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LEGAL INSTRUCTIONS CONCERNING APPLICATIONS FOR FULL INSURANCE BENEFITS - ASSIGNMENT OF MULTIFAMILY AND HEALTHCARE MORTGAGES TO THE SECRETARY

These instructions apply both to assignments of current mortgages under Section 221(g)(4) of the National Housing Act, 12 U.S.C. §1715l(g)(4) and to assignments of mortgages in default pursuant to 12 U.S.C. §1713(g). The time limitations and other requirements the mortgagee must meet in submitting a claim are set forth in 24 CFR § 207.258. **Mortgagees must consult with their own counsel to ensure that their submission complies with HUD requirements as set forth in these instructions.**

Submission of electronic copies of the package of legal documents is strongly preferred over submission of hard copy originals for the legal compliance review process. Send electronic copies of the package of legal documents to the attention of the Deputy Assistant General Counsel for Multifamily Mortgage Division and the staff attorney(s) or paralegal handling the claim at OGC-Claims@hud.gov. Thereafter, send electronic copies of subsequent documents to the attention of the staff attorney(s) or paralegal handling the claim. Per the Mortgagee's Certification attached as Exhibit A, Mortgagee and Mortgagee's counsel must provide, or cause to be provided, hard copy originals of all the legal documents previously submitted electronically no later than 1 business day after HUD counsel submits a written request for the documents organized in a manner consistent with Exhibit A's checklist. Send all hard copy originals to the following address, **or as otherwise directed by HUD counsel:**

Multifamily Mortgage Division
Office of Insured Housing
Office of General Counsel
U. S. Department of Housing and Urban Development
451 7th Street, S.W. - Room 10172
Washington, D.C. 20410-0500

Part A - Documents to be Recorded

The mortgagee must file for record the following documents with the appropriate land records office:

1. Assignment of Mortgage¹/Security Instrument. The assignment of mortgage must run to the " United States Secretary of Housing and Urban Development, his/her successors and assigns" and must be in a form which meets the requirements of the laws of the jurisdiction in which the property is located. **NOTE:** Do not use Form No. 289, Assignment, as the assignment of mortgage. No insertions or deletions of any kind may be made to the requisite language below, except (i) modifications necessary to insert the missing information in the appropriate spaces (delete inapplicable bracketed options and delete brackets prior to execution), and (ii) modifications or additions required in order to comply with applicable state law, local law, or recording requirements. Please ensure that the property description is attached to the assignment and is legible. The assignment must include the following language:

This Assignment is without recourse or warranty, except that the undersigned hereby warrants that no act or omission of the undersigned has impaired the validity or priority of said [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument]. The undersigned also warrants that said [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument] is prior to all mechanics' and materialmen's liens filed of record subsequent to the recording of such [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument] regardless of whether such liens attached prior to such recording date, and prior to all liens and encumbrances which may have attached or defects which may have arisen subsequent to the recording of such [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument] (except such liens or other matters as have been approved by the Assignee hereunder). The undersigned also warrants that, as of the execution of this Assignment, the sum of _____ and ____/100 Dollars (\$_____) (insert the unpaid principal balance of the mortgage as of the date of execution of the Assignment), together with the interest accruing at the rate of ____% per annum, as provided in the said Note and [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument], is actually due and owing under said Note and [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument], that there are no offsets or counterclaims thereto, and that the undersigned has a good right to assign the said Note and [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument].

¹ **NOTE:** The term "Mortgage" or "Security Instrument" refers to the document creating the mortgagee's first lien security interest, which may be a Mortgage, Deed of Trust, Deed to Secure Debt, or Other Designation as Appropriate in Jurisdiction, depending upon the state and the date of execution. For transactions that closed under the following loan documents or subsequent updates, the term "mortgage" or "Security Instrument" in these Legal Instructions refers, as applicable, to the: (a) Multifamily (Mortgage, Deed of Trust, Deed to Secure Debt, or Other Designation as Appropriate in Jurisdiction), Assignment of Leases and Rents and Security Agreement (HUD Form 94000M and subsequent revisions thereof), and there will be no separate Assignment of Leases and Rents or Security Agreement; (b) Healthcare [Mortgage, Deed of Trust, Deed to Secure Debt, Security Deed, or Other Designation as Appropriate in Jurisdiction], Assignment of Leases, Rents and Revenue and Security Agreement (HUD Form 94000-ORCF and subsequent revisions thereof), and there will be no separate Assignment of Leases and Rents or Security Agreement; or (c) Hospital [Mortgage, Deed of Trust, Deed to Secure Debt, Security Deed, or Other Designation as Appropriate in Jurisdiction], Assignment of Leases, Rents and Revenue and Security Agreement (State) (HUD Form 94000-OHF and subsequent revisions thereof), and there will be no separate Security Agreement.

2. Uniform Commercial Code (“UCC”) Filings. The mortgagee must file a UCC financing statement assignment, assigning the UCC -1 to the Secretary, in each place where a UCC-1 was filed and/or recorded (i.e., County Recorder's Office, Secretary of State, etc.), including UCC filings/recordings for operators, borrower representatives and/or master tenants or managing members for Healthcare loans, as applicable (see Part B, Items 8 and 15, below). Additional filings/recordings may be necessary to comply with revised Article 9 of the UCC. See Part B, Items 8 and 15, below. **Mortgagees must consult with their own counsel to ensure that their UCC submissions comply with Revised Article 9 of the UCC.**

3. Assignment of Security Agreement(s). If the security agreement or chattel mortgage was recorded, the assignment of that document to the Secretary must also be filed for record. The assignment must include the following language:²

The Assignor hereby warrants that no act or omission of the Assignor has impaired the validity or priority of the first lien created by said [Security Agreement] [Chattel Mortgage] and that Assignor has a good right to assign said [Security Agreement] [Chattel Mortgage].

0. If other instruments were recorded including, Healthcare-related documents (see Part B, Item 15, below by way of example), the assignment of that document to the Secretary must also be filed for record. The assignment must contain the language set forth in Part A, item 3 above and which is otherwise acceptable to HUD.

Part B - Submission of Legal Documents After Recordation of Assignment

The documents identified in this Part must be submitted within forty-five (45) days after the date that the assignment of mortgage is filed for record. The Office of the General Counsel may grant one 15-day extension of the deadline for claims paid in cash or debentures, upon written or oral request, made prior to the expiration of the 45-day period. If made orally, the request must be confirmed in writing, within five (5) calendar days after the 45-day deadline.

Please note, in the case of claims to be paid in cash, the mortgagee's failure to submit the documents within the deadline (or extended deadline) in a legally acceptable form, as determined by the Office of the General Counsel, shall result in the curtailment of interest on the claim, i.e., interest on the final insurance payment will accrue only through the last day of the deadline (or extended deadline). See 24 CFR § 207.259(b)(1)(iii).

Therefore, mortgagees are strongly encouraged to engage legal counsel familiar with the HUD insurance claim process throughout the legal document preparation and submission process. It is HUD’s experience that Mortgagees that do not have counsel review their documents before submission are more likely to submit incomplete or inaccurate packages which HUD will return to the mortgagee or its representative. This will, in many instances, result

² For supplemental loans, the following assignment language is acceptable:

The Assignor hereby warrants that no act or omission of the Assignor has impaired the validity or priority of the first lien created by said [Security Agreement] [Chattel Mortgage] (except such liens or other matters as have been approved by the Assignee hereunder) and that Assignor has a good right to assign said [Security Agreement] [Chattel Mortgage].

in missed deadlines and interest curtailment. At the HUD supervisor's discretion and in accordance with professional responsibility standards, the HUD staff attorney may be instructed to request to communicate directly the mortgagee's or its counsel to ensure that proper legal review has occurred prior to submission of the documents to HUD.

Any extension granted or denied by the Office of the General Counsel is independent of extensions granted or denied by the Multifamily Financial Operations Division. Therefore, if necessary, the mortgagee must separately request and receive extensions from the Multifamily Financial Operations Division regarding the submission of fiscal documents.

Attached as Exhibit A is the Mortgagee's Certification, which includes a sample checklist of documents to be used in submitting the legal package. Mortgagees should note that the checklist is not exhaustive. HUD reserves the right to require additional documentation as may pertain to the claim. See 24 CFR § 207.258(b)(5)(v) and Part B, item 14 below.

The following documents must be submitted within forty-five (45) days after the date that the assignment of mortgage is filed for record. **If documents were recorded by electronic filing, certified copies must be provided. Certifications must be made by the recording official.**

1. The original Note (including originals of any endorsements or Allonges), along with an Allonge dated the date of execution of the Assignment of [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument], containing the following requisite language:

For value received, all right, title and interest of the undersigned to the within Note, the unpaid balance of which is \$ _____ [insert the unpaid balance as of the date of assignment], together with interest thereon, is hereby assigned to the United States Secretary of Housing and Urban Development, his/her successors and assigns, without recourse or warranty except as shown in that certain assignment of even date assigning to said Secretary the [Mortgage][Deed of Trust][Deed to Secure Debt][Security Instrument] securing this Note.

If the original Note is unavailable, the mortgagee must submit an Affidavit of Lost Note, in a form acceptable to HUD, and an Indemnification Agreement. The Indemnification Agreement must contain the following language and be in a form acceptable to HUD:

[Insert name of the mortgagee] agrees to indemnify and hold harmless the United States Secretary of Housing and Urban Development and his/her successors and assigns (the "Secretary") against any loss, costs, or charges whatsoever, including attorney's fees, which may be sustained by the Secretary as a result of the loss of the original Note.

2. The original Mortgage, or a certified copy, and the originals or certified copies of all amendments and/or modifications. All certifications must be made by the recording official. If an amendment or modification was not recorded and the original is unavailable, a copy must be provided, along with an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:

[Insert name of the mortgagee] agrees to indemnify and hold harmless the United States Secretary of Housing and Urban Development and his/her

successors and assigns (the “Secretary”) against any loss, costs, or charges whatsoever, including attorney’s fees, which may be sustained by the Secretary as a result of the failure of the mortgagee to furnish an original copy of [insert description of document].

3. Original or copy certified by the recording official of the Assignment of Mortgage to the Secretary.

4. Original interim assignments (including allonges to the Note), amendments, or modifications of the Mortgage, or certified copies. All certifications must be made by the recording official. If an assignment, allonge, amendment, or modification was not recorded and the original is unavailable, a copy must be provided, along with an Indemnification Agreement that contains the language set forth in Part B, item 2 above and which is otherwise acceptable to HUD.

5. Original or certified copies of security agreement(s)/chattel mortgage(s) (including all amendments and/or modifications), if applicable.³ All certifications must be made by the recording official. If the security agreement/chattel mortgage was not recorded and the original document is unavailable, the mortgagee may satisfy this requirement by furnishing an Indemnification Agreement that contains the language set forth in Part B, item 2 above and which is otherwise acceptable to HUD.

6. Assignment of Security Agreement(s)/Chattel Mortgage(s),. If there is a separate security agreement or chattel mortgage, an Assignment of Security Agreement is required. If the security agreement or chattel mortgage was recorded, the assignment of that document to the Secretary must also be filed for record. The assignment must include the following language:

The Assignor hereby warrants that no act or omission of the Assignor has impaired the validity or priority of the first lien created by said [Security Agreement] [Chattel Mortgage] and that Assignor has a good right to assign said [Security Agreement] [Chattel Mortgage].

7. Original interim assignments of the [Security Agreement][Chattel Mortgage], or certified copies, if applicable. All certifications must be made by the recording official. If the interim assignments were not recorded and the original documents are unavailable, the mortgagee may satisfy this requirement by furnishing an Indemnification Agreement which contains the language set forth in Part B, item 2 above and which is otherwise acceptable to HUD.

8. UCC Financing Statements. **NOTE:** Several states have unique UCC filing requirements. **Mortgagees are advised to consult with their counsel to ensure that their UCC submissions comply with Revised Article 9 of the UCC.** Mortgagees must provide evidence that the “United States Secretary of Housing and Urban Development, his/her successors and assigns as their interests may appear” holds a valid perfected first lien security interest in the collateral, either by assignment of existing UCC financing statements or by perfection/re-

³ See footnote 1, supra.

perfection in both the applicable local jurisdiction for fixture filings and in the appropriate Secretary of State office. See sample checklist in Exhibit A.

- *If UCC Filings are Current:* The mortgagee must submit all original UCC filings (items (a) through (e) below, as applicable) showing recording information (or tear sheet/ acknowledgement sheet for UCC filings that were originally on carbon set forms or hard copies of the filed PDF with filing number if the UCC was electronically filed) (“UCC filings”) in chronological sequence, sorted by filing jurisdiction (i.e., separate the UCC filings that were filed in a Secretary of State’s office from those filed/recorded in a city or county) and sorted by the debtor named on the UCC filing (e.g., for Healthcare loans, clip, bind, or organize the UCC filings naming the borrower as debtor separately from those filed naming the operator, master tenant, managing member or other entity as debtor). If requisite UCC documents are unavailable, the mortgagee must submit copies certified by the recorder's office or copies accompanied by a UCC-11 Search. **Searches performed by title insurance companies or attorneys are not acceptable.** Lapsed UCC filings must be provided, to the extent available. **If provided, lapsed UCC filings must be clearly identified and clipped or bound separately from current UCC filings.**

(a) UCC-1;

(b) UCC assignment for each interim assignment of a financing statement;

(c) UCC amendment(s), if applicable;

(d) UCC financing statement assignments, assigning each UCC-1 to the “United States Secretary of Housing and Urban Development, his/her successors and assigns”; and

(e) UCC continuation statements.

- If UCC filings will expire within six (6) months after the assignment of mortgage, continuation statements must be prepared and filed for record by the mortgagee.

- *Lapsed UCC filings: Re-perfecting the Security Interest in the Collateral:* If any UCC filing has lapsed, the mortgagee must prepare a new UCC-1 and file it for record in the appropriate filing office to re-perfect the security interest in the collateral. This must be accomplished within the legal submission deadline or extended deadline.

Re-perfecting before the assignment of mortgage is recorded. The secured party named in the new UCC-1 must be the “[mortgagee name] and/or the United States Secretary of Housing and Urban Development, their successors and assigns, as their interests may appear”.

If any UCC filing has lapsed, the mortgagee must submit an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:

[Insert name of mortgagee] agrees to hold the United States Secretary of Housing and Urban Development and his/her successors and assigns harmless from any losses or damages caused by the lapse of the UCC filing or the failure to file a UCC financing statement.

- *UCC filing was never filed: Perfecting the Security Interest in the Collateral:* If a UCC filing was never made in a required jurisdiction, the mortgagee must prepare a UCC-1 and file it for record in the appropriate filing office to perfect the security interest in the collateral, following the instructions set forth above under “Lapsed UCC Filings: Re-perfecting the Security Interest in the Collateral” and pursuant to applicable law. This must be accomplished within the deadline or extended deadline, as applicable to avoid curtailment. The mortgagee must also submit an Indemnification Agreement that contains the following language and is otherwise acceptable to HUD:

[Insert name of mortgagee] agrees to hold the United States Secretary of Housing and Urban Development and his/her successors and assigns harmless from any losses or damages caused by the lapse of the UCC filing or the failure to file a UCC financing statement.

NOTE: UCC-11 LIEN SEARCH WHEN THERE HAS BEEN A UCC LAPSE OR NON-FILING: Whenever there has been a UCC lapse or a UCC was not filed, the mortgagee must also provide a UCC-11 Search for each recording office as appropriate, pursuant to Revised Article 9 of the UCC, dated as of the date that the UCCs are assigned to the Secretary. The Search must demonstrate or evidence that the lien being assigned to the Secretary is a first lien, and that there are no intervening liens. *If the lien being assigned to the Secretary is not a first lien, the prior lien must be removed, and the Secretary must be provided a first lien in accordance with these instructions. This must be accomplished within the deadline or extended deadline, as applicable.* **Searches performed by title insurance companies or attorneys are not acceptable.**

9. Form No. 289, Assignment. This form is intended to cover collateral documents, interests and funds required by HUD regulations to be assigned to the Secretary that affect the note or mortgage, or which may be necessary to enable the Secretary to enforce all rights of a mortgagee against the obligors. This instrument is not to be used as the assignment of mortgage and it should not be recorded. See Exhibit B for a copy of this form.

10. Proof of Hazard/Property Insurance. Mortgagees must provide proof of hazard/property insurance that complies with applicable program requirements.

- a) The mortgagee must submit one of the following as Proof of Hazard/Property Insurance:
 - i) The original of each hazard insurance policy covering the project (with endorsement in accordance with the requirements in 10(b);
 - ii) An insurance binder (ACORD 75 or equivalent under state law);
 - iii) Mortgage Bankers Association (MBA) Evidence of Insurance – Commercial Property Form;
 - iv) Evidence of Property Insurance (ACORD 27 or equivalent under state law); or
 - v) Evidence of Commercial Property Insurance (ACORD 28 or equivalent under state law).
- b) The Proof of Hazard/Property Insurance must meet the following requirements:
 - i) Must name the United States Secretary of Housing and Urban Development, his/her successors and assigns as mortgagee and **sole** loss payee;

- ii) The date of this endorsement must be the date the assignment of mortgage to the Secretary is filed for record;
 - iii) The hazard insurance must be in effect at least through 11:59 p.m. on the date on which the assignment of mortgage is recorded; and
 - iv) The hazard insurance must comprise property damage and liability coverage that complies with the Security Instrument.
- c) If the mortgagee submits evidence of property insurance or an insurance binder (MBA Commercial Property Form, ACORD 75, ACORD 27, or ACORD 28 or equivalent under State law), the mortgagee must submit an affidavit that contains the following language and is otherwise acceptable to HUD:

[Insert name of the mortgagee] affirms under penalty of law that the [describe hazard insurance policy by name of insurance company or producer and policy number] described in the [Insurance Binder or other document name, as applicable] is in full force and effect and names the United States Secretary of Housing and Urban Development, his/her successors and assigns, 451 Seventh Street, SW, Room 10172, Washington, D.C. 20410-0500 as loss payee as of [Insert the date the assignment is filed for record].

- d) The effective date of the mortgagee's affidavit, if applicable, must be the date the assignment of mortgage to the Secretary is filed for record.

A Certificate of Insurance is not acceptable.

11. An assignment of the mortgagee's interest in the hazard insurance policy must state the following:

The interest of _____, as the Mortgagee under Policy No. _____ issued by _____ is hereby assigned to the United States Secretary of Housing and Urban Development, his/her successors and assigns. Date: [insert date of assignment]

12. Flood Insurance. If all or part of the building(s) included within the project are in a Special Flood Hazard Area (SFHA), acceptable proof of flood insurance coverage is required. This can be either the original flood insurance policy covering the building(s), a copy of the Flood Insurance Application and premium payment, a copy of the declarations page, or evidence of flood insurance, comprising flood insurance coverage equal to the lesser of the insurable value of the building(s) or the maximum amount of coverage available for that type of property under the National Flood Insurance Program ("NFIP") (see www.fema.gov/business/nfip/manual.shtm). The flood insurance must name the mortgagee and the United States Secretary of Housing and Urban Development, his/her successors and assigns as mortgagee and loss payee respectively. The effective date of this endorsement must be the date the assignment of mortgage to the Secretary is filed for record. The flood insurance must be in effect at least through 11:59 p.m. on the date on which the assignment of mortgage is recorded. In addition, if the mortgagee submits evidence of flood insurance, the mortgagee must submit an affidavit that contains the following language and is otherwise acceptable to HUD:

[Insert name of the mortgagee] affirms under penalty of law that the [describe flood insurance policy by name of insurance company or producer and policy number] described in the [Evidence of Insurance or other document name, as applicable] is in full force and effect and names the United States Secretary of Housing and Urban Development, his/her successors and assigns, 451 7th Street, SW, Room 10172, Washington, D.C. 20410-0500 as loss payee as of [Insert the date the assignment is filed for record].

The effective date of the mortgagee's affidavit, if applicable, must be the date the assignment of mortgage to the Secretary is filed for record. **A Certificate of Insurance is not acceptable.**

13. An assignment of the mortgagee's interest in the flood insurance policy must state the following:

The interest of _____, as the Mortgagee under Policy No. _____ issued by _____ is hereby assigned to the United States Secretary of Housing and Urban Development, his/her successors and assigns. Date: _____

14. Additional Documents and Assignments.

The mortgagee must deliver to the Secretary all other agreements, instruments, documents, or collateral which evidence, secure, or otherwise relate to the FHA-insured mortgage whether executed or delivered by or on behalf of a borrower, operator, master tenant, or other parties.

If the assignment of mortgage occurs within two (2) years after the date of final endorsement of the Note, the mortgagee must assign to the Secretary its rights under the Building Loan Agreement and all bonds or other agreements designed to assure completion and submit the related documents. The balances of any undrawn letters of credit for escrow deposits held by the mortgagee at the time of default will be treated as cash in the settlement of the mortgagee's claim for insurance benefits.

15. Healthcare Documents and Assignments. Additionally, for loans insured under Section 232 (12 U.S.C. §1715w) of the National Housing Act (Healthcare) and those insured under Section 242 (12 U.S.C. §1715z-7) of the National Housing Act, the mortgagee must assign all of its right, title and interest in, to and under all Healthcare-specific documents to the Secretary, which may include, but is not limited to:

a. Any operating lease, master lease, lease, sublease, cross-default guaranty, and all corollary Subordination and Non-Disturbance Agreements;

b. Each Deposit Account Control Agreement. The mortgagee shall also include a copy of any Notice of Exclusive Control that has been delivered to the Bank (as defined in the Deposit Account Control Agreement) and the notice given to the Bank of the assignment to the Secretary.

form HUD 2510

If a Notice of Exclusive Control has not been delivered to the Bank, the Secured Party shall contact the Director of the Office of Residential Care Facilities in the Office of Healthcare Programs as soon as possible, within the 45-day period (or any extended deadline) for further instructions. The mortgagee shall include a copy of the notice given to the Director and any further instructions provided by the Office of Healthcare Programs with its legal package;

c. Each Deposit Account Instructions and Service Agreement (DAISA), lockbox agreement or similar document;

d. The Intercreditor Agreement and all corollary Riders; and

e. All other agreements, instruments, documents, or collateral which evidence, secure, or otherwise relate to the Section 232-insured loan, or required or permitted under the Section 232 Healthcare program, whether executed or delivered by or on behalf of a borrower, an operator, borrower representative, or master tenant, in each case, as amended, restated, supplemented or otherwise modified.

f. Assignment for Section 232 Healthcare Loan Documents. This form is intended to cover collateral documents, interests and funds required by HUD regulations to be assigned to the Secretary that affect the healthcare loan documents, or which may be necessary to enable the Secretary to enforce all rights of a mortgagee against the Borrower, Operator, Borrower Representative, or Master Tenant (as applicable). This instrument is in addition to Form. 289 (Part B, item 9 above) and is not to be used as the assignment of mortgage and it should not be recorded. See Exhibit C for a copy of this form.

The mortgagee must submit to the Secretary the original or a certified copy of the assignments and the assigned Healthcare-related documents, including any amendments or modifications. If an assignment, amendment, or modification was not recorded and the original is unavailable, a copy must be provided, along with an Indemnification Agreement that contains the language set forth in Part B, item 2 above and which is otherwise acceptable to HUD.

16. A copy of the resolution of the mortgagee's board of directors or other appropriate evidence demonstrating the authority of the signatory of the assignment instruments to act on behalf of the mortgagee for FHA Claims. The resolution must authorize the signatory to sign in the capacity of the position they hold.

17. Title insurance coverage. HUD's interest must remain in first position on the title insurance policy. The regulations (24 CFR § 207.258(b)(5)(ii)) require that **the effective date of the original loan title insurance policy coverage be extended to include the date the mortgage is assigned to the Secretary**. Therefore, the mortgagee must submit (in addition to the original loan title insurance policy and previous endorsements) a date down endorsement to the original loan title insurance policy, or a new loan title insurance policy (see below) in the amount of the outstanding principal balance of the mortgage, which (1) bears an effective date on or after the date the assignment of mortgage is recorded, (2) names "The United States Secretary of Housing and Urban Development, his/her successors and assigns" as the sole insured party, and (3) contains only those exceptions as may have been approved by the Secretary.

NOTE: Only exceptions approved by FHA may be listed. Liens may not have priority over the assigned mortgage and, therefore, must be shown as subordinate to the lien of the assigned

mortgage. Previously-approved secured secondary financing liens must appear on Schedule B, Part II.

Other non-monetary exceptions to title insurance including covenants or easements which the Secretary has not approved previously and which have priority over the assigned mortgage may not appear as exceptions to the loan title insurance policy unless such exceptions are approved by the applicable HUD program office during the mortgage assignment process. Any covenants or easements which appear as exceptions to the loan title insurance policy and have not been approved previously must be listed as subordinate to the assigned mortgage. If this cannot be done, the acceptability of the exceptions will be evaluated by HUD on a case-by-case basis.

NOTE: Easements, exceptions, encumbrances, liens, covenants or any other item appearing on title must be approved by HUD.

Mortgagee must submit evidence of HUD's written approval for any new exception on the title insurance policy or date down endorsement. All standard pre-printed exceptions, including those concerning the survey or matters that a survey would show, arbitration, delivery of the note on the date of endorsement, and those concerning mechanic's liens,⁴ must be deleted, except where such deletions are prohibited by applicable state law. The following survey exception is acceptable: "Such state of facts occurring subsequent to [date of survey], as would be disclosed by a current, accurate survey and inspection of the property." Real estate taxes shall be shown as not yet due and payable⁵; all taxes that are liens and payable taxes shall be paid (see item 18, below, for further details regarding real estate taxes).

A Policy Authentication endorsement (ALTA Endorsement 39-06, or as applicable) is required when the policy or endorsement will be issued electronically or without wet-ink signatures.

The mortgagee should be aware that if title insurance issues are unacceptable to HUD and cannot be resolved within the deadline (including extensions) for submitting the complete legal package, the mortgage may be reassigned to the mortgagee, thereby requiring the mortgagee to reimburse the Secretary the amounts paid plus interest. The mortgagee should also be aware that HUD no longer requires the decertified ALTA Endorsement 21-06 (Creditors' Rights).

If the mortgagee intends to submit a new loan title insurance policy, the policy must conform with the 2006 ALTA format, and the applicable boxes in Schedule A, item 6 must be checked. Where the Title Policy is issued by a title agent (i.e., not directly by the issuing title company), HUD requires a letter of authority (aka agency verification letter) for new loan title insurance policies. The agency verification letter must: be on the letterhead of the Title Company issuing the Title Policy, be addressed to HUD and the Mortgagee; include Borrower's name, Project name and number, policy amount, and title agent's name, and state that the title agent is in good standing with the title company issuing the Title Policy. Additionally, the agency verification letter must state that the title agent has the authority to issue the Title Policy on behalf of the title company for the project identified in the letter and must be valid on or after the date the assignment of mortgage is recorded. Mortgagee's Counsel is responsible for obtaining any necessary updates to the agency verification letter to ensure compliance with these requirements. In those states in

⁴ Mechanic's Liens. Boilerplate exceptions to inchoate mechanic's liens are unacceptable and must be deleted. Previously recorded mechanics liens disclosed on Schedule B, Part I must be resolved by the parties and deleted. Affirmative coverage is not acceptable.

⁵ Exceptions for taxes "payable but not yet due" are unacceptable.

which the 2006 ALTA loan title insurance policy format has not been approved by the applicable state insurance board or commissioner for use in that jurisdiction, the loan title insurance policy submitted to HUD must conform with the 1992 ALTA or 1987 ALTA format (except in California, Texas, or Louisiana, where the applicable state-approved forms are used instead of the ALTA forms). If either the 1992 or the 1987 format is submitted, the loan title insurance policy must include an ALTA Form 8.1 Environmental Endorsement. The following loan title insurance policy formats are **not** acceptable:

1970 ALTA Loan Policy Modified/Revised 1984
1984 ALTA Loan Policy
1990 ALTA Loan Policy

If the loan was not finally endorsed for mortgage insurance prior to the mortgagee's election to assign, a pro-forma or specimen loan title insurance policy must be submitted for prior approval within the 45-day period. The mortgagee must also enclose a copy of any existing loan title insurance policy. **NOTE:** Any pro-forma or specimen loan title insurance policy must be approved and the original loan title insurance policy must be received within the legal submission deadline (45 days or 60 days, if an extension has been granted as set forth hereinabove).

18. Information indicating when the current year's taxes will become delinquent. This may be in the form of a notation on the loan title insurance policy endorsement, tax bills stating the date of delinquency, or a letter from the taxing authority. Taxes that become delinquent within 45 days after the assignment of the mortgage to the Secretary has been filed for record may not appear as an exception on the loan title insurance policy. These taxes must be paid by the mortgagee and will be reimbursed by HUD pursuant to 24 CFR §§ 207.259(b)(1)(i) and 207.259(b)(1)(ii).

19. For electronic submissions, the mortgagee must submit the Mortgagee's Certification Regarding: Electronic Submission of Documents for Application for Full Insurance Benefits – Assignment of Mortgage. HUD counsel shall be reviewing electronic versions of the legal documents for legal compliance, and the Mortgagee's Certification is intended to ensure HUD's receipt of legally compliant documents, both in form and substance. See Exhibit A for a copy of this Mortgagee's Certification.

NOTE: HUD reserves the right in its sole discretion to refuse to accept any Indemnification Agreement, as described in the paragraphs above, if litigation has occurred which has affected or may affect the project or the mortgagee's interests. HUD's determination shall be made on a case-by-case basis.

EXHIBIT A

Mortgagee's Certification Regarding: Electronic Submission of Documents for Application for Full Insurance Benefits – Assignment of Mortgage (with Sample Checklist)

EXHIBIT B

Form No. 289, Assignment

EXHIBIT C

Assignment of Section 232 Healthcare Loan Documents