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2025 Annual SMAC Conference

Closing, Additional (Special) Conditions, Cost
Certification, and Final Endorsement

Presenters

- Jennifer Massey, Highland Commercial Mortgage, LLC
- John E. Vihstadt, Miles & Stockbridge
- Felicia Hult, Reno Cavanaugh
- Charlene Harper, HUD Closing Coordinator

Presentation Outline

1. Key Players and Their Roles
2. Additional (Special) Conditions
3. Final Endorsement
4. Best Practices
5. Deadly Closing Sins

CLOSING – KEY PARTIES and HUD requirements

- Key parties are (i) HUD Closing Coordinator, HUD Underwriter, and HUD Counsel, (ii) Lender's Closer, Lender's Underwriter, and Lender's Counsel, (iii) Borrower and Borrower's Counsel, and (iv) Title Company. For NC/SR, add (v) HUD Construction Analyst, (vi) Architect, (vii) Contractor, and (viii) Surety. For complex deals, additional parties may include (ix) tax credit investor and its counsel, (x) bond issuer and bond counsel, (xi) subordinate lenders and their counsel, etc.
- Closings are governed by the Firm Commitment, applicable Closing Checklist, and MAP Guide Chapter 19. All parties need to be aware of the requirements. Ideally, the borrower and borrower's counsel are well versed in the requirements. If not, the lender and lender's counsel need to fill their gaps in knowledge and experience.

HUD TEAM ROLES AND RESPONSIBILITIES

- HUD Closing Coordinator
- **HUD Primary point of contact for closing.**
- Issues “Hello Letter”
- Conducts preliminary review of Closing Package to ensure closing package is complete
- Coordinates as necessary with HUD Underwriter, HUD Counsel, HUD Asset Management and other HUD reviewers
- Provides HUD comments. HUD comments might be combined comments of Housing reviewers and HUD Counsel, but comments might also be issued separately.
- Establishes Tentative Closing (TCD) and Final Closing Date

HUD TEAM ROLES AND RESPONSIBILITIES

- HUD Underwriter
 - Primary contact for review of loan application.
 - Reviews Amendment Requests and updated underwriting forms.
 - Issues Firm Commitments and Amendment.

HUD TEAM ROLES AND RESPONSIBILITIES

- HUD Counsel

- Ensures compliance with the National Housing Act and its implementing regulations.
- Primary responsibility of review of closing package to confirm:
 - Closing documents are consistent with Firm Commitment, Closing Checklist and MAP Guide
 - HUD standard form documents do not deviate from approved forms and/or approved changes.
 - Confirm with Closing Coordinator and others that Additional (Special) Conditions have been satisfied.
 - Title policy shows Security Instrument as enforceable first lien; identifies title and survey and survey matters for Housing.
- Primary responsibility for review on closing date of final closing package, recorded documents and title policy.

LENDER TEAM ROLES AND RESPONSIBILITIES

- Lender's Closing Coordinator
- **Primary Lender contact for closing.**
- Coordinates with Lender Underwriter, third-party reviewers, etc.
- Manages closing calls with working group.
- Coordinates rate lock with borrower along with lender's originator.
- Submits Amendment Requests.
- Works with borrower to receive, approve and prepare "business items" such as Closing Statement, Critical Repairs, Initial Draw, Insurance, Rent Roll, etc.
- Participates in Pre-Occupancy call, Pre-construction meeting, etc.

LENDER TEAM ROLES AND RESPONSIBILITIES

- Lender's Underwriter
- Primary Lender contact for loan application.
- Coordinates preparation of Amendment Requests and updated underwriting forms.
- Address underwriting issues that arise during closing.

LENDER TEAM ROLES AND RESPONSIBILITIES

- Lender's Counsel
- **Primary contact with HUD counsel and HUD closing team** and Takes the lead in coordinating closing.
- Prepares HUD loan documents.
- Reviews documents from borrower and borrower's counsel (and other parties) to ensure compliance with HUD requirements. E.g. organizational documents, opinion, construction contract, subordinate financing, Restrictive Covenants, bridge loan documents, bond documents, etc.
- Coordinates with title company and surveyor.
- Submits initial and final closing packages. And addresses and coordinates responses to HUD comments.
- Coordinates execution of Note and Regulatory Agreement by HUD.
- Coordinates recording of documents.


BORROWER TEAM ROLES AND RESPONSIBILITIES

- Borrower
 - Executes and accepts Firm Commitment.
 - Coordinates with Lender team on rate lock.
 - Ensures completion of pre-closing repairs.
 - Works with Lender Closing Coordinator on business items, including Additional Conditions.
 - Ideally helps to drive third parties to comply with timeline and HUD requirements.
 - Executes closing documents.

BORROWER TEAM ROLES AND RESPONSIBILITIES

- Borrower's Counsel
- Prepares organizational documents and opinion(s). Coordinates with local counsel, if applicable.
- Often shares coordination of title policy and survey.
- In complex transactions, prepares or coordinates master lease, TIF documents, etc.
- Coordinates with other parties such as municipality concerning building code/zoning code compliance, contractor, investors and investor's counsel, subordinate lender and their counsel, etc.
- Coordinates execution of documents by borrower.

Communication flow

- Borrower communicates with Borrower's Counsel and their Lender
 - Borrower's Counsel communicates with the Borrower and the Lender
 - Lender communicates with Lender's Counsel, HUD/Housing, OGC (limited).
 - Lender's Counsel communicates with the Lender, Borrower's Counsel, HUD OGC/Housing
 - OGC communicates with Lender's Counsel, Housing
 - Housing communicates with OGC, Lender, Lender's Counsel, other HUD staff
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- Counsel ↔ Counsel ✓ HUD Counsel ↔ HUD Staff ✓ Lender ↔ HUD ✓
 - Lender Counsel ↔ Closing Coordinator ✓
 - Borrower ↔ Production Staff ✗ Borrower Counsel ↔ Production Staff ✗
 - Borrower ↔ Lender ✓
 - Borrower Counsel ↔ HUD Counsel  (case dependent)

TIMELINES

- TIME LOST PRIOR TO RECEIPT OF THE FIRM COMMITMENT CANNOT BE MADE UP DURING CLOSING!
- Ideally the lender and borrower parties will be working on the Closing Package prior to receipt of the Firm Commitment. This is vital for complex transaction.
- The goal should be to submit the Closing Package within no more than two weeks after the Firm Commitment is received.
- Per MAP Guide 19.1.2.3, a Closing Package must be submitted at least thirty (30) business days prior to any Tentative Closing Date, which is effectively 45 calendar days.
- Most HUD offices strive to provide comments within two weeks of receiving a substantially complete Closing Package.
- HUD's comments must be addressed within **g** 5 business days to maintain a Tentative Closing Date

ADDITIONAL (SPECIAL) CONDITIONS

- Additional Conditions are project specific conditions added to a Firm Commitment by Exhibit B. Additional Conditions are also sometimes referred to as Special Conditions.
- Lenders must address in their Lender Narrative whether they have identified Additional Conditions to be included in the Firm Commitment. HUD will also identify Additional Conditions.
- A PET PEEVE. Too many times, Additional Conditions are simply boilerplate conditions that are standard requirements under the Firm Commitment, Closing Checklist, etc. For example, the “HUD Provisions” need to be added to the borrower’s organizational documents.
- Additional Conditions must be listed under Item 1.d on the Initial Closing Checklist and Item 34 (albeit called Special Conditions) on the Final NC/SR Checklist.

ADDITIONAL (SPECIAL) CONDITIONS

- Additional Conditions may need to be satisfied:
 - At Initial Closing. For example, providing up-to-date financial statements or a renewed/extended HAP Contract.
 - During Construction. For example, complying with specific construction requirements related to endangered species.
 - At Final Closing. For example, delivery of a No Action Letter concerning environmental conditions.
- Additional Conditions may be primarily housing or legal in nature.
- PRACTICE NOTE: Although not submitted to HUD, consider using the ORCF Special Condition Matrix to track whether Additional Conditions have been satisfied.

Cost certification

- MAP Guide Chapter 13.2 cost certification is not required if the LTV of the project is 80% or less and equity is provided by LIHTC, Historic Tax Credits, or New Market Tax Credits.
- Cost Certifications must be reviewed by Lenders for compliance with HUD requirements prior to submission to HUD.
- Following HUD review and approval, HUD issues the Maximum Insurable Mortgage (HUD 92580) confirming the final loan amount, including any decrease or increase in loan amount.

Cost certification extras

- TIMING - MAP Guide 13.8 outlines the timing for submission of audits
 - Within 30-45 days after the borrower's selected cut-off date*
 - Not less than 30 days before the desired final closing date
- *Cost Cut-Off Dates
 - MAP Guide 13.6 B. "The Borrower has the option to include in the cost certification all soft costs incurred up to 60 days beyond [the date of the final trip report.]
 - This date is crucial as it marks the beginning of project operations and the annual financial statement (AFS) reporting.

Final endorsement

- The Maximum Insurable Mortgage (HUD 92580) indicates the final loan amount and any special conditions to be addressed.
- It is unusual for there to be an increase or a decrease in the final loan amount. Absent a change in loan amount or disputes with the contractor, Final Endorsement is very straightforward.
- Final Endorsement closing process should begin prior to receipt of the 92580 since among, other items, the general contractor and subcontractors are anxious to receipt their final payment and sometimes nearing the end of the period during which to file mechanics liens.

Final endorsement – Practice Tips

- The filed work and the date of survey and Surveyor's Report **within 120 days**, not 180 days as permitted at Initial Closing.
- Title Policy
 - The Date of Policy NOT JUST THE DATE OF COVERAGE must be brought forward to the Final Closing Date. In some jurisdictions, this requires a new title policy or the payment of a new title insurance premium.
 - Identify any new exceptions that have been recorded since Initial Closing. Often these are utility or similar easements.
 - If the title policy contained a pending disbursement exception, it must be deleted, and Covered Risk 11(b) must be reinstated.
- Check for Additional Conditions required to be satisfied in connection with Final Endorsement.

Final endorsement – Practice Tips

- Environmental related Additional Conditions are often a hold-up and can involve other parties such as state or local environmental agencies.
- Coordinate timing and requirements with other parties such as bridge and subordinate lenders, parties to tax exempt bond transactions, tax credit investors, etc.
- Request final Labor Clearance as soon as possible.
- Alert HUD ASAP if there are disputes with the contractor that might impact their participation in the Final Closing. MAP Guide Chapter 19.3.4 addresses those circumstances.

BEST PRACTICES

- Communicate. Communicate. Communicate.
 - Special Deadlines, Issues or Constraints. For example, placed in service dates, expiration of purchase and sale agreement, issues related to subordinate financing, weather constraints for NC/SR, etc.
 - Request early legal review, if necessary, under MAP Guide 19.1.2.2. Requests should be submitted to the HUD Underwriter prior to receipt of the Firm Commitment and to the HUD Closing Coordinator after the Firm Commitment has been issued but before the Closing Package is submitted.
- Know the HUD Requirements and follow them. If you need a waiver, notify HUD early and make the case to justify deviation.
- Certain items (e.g., Management Certification, Affirmative Fair Housing Marketing Plan, etc.) require involvement from other members of the HUD Team such as Underwriting and Asset Management. So, use the contacts provided in the “Hello Email” and not delete anyone from the contacts.

DEADLY CLOSING SINS

- Not addressing long lead or complicated issues or items EARLY in the closing process. For example:
 - Coordination with and resolving issues with third parties such bond issuers, LIHTC investors, letter of credit providers, bridge lenders, sellers of project, etc.
 - Subordinate Financing issues such as Subordination Agreements, HUD Amendment/Rider to Restrictive Covenants, Disbursement Agreements, etc.
 - Commercial Lease issues such SNDAs, Estoppel Certificate. Especially for large national/regional tenants who often have their own preferred forms.
 - Construction items such Final Drawings and Specifications, pulling Building Permits.

DEADLY CLOSING SINS

- Conditional Building Permits
- Incomplete draw package
- Closing statements that do not reconcile with sources and uses