMISSION OF CLOSING DOCKET.

The HFA must submit the closing docket, representations and certifications as required in Appendix 10, to the local HUD Office, transmitted by letter signed by an authorized official identified in the Risk-Sharing Agreement. An original and one conformed copy must be submitted, in legal-sized pressboard folders fastened at the top. The closing docket, each page numbered in the upper right corner with the HUD project number, must be accompanied by the information diskette and a check for the first year's Mortgage Insurance Premium (see chapter 9).

NOTE: For a new construction/substantial rehabilitation project that will be insured upon completion (i.e., no initial endorsement) an information diskette must be submitted with a cover letter stating that the project has started construction

and specifying the date of construction start.

- A. Information diskette. Project information concerning the mortgage amount, location, number and type of units, income and expenses, rents, project occupancy percentage, value/replacement cost, interest rate, type of financing, tax credit use, and similar statistical information will be recorded on a diskette that will allow input of project information into the 542(c) data system. The type of information required on the diskette is described in Appendix 11. HFAs will be provided the format and instructions for preparing the information diskette. HUD Offices will be provided instructions for entering the diskette.
- B. Initial Closing. The initial closing docket submitted by the HFA must include the information and certifications identified in Appendix 10, section 1. It must also include the HFA's information diskette, completed to include the data required for the data system. The local HUD Office will review the initial closing docket in a manner similar to its review of the final closing docket pursuant to paragraph 6-3 below.
- C. Final Closing. After physical completion of the project or completion of critical repairs (noncritical repairs may be made after final endorsement with establishment of appropriate escrows acceptable to the HFA) and execution of a certificate of actual cost (for both insurance of advances and insurance upon completion), the HFA will submit a closing docket to the local HUD Office for final endorsement. The final closing docket must include the information and certifications identified in Appendix 10, section 2 along with the HFA's information diskette, completed to include the data for the data system (or to update prior information if the loan was submitted for initial closing).

6-3 LOCAL HUD OFFICE REVIEW OF CLOSING DOCKETS.

- A. GENERAL. The Multifamily Housing Division has primary responsibility for review of closing dockets and ensuring that projects are endorsed for insurance. The local HUD Office has 5 working days to complete this process except for the sample of projects that the Office chooses for pre-endorsement monitoring, which has a 10-day deadline (see paragraph D below). However, every effort should be made to endorse projects as quickly as possible.
- B. CERTIFICATIONS. Multifamily Housing staff will review all closing dockets for completeness, including the HFA's certifications that:
 - 1. written approval was obtained for all HUD-retained

reviews;

2. the environmental review was obtained in accordance with 24 CFR Part 58.
3. all equal employment opportunity requirements were followed;
4. the HFA reviewed and approved the mortgagor's Affirmative Fair Housing Marketing Plan;
5. processing, underwriting (including a determination that a market exists for the project), cost certification (at final closing only) and closing were all performed according to the HFA's standards and requirements (or for projects processed under Level II, with the underwriting standards and loan terms and conditions as approved by HUD);
6. for insurance of advances cases, advances were made proportionate to construction progress;
7. the property is free of all liens other than the first mortgage except for inferior liens approved by the HFA;
8. all contractual obligations are paid;
9. the dedicated account, if required, has been increased in accordance with paragraph 2-2;
10. laborers and mechanics employed in the construction of the project and subject to the requirements of paragraph 5-3B were paid not less than the wages determined by the Secretary of Labor in accordance with the Davis-Bacon Act. (This certification does not apply to initial endorsement.); and
11. all principals have received 2530 clearance as required by outstanding procedures.

C. OTHER INFORMATION. The local HUD Office will review each closing docket for among other things, the presence of the HFA's information diskette; an amortization schedule; a copy of the Risk-Sharing Agreement with any prior amendments or addendums; certified copies of the mortgage (deed of trust), mortgage (deed of trust) note (with the risk of loss to be assumed by the HFA and HUD specified on the face sheet); a copy of the HFA-approved cost certification; a copy of the Regulatory Agreement between the HFA and the mortgagor; and a hazard insurance policy with a clause making the loss payable to the HFA. The Office will also determine that certifications and other documents committing the HFA were signed by HFA

officials identified in the Risk-Sharing Agreement.

- D. LOCAL HUD OFFICE MONITORING FUNCTIONS. The local HUD Office will perform its pre-endorsement monitoring functions by reviewing a limited sample of the insured advances cases and cost certifications. The Office has a total of 10 working days to review the closing docket, perform monitoring functions and endorse the mortgage for insurance for these sample cases.

HUD has the authority to make an appropriate adjustment to the amount of mortgage insurance up to and including final endorsement. However, it is anticipated that adjustments would be made only in very rare cases (as they are rare for HUD-processed projects). The review is to ensure that the HFA has used its own procedures for insured advances and cost certification. Except where Headquarters has required a particular HFA to use HUD's procedures for advances and/or cost

certification, HFAs do not have to comply with HUD's handbooks and instructions.

1. Insurance of advances. Check to see whether advances were consistent with construction progress, whether the loan remained in balance by comparing actual disbursements against a project completion schedule, and whether disbursements were supported by bills and/or receipts.
2. Cost Certification. Review the HFA's cost certification to ensure that the amount to be insured is supported by costs actually incurred and approved by the HFA.

6-4 HUD ENDORSEMENT. After review of the closing docket and other materials, the local HUD Office must do the following:

- A. ENDORSEMENT. The Director of Multifamily Housing will endorse the credit instrument within 5 workdays after accepting the closing docket (except as described in paragraph 6-3D). In Offices with a Director of Housing, the credit instrument may also be endorsed by the Director of Housing. The original endorsed credit instrument must be returned by certified mail, return receipt requested.
- B. MORTGAGE INSURANCE PREMIUM (MIP). The local HUD Office must issue an Official Receipt for the initial year's MIP from the HFA (mortgagee) as provided in Chapter 9. The MIP for the HFA Risk-Sharing program is different than HUD's other mortgage insurance programs and reflects the varying levels of risk that may be borne by the HFA. Appendix 8 contains a chart of the various MIP levels.

- C. CLOSING MEMORANDUM (Form HUD-290, Closing Memorandum - See Appendix 13-15 for examples). In the HFA Risk-Sharing program, the Multifamily Housing Division will prepare the HUD-290 instead of Field Counsel. The Multifamily Housing Director (or Director of Housing) will sign the form, crossing out the title "Closing Attorney" and inserting, "Director, Multifamily Housing Division."
1. Include original with the original closing docket to be transmitted to Headquarters as described in paragraph E below.
 2. Include a copy with the conformed closing docket to be transmitted to the Designated Office for the monitoring phase (or retained, if the local HUD Office and the Designated Office are the same).
- D. AMORTIZATION SCHEDULE. Within 5 workdays of endorsement, the local HUD Office must submit copies of the HUD-290, amortization schedule, Risk-Sharing Agreement, and the mortgage note to the Multifamily Insurance Operations Branch (HFMMI), P.O. Box 44124, Washington, D.C. 20026-4124. See Chapter 9 for full details.
- E. TRANSMITTAL OF CLOSING DOCKET. The Risk-Sharing original closing docket is processed in the same manner as the Washington Docket is for projects insured under the National Housing Act except that the contents of the docket, including amortization schedule must comply with the requirements of this Handbook. Send the closing docket within 30 workdays of endorsement to Headquarters, Office of Housing, Chief, Records Management Branch (HOAMP), B-264, as follows:
1. Cover memorandum and original HUD-290.
 2. Closing docket prepared by HFA, with each page numbered in accordance with paragraph 6-2.
- F. ADDENDUM TO RISK-SHARING AGREEMENT. If there are changes to the number of units or risk share between the Firm Approval Letter and endorsement, the Field Office will prepare an addendum to the Risk-Sharing Agreement that reflects the revised risk share assumed by HUD and the HFA, and any changes to the number of units. A copy of this addendum will be sent to the Designated Office. Follow outstanding credit subsidy guidelines to determine if additional credit subsidy is required.

6-5 UPDATE HFA UNIT ALLOCATION BALANCES. If there has been such a change in the number of units for the project since the Firm Approval Letter, the data file must be adjusted to reflect the units remaining in the HFA's allocation. The data system will reflect the actual mortgage amount/risk

share, keep a running tally of units committed versus set-aside, and retain a record of any balance available. The HFA should be notified in writing after endorsement as to the current outstanding balance of units if there was a change after Firm Approval Letter.

6-6 RECORDATION. At the time of initial endorsement, in the case of insurance of advances, or at the time of final endorsement in the case of insurance upon completion, the HFA shall make certain that the mortgage, the Regulatory Agreement, and the Uniform Commercial Code financing statements are properly recorded, and filed in all required locations.