

Coming Soon: New Section 232 Documents

- Moderator: **Jim Levine** - Baker Donelson, Shareholder
- Panelist: **Ritchie Dickey** - Lancaster Pollard, VP, Underwriter
- Panelist: **Nikki Hoffpauir** - Krooth & Altman, Partner
- Panelist: **Jim Shoup** - Lancaster Pollard, Senior VP, Director of Asset Management
- Panelist: **John Hartung** - HUD/ORCF – Director: Policy, Risk Analysis and Lender Relations Division

Underwriting and Production Documents

Ritchie Dickey

1. Borrower's Certificate of Actual Cost

- Removes AMPO and profit and risk lines



2. Consolidated Certification – Borrower

- Dropdown menu added for program name
- Added question about country and state of origin for borrower and principals
- Clarifying language regarding country/state of origin requirements
- Added details regarding previous participation eligibility
- Added language about 223(d) eligibility
- Defines Common Control for purposes of certifying as to multiple projects (i.e., portfolio) for 232
- List of attachments now includes org chart and moved list of “other parties” to an attachment



3. Consolidated Certification – Contractor

- Added antidiscrimination language for applicant or employee because employee inquired about or discussed compensation
- Removed “Certain HUD Mortgage Insurance Program Requirements” Section
- Added Byrd Amendment language
- List of attachments now includes org chart and moves list of “other parties” to an attachment
- Similar changes to list of attachments



4. Consolidated Certification – Lenders

- Added language that lender has evaluated insurance in accordance w/ HUD requirements
- Added language about verifying borrower's country/state of registration
- Added that lender reviewed any delinquent federal debt and included reason for recommendation of the applicant in the Lender Narrative



5. Consolidated Certification – Management Agent

- Similar to borrower changes w/r/t Previous Participation
- Added principals and affiliates of management agent to certification regarding Fair Housing Act
- Similar changes to list of attachments



6. Consolidated Certification – Operator

- Added: is the operator, parent company, affiliates or subsidiaries the subject of an ongoing investigation or judicial or administrative action involving any federal, state, municipal, and/or other regulatory authority, which that could have a detrimental impact on the operator's financial condition or may jeopardize the operator's license and/or its provider agreements?
- Added similar language about previous participation
- Added same antidiscrimination language similar to contractor cert
- Similar changes to list of attachments



7. Consolidated Certification – Parent of Operator

- Added note about common control in relation to other 232 apps
- Added “In the past 10 years” to Supplemental to Underwriting Analysis questions
- Similar additions to Operator Cert



8. Consolidated Certification – Principal of the Borrower

- Add question about country of origin
- Added language regarding understanding and compliance with HUD requirements, integrity and accuracy of exhibits provide to lender, and anti-discrimination
- Clarifying language regarding country/state of origin requirements
- Similar changes to other certs w/r/t previous participation and common control
- Similar changes to list of attachments



9. Consolidated Certification – Controlling Participant

- **New** document used when Controlling Participant is not covered by other Consolidated Certs
- Similar language to POB Cert
- Only attachments are Org Chart and Previous Participation



10. Lender Cert for New Construction Cost Certs

- Adds Y/N question if part of building is shared with other HUD-insured or non-HUD insured project and costs were allocated



11. Initial Operating Deficit Escrow Calculation Template

- **New** document used when a facility is released from a master lease



12. Lender Narrative – New Construction – Single Stage

- Adds list of parties subject to Section 38 of the RA
- Adds question if borrower is non-profit
- Sensitivity added for Medicaid rate and census changes
- Adds more complete list of escrows and has cell for Front Money Escrow in Exec Summary and adds question, “Cash requirement will be met by”
- Adds review of principals’ net worth and liquidity
- Adds MME budget to section regarding contracts.



12. Lender Narrative – New Construction – Single Stage (continued)

- Took out guidance notes
- Added “shared costs/expenses” with other facilities and shared walls/floors to list of atypical underwriting considerations
- Added several more Program Eligibility questions – not new criteria, but are now directly addressed in the Lender Narrative.
- Adds specific language regarding Keys compliance
- Risk factors adds several items related to State Risk Grid
- Removed Housing Consultant section



12. Lender Narrative – New Construction – Single Stage (continued)

- In Project Description adds Proximity to Hospitals and Services
- Adds sections to discuss emergency call system and “Security, Networking, and other IT Systems”
- Adds several questions regarding conclusions of arch and cost review.
- Adds more environmental questions
- Adds section for radon mitigation
- Adds note in operator section if aged AR is greater than 2% of EGI.
How will project handle delays, if AR financing isn’t planned?



12. Lender Narrative – New Construction – Single Stage (continued)

- Adds specific Risk Management Program sub-section to Operation of Facility section
 - Risk Tier identification
 - Internally or externally administered program
 - Description of program
 - Real-time incident reporting and tracking that informs senior management
 - Experience of staff
 - Training
 - Continuous Improvement



12. Lender Narrative – New Construction – Single Stage (continued)

- Adds note about timing to submit AR docs for new construction deal, since AR line won't be set up until closer to occupancy
- Adds several questions about the ICA
- Adds guidance on when to submit PLI policy terms for new construction project
- Adds section for commercial GL insurance
- New section on tax credits



13. Lender Narrative 223f

- A lot of the same changes as to the construction Lender Narrative
- Adds question if lender will administer non-critical repairs
- Adds section dealing with portfolios (CCR summary, portfolio matrix)
- Adds guidance in environmental section about site work, ground disturbance or digging (i.e., contact LEAN Thinking in advance to kick off tribal notification)
- Adds debt seasoning matrix
- For projects with less two-year seasoning, adds table to demonstrate stabilized NOI



14. Appraisal Sockets

- New Excel template to replace Decision Circuit
- Everything is on one worksheet
- To accompany appraisal for refinance projects
- Lender's responsibility to ensure data is correct (obviously)
- Items that need clarification can be explained on "Lender Notes" tab

Instructions

Overview

Unit Schedule

Rate Comps

Occupancy/
Census

Revenue Data

Expense
History

Expense
Comps

Sales Comps



15. Refund Request

- Made form more broadly applicable (i.e., not specific to type of refund)

Legal Documents

Panelist: Nikki Hoffpauir

1. Healthcare Facility Note

- Adds provision for additional interest rate charge to cover difference between the permanent rate and the construction rate when final endorsement has not occurred by the commencement of amortization
- Removes Section 38 signatory names
- New provision allowing Lenders to not accept prepayment without HUD consent and satisfaction of conditions relating to consent
- Deletes redundant information at the end of the 223(a)(7) language in the endorsement panel



2. Healthcare Regulatory Agreement – Borrower

- Addresses potential future master leases
- Clarifies PCNA date
- Makes the Management Agreement Addendum mandatory and removes specific requirements that otherwise would have to go in
- Requires Borrower/Master Tenant to enforce lease rights to avoid a claim
- Makes Section 38 signatory an addendum
- Broadens provisions against discrimination



3. Healthcare Regulatory Agreement – Operator

- Addresses potential future master leases
- Adds HIPAA protections for operator information submissions
- Makes the Management Agreement Addendum mandatory and removes specific requirements that otherwise would have to go in
- Prohibits pet fees against service animals
- Broadens provisions against discrimination



4. Management Agreement Addendum

- Reconciles discrepancies between updated Handbook, punchlist and Addendum



5. Operator Security Agreement

- Removes Assignment of Leases and Rents as an attachment and notes it as a separate document



6. Subordination Agreement – Financing

- Notes that prior to payment on the note, Borrower must calculate Surplus Cash before distribution is made and apply the 75% limit prior to payment on the subordinate note
- Limit of 75% of the net proceeds of a sale or transfer to be applied to reduce the subordinate loan



7. Surplus Cash Note

- Surplus Cash must be calculated prior to a distribution, show positive Surplus Cash, then 75% of the distribution must be used to pay down the note- different from Regulatory Agreement provisions
- Adds an affirmative “no claim against mortgaged property, proceeds, etc.” clause



8. Survey Instructions & Certification

- Updates to 2016 standards
- Notes that the certification works for any non-120 day survey; however, a caveat was added that the last update on the survey must have been within one year of closing to use the certification



9. Construction Contract

- Deletes the pages/number/title description for the index of plans and specs that no one knew what to do with
- Adds addenda as an exhibit
- Removes early commencement of work options
- Adds reference to all payments due to Contractor being made before next payment can be authorized
- Adds an incentive fee computation addendum for Cost Plus Contracts



10. Design Architect Certification

- Notes construction will be in consistent with HUD-approved permits and approved drawings
- Updates required standards



11. HUD Amendment to B108

- Notes that agreement is to be both for design and supervisory services unless otherwise permitted by HUD. And if IOI exists, then contract is for design services only
- Requires fixed amounts in the B108 for design and supervision rather than percentage of total costs



12. Request for Endorsement

- Adds completion of sub-rehab or construction in addition to repairs other than non-critical repairs
- Removes “at lender’s option” from acceleration of indebtedness in the event HUD requests such for Regulatory Agreement default.
- Adds check box for lender delegated Non-Critical repair escrow
- Deletes dollar amount of the repair escrow
- Adds short and long term debt service reserves
- Simplified lender’s certifications regarding financing charges, reducing number of options
- Adds a closing document memorandum to identify changes to documents
- Adds a certification of no litigation involving the Borrower, Principals of the Borrower, the Master Tenant, Principals of the Master Tenant, the Operator, and Principals of the Operator, except as otherwise disclosed on exhibit



13. Escrow Agreement for Operating Deficits

- Removes debt service reserve component
- Expenses not included in the Initial Operating Deficit (IOD) Escrow Calculation are not eligible for IOD as reasonable operating expenses
- IOD Escrow Calculation is also a new form



14. Escrow Agreement Non-Critical Deferred Repairs

- Identifies borrower-elected as the same as non-critical
- Identifies source of the cash for the repairs (loan proceeds or cash from borrower)
- Notes overruns have to be funded by Borrower and not Reserve for Replacements
- Latent defect period now 15 months
- For repairs over \$1M, latent defect deposit of 2.5%
- Adds delegated authority paragraph



15. Minor Movable Escrow

- Adds note that HUD will look to lender for certification that escrow requirements are met



16. Escrow Agreement for Debt Services Reserves

- Can be used for long term or short term debt service reserve



17. Escrow Agreement for Off-Site Facilities

- Pretty much same as MF form, but without the Latent Defects Escrow concept



18. Working Capital Escrow

- Consistent with MF form, except removes MIP accruals during construction
- Release provisions: 12 months after FE and DSC of 1.0 for 6 consecutive months
- DSC calculation consistent with other 232 escrows



19. Limited Guaranty and Security Agreement

- To be used when you have common ownership but a master lease structure is not appropriate (i.e., owner-operator deals, not identical ownership of Operator, etc.)
- Pledges ownership distributions made to the principal for a period of 180 days to cover funds due Lender in the event of a default
- Treated as unsecured loan to Borrower that can be repaid out of surplus cash
- Can be terminated if common ownership goes away



20. Master Tenant Assignment of Leases and Rents

- Mimics Operator assignment of leases and rents in many ways, assigning all the rights under the subleases
- But, preserves any other assignment of lease to secured party for “other subleases” for other HUD loans
- In event of a default, Lender can step in and exercise Master Tenant’s rights under the subleases, including terminating or extending



21. Subordinate Cross-Default Guaranty of Subtenants

- Used when you have multiple lenders involved in a portfolio with common ownership, where each lender has its own Master Lease
- Pledges the excess revenues of Operators under Master Lease A to lease payments due to Master Tenant B from related Operators, and excess revenues of Operators under Master Lease B to lease payments due to Master Tenant A from related Operators
- Subordinated to loan obligations, AR obligations, payments for Goods and Services; and the Cross Default Guaranty related to its own Master Lease



22. Addendum to Operating Lease – I can't seem to find this document

- Allows increases to rent or other payments due Lessor without HUD approval

Legal Documents

Moderator: Jim Levine

1. Guide for Opinion of Borrower's Counsel

- Adds FHA Commitment to list of "Loan Documents"
- Requires Docket Searches in jurisdiction of GP or manager
- Modifies assumptions



2. Guide for Opinion of Operator's Counsel and Certification

- Adds materiality qualifier to "no default" opinion



3. Consolidated Operator Opinion Single State

- Consolidates multiple operator opinions into one for a portfolio



4. Healthcare Regulatory Agreement Master Tenant

- Mandates enforcement of lease remedies if operator defaults
- Prohibits collection of deposits/fees for service animals



5. Master Lease Addendum

- Permits rent increases without HUD/Lender consent



6. Master Lease SNDA

- Prohibits enforcement of landlord lien rights absent consent of HUD Lender



7. Master Tenant Security Agreement

- Removes Assignment of Leases and Rents provisions
- Clarifies no DACA requirement for downstream accounts
- Strengthens remedies of Lender



8. Amendment to HUD Master Lease (Partial Termination and Release)

- **New** document and amends master lease upon facility release



9. Termination and Release of Cross-Default Guaranty of Subtenants

- **New** document used when a facility is released from a master lease



10. Intercreditor Agreement (for AR Financed Projects)

- Adds representations regarding cross-collateralization of AR loan
- Acknowledges AR advances may be used for management agents/consultants
- Modifies waterfall provisions for use of AR Advances



Asset Management Docs

Panelist: Jim Shoup

1. Lender Narrative, Change of Participants – Transfer of Physical Assets

- Adds COP – Change of Participants to terminology
- Modified COP is on Form 92266C
- Requests 18 month look back and forward for other ownership TPA's



2. Surplus Cash Computation

- Addition of 60 day government AR is no longer optional for non-profits
- Residual receipts deposit in 90 days (no longer 60 days)



3. Funds Authorizations Form 9250

- Borrower submits to Lender only and retains invoices for 3 years



4. Lender Narrative – Change of Management Agent

- Do not use if also Change of Operator
- Special conditions section added



5. Lender Narrative – Change of Operator

- Disclosure of shared expenses with other facilities
- Added Insurance discussion for General Liability, Property, Officer's Liability, Additional, and Auto
- Special conditions section added



6. Advance of Escrowed Funds

- Latent defect refund goes to Replacement Reserve if original funding was from borrowed funds



7. Servicer Notification

- Added Notice of Mortgage Assignment (does not supersede MDDR)

