

Application for Transfer of Physical Assets (TPA) Section 242

U.S. Department of Housing and Urban Development Office of Hospital Facilities

OMB Approval No. 2502-0602
(exp. xx/xx/xxxx)

Public reporting burden for this collection of information is estimated to average 92 hours. This includes the time for collecting, reviewing, and reporting the data. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to the Reports Management Officer, QDAM, U.S. Department of Housing and Urban Development, Washington, DC 20410-5000. Do not send this completed form to the above address. No confidentiality is assured. The information is being collected to obtain the supportive documentation which must be submitted to HUD for approval and is necessary to ensure that viable projects are developed and maintained. The Department will use this information to determine if properties meet HUD requirements with respect to development, operation and/or asset management, as well as ensuring the continued marketability of the properties. This agency may not collect this information, and you are not required to complete this form, unless it displays a currently valid OMB control number. This information is completed and submitted to HUD by prospective purchasers of properties with security instruments either HUD-insured or HUD-held prior to conveying the title. This form cites all the supportive documentation which must be submitted to HUD for approval. The authority for this function can be found in the National Housing Act and in the Regulatory Agreements between the Secretary of HUD and the borrower of each HUD related project. This information is required to obtain benefits.

General Information

Use these instructions for overview and checklist purposes.

Warning: Federal law provides that anyone who knowingly or willfully submits (or causes to submit) a document containing any false, fictitious, misleading, or fraudulent statement/certification or entry may be criminally prosecuted and may incur civil administrative liability. Penalties upon conviction can include a fine and imprisonment, as provided pursuant to applicable law, which includes, but is not limited to, 18 U.S.C. 1001, 1010, 1012; 31 U.S.C. 3729, 3802; 24 C.F.R. Parts 25, 28 and 30, and 2 C.F.R. Parts 180 and 2424.

Use this form for transfers of properties encumbered by security instruments insured by HUD and for security instruments owned by the Secretary of HUD. It must be executed by the purchaser, the seller, and normally by the lender. It must be presented to the lender for execution. If the lender refuses, the reason must be given to HUD in writing. Copies of correspondence to or from the lender must be attached. If the security instrument has not been finally endorsed for insurance, the application will not be accepted without the lender's execution. **If the proposal to transfer involves the creation of a lien against the property, the lender must consent to the transfer.**

Avoid introducing amendments or deviating from the instructions unless absolutely necessary to make the transaction effective. Nonconforming documents and deficient information will delay the process.

When an Attorney's Opinion is required, do not use an attorney that has an identity of interest with either the purchaser or seller.

The final paragraph of this application must be signed by the lender in every instance where the transfer will result in the creation of a lien against the project.

HUD imposes a TPA fee of \$0.50 per \$1,000 of the original face amount of the security instrument to cover the cost of legal, administrative, and fiscal actions. Send the fee with the application.

Some transactions generally do not require a fee:

1. Substitution of individual general partners of a partnership/ borrower; or
2. Transactions between two not-for-profit or public organizations.

Some transactions involving multiple transfers may be subject to more than one TPA fee, such as transactions involving two transfers of title by deed. The HUD Office of Hospital Facilities (OHF) (after consulting with the Office of General Counsel) will make the determination.

If HUD determines that a transaction or series of transactions have been structured to avoid paying the TPA fee, the application will be rejected. New application(s) will not be accepted until the required fee(s) have been paid.

Preliminary Approval Process

HUD immediately gives the applicant a written acknowledgment of receipt and begins a completeness review. HUD shall determine if the application should be returned or if the missing pieces should be requested and processing delayed. HUD then reviews the application to determine acceptability of transfer. If the instruments are in order, HUD gives a written preliminary approval. If some changes are necessary, a conditional approval will be given that authorizes execution of documents not requiring changes.

Preliminary Approval

The preliminary approval binds the borrower-seller and purchaser to take any steps necessary to re-convey the property to the borrower-seller if the terms of the preliminary approval are not met within 45 working days, unless HUD gives a written extension. It also binds the borrower-seller and purchaser to meet all other conditions of the preliminary approval to include correcting any unsatisfactory matter revealed in the review of items received for final approval. It requires that all Final Approval documentation must be recorded and submitted to HUD within this 45 working day period.

Required documents that are expected to accompany the application:

1. **TPA Application.** HUD-92266-OHF (this form).
2. **Purchaser's letter.** "Purchaser" is defined to include all general partners in a purchasing partnership, or any managing member of a limited liability company or any other individual or entity holding controlling interest in a partnership, limited liability company, or corporation, or any other form of ownership entity. The letter:
 - must be signed by an authorized principal of the purchasing entity;
 - must describe in detail all financial consideration flowing to the project and the borrower/seller as a result of the transfer;
 - must detail all funds allocated to project operations as well as those funds designated for use in correcting the physical needs of the project;
 - must state that if the project is HUD-insured, the project security instrument is current or will be brought current as a result of the transfer approval;
 - All workout plans must comply with HUD workout policies in effect at the time the TPA application is submitted for Preliminary Approval.
3. **Purchaser's Previous Participation Certification** (HUD-2530) must be filed for all controlling Participants, as defined by 24 CFR Part 200, Subpart H.
4. **Purchaser's Resume(s) or Narrative.** If the purchaser has no previous participation with OHF when the application for transfer is submitted, it must communicate an ability to successfully operate the project. Resumes are required for each Controlling Participant of the Purchaser and should be in sufficient detail for HUD to understand

the nature of their hospital experience. Additionally, a narrative describing the history and competence of the purchasing organization should be included.

5. **Sources and Uses of Funds.** This shows **all** expected sources of funds and **all** expected uses of these funds. **All purchasers are required to include a sources and application of funds.**
6. **Executed, but Unrecorded Sale Contract, option Contract or Land Contract. purchase and sale agreement.** Submit the applicable sale document in its entirety.
7. **Executed Seller/ Purchaser Affidavit.** The parties must submit with the sale contract a sworn statement to the effect that the sale contract recites all of the consideration moving to the seller or any person identified therewith.
8. **Executed but Unrecorded Regulatory Agreement.**
9. **Executed but Unrecorded Modification Agreement or Release and Assumption Agreement.**
10. **Audited Financial Statements** (prepared according to Generally Accepted Accounting Principles (United States) (U.S. GAAP) for the purchasers three most recent fiscal years
11. **Most Recent Unaudited Interim Financial Statements** (prepared according to Generally Accepted Accounting Principles (United States) (U.S. GAAP) available for the purchaser.
12. **Pro forma balance sheet and Income Statement.** (prepared according to Generally Accepted Accounting Principles (United States) (U.S. GAAP) that shows how the project accounts are expected to appear the day after the expected date of closing, if required by OHF.
13. **Lender's Statement of Escrow and Reserve Account** an opinion as to the adequacy of the present escrow balances (taxes, property insurance) and present monthly deposits to meet the next anticipated tax and insurance bills.
14. **Borrower's Statement of Mortgage Reserve Fund** balance, indicating compliance with the Mortgage Reserve Fund Agreement and any amendments.
15. **Management Improvement and Operating (MIO) plan.** Where the project will have physical, management, or financial needs or changes at the time of the transfer, a MIO plan or another plan acceptable to OHF must be submitted, which describes the timing and extent of planned repairs and financial contribution and the timing for all management or procedural changes, if required by OHF.
16. **Proposed but Unrecorded Deed.**
17. **Proposed Bill of Sale and Assignment** that describes all personal property conveyed and should be on the form provided by HUD.
18. **Proposed Borrower Certifications Form** HUD 91070-OHF
19. **Title Report**
20. **Executed Organizational Documents of Purchaser** Full details as to the entity acquiring the project shall be provided. If the purchaser is a corporation, trust, or partnership, two certified copies of the charter, trust, or partnership agreement should be furnished. In any such case the charter or agreement shall show that the corporation, partnership, or trust is authorized to operate the project and to execute and be bound by the Regulatory Agreement. The charter, agreement, or other proper document or minutes of meetings should establish clearly the authority of the persons executing the Regulatory Agreement and other papers for the purchaser.
21. **Other Documents.** Given the complexity of acute care hospitals, OHF may require additional documentation to substantiate the

purchaser's credit worthiness and capacity to successfully operate a hospital. For more information on how OHF underwrites applicants, please see HUD Handbook 4615.1 Mortgage Insurance for Hospitals.

22. **Attorney's Certification.** The Purchasers attorney must certify that following HUD's preliminary approval, all documents requiring execution and/or recordation will be executed and, as required, recorded in the form reviewed and approved by HUD.
23. **Consent by the Lender**
24. **Application fee (if applicable).** \$0.50 per \$1,000 of the original face amount

Final Approval Process

If HUD required any changes to the documents submitted during the Preliminary Approval review, the applicant's attorney must certify to HUD that the required changes have been made.

The applicant has 45 working days from the date of preliminary approval to submit all executed and recorded documentation to HUD. The preliminary approval shall be the date on the letter. Where the applicant finds that it is unable to submit the appropriate documentation within the required time period, a written request for an extension of time must be submitted to OHF. Such extension requests must explain the reason for the delay.

The Final Approval Process includes both legal and programmatic reviews that must be satisfied prior to the transfer.

The Applicant must provide the following for final approval:

1. **All Executed Recorded Documents.** One certified (by the recording officer) and one conformed copy of all recorded documents—except the recorded Regulatory Agreement.
2. **All Unrecorded Executed Documents.** Certified true copies by the purchaser, trustee or other responsible person of all unrecorded executed documents used in connection with the transfer.
3. **Original Regulatory Agreement.** Where applicable, the original executed and recorded Regulatory Agreement and one copy.
4. **Purchaser's Balance Sheet and Income Statement-Unaudited Actual Condition** on or within 30 days of date of title transfer to the purchaser
5. **Purchaser's Audited Annual Financial Statements** not previously submitted to OHF for any period that has closed within 120 days, as well as any updates or restatements to previously submitted financial reports.
6. **Lender's Statement** of all trust and escrow accounts as of date of transfer of title to the purchaser.
7. **Title Policy** or endorsement, as applicable. If the borrower-seller is to be released from the note obligation, a new title policy or a letter, from the title company issuing the original title policy, showing that after the transfer the insured security instrument will remain a valid lien on the property and that the existing title policy is still in full force and effect.
8. **Attorney's Opinion.** Stating that: the transaction has been legally consummated, that the purchaser is legally authorized to operate the project and is obligated to abide by the terms of the Regulatory Agreement, and the documents that were executed and/or recorded are the same, in form and content, as those approved by HUD in the preliminary review.

If everything is acceptable, HUD sends a letter approving the transfer.

If recording or other deficiencies are discovered, HUD will immediately

tell the purchaser to correct them and to resubmit.

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Section 242

U.S. Department of Housing and Urban Development
Office of Hospital Facilities

OMB Approval No. 2502-0602
(exp. mm/dd/yyyy)

| | | |
|--|------------------|-------------------------------------|
| Project Number: | | Date (mm/dd/yyyy): |
| Project Name: | Borrower-Seller: | |
| Project Purchaser (includes form of ownership, e.g., individual, partnership, corporation, trust): | | |
| Lender of Record (name and address): | | Servicing Agent (name and address): |
| Security Instrument Recorded: | State: | County: |
| Date (mm/dd/yyyy): | Book: | Page: |

To the Secretary, Department of Housing and Urban Development (HUD):

The above-named borrower-seller and the project purchaser submit herewith the required fee of \$ _____ and apply to HUD for permission to transfer the project from the borrower to purchaser and, in support of said request represent to the Secretary as follows:

- All real and personal property of the seller will be conveyed to the purchaser.
- After the transfer, purchase will own said real and personal property free and clear of all liens, encumbrances, or project obligations except the insured security instrument and those expressly approved by you in writing as to form, content, terms, and amount.

In further support of this request, the documents enumerated in the instructions on this form are attached for preliminary approval.

It is understood and agreed that within 45 working days of the issuance of preliminary approval the final approval documents enumerated in the instructions on this form will, with such changes as you may require and no others, be delivered to you. Unless said documentation is delivered to

HUD/OHF within the specified time (45 working days) or unless further time for completing the transaction is granted in writing by you, the application for approval of the transfer will be denied and any interest already conveyed in the property shall be reconveyed to the above-named borrower.

It is understood and agreed that within 45 working days of the issuance of written authorization to record the documentation previously submitted in connection with this transfer, such documentation will be recorded and the original and copies of the documentation will be returned to you as appropriate. In addition, all of the attachments listed here as required for final approval, some of which have not been submitted previously, must be submitted to you within the same 45 working day period. It is understood that unless appropriate documentation is recorded and returned to you within the prescribed time or unless further time for completing the transaction is granted in writing by you, final approval of the application to transfer the property will be denied and all property transferred will be reconveyed to the borrower.

Lender's Statement: If the above transfer is approved by the HUD Secretary, the lender agrees to execute a Release and Assumption Agreement or a Mortgage Modification Agreement incorporating the Regulatory Agreement in the security instrument. It is understood that the lender's consent to this transfer will in no way prejudice its rights under its contract of insurance with HUD. In the event the consent of the lender to the transfer is not evidenced by endorsement of this application, please provide the following information.

_____ in connection with this transfer. Lender waives its right to assign the security instrument and claim insurance benefits by the reason of the creation of such lien(s).

| | |
|----------------------------------|----------------------------|
| Executed This Date (mm/dd/yyyy): | Lender: |
| Party to Whom Request Directed: | By (authorized signature): |
| Party to Whom Request Directed: | Date (mm/dd/yyyy): |
| Party to Whom Request Directed: | By (authorized signature): |
| Party to Whom Request Directed: | Date (mm/dd/yyyy): |
| Party to Whom Request Directed: | By (authorized signature): |
| Party to Whom Request Directed: | Date (mm/dd/yyyy): |
| Party to Whom Request Directed: | By (authorized signature): |

| | |
|--------------------|----------------------------|
| Lender: | By (authorized signature): |
| Date (mm/dd/yyyy): | By (authorized signature): |
| Date (mm/dd/yyyy): | By (authorized signature): |

Lender's Consent to the Creation of a Lien Against the Project: Lender hereby consents to the creation of a lien(s) against the real property known as (Project No.) _____, (Project Name) _____