

Construction Changes

(excerpt from HUD Handbook 4460.1 Rev-2)

A. Policy

1. Changes must be accurately reported and accounted for pursuant to U.S. Criminal Code, Section 1010, Title 18, U.S.C.
2. Procedures for changes outlined here are not to be used to alter the intent of contract documents or to lower the quality or value of a project.
3. HUD does not initiate any change but may require them as a condition of approval in connection with a change proposed by the architect, mortgagor, or contractor.
4. All changes must be approved in writing by the mortgagee and HUD before they are made. (For exception in emergencies see subparagraph C. below.)
5. Any change that is made without formal approval, even though tentatively agreed to as technically acceptable, must be recorded by the HUD Inspector as a noncompliance. This stands until the Form HUD-92437 is approved, and also affects payment of advances, as explained in subparagraph H.

B. General Procedure. (For specific situations, see the appropriate subject heading).

NOTE: For projects involving insurance upon completion, references here to "contract requirements" or "contract documents" include the conditions and provisions of the commitment if there is no construction contract.

1. Contemplated changes are first discussed among the architect, contractor, owner, and HUD inspector.
2. HUD Inspector makes a preliminary determination of technical acceptability before the change is submitted for approval of mortgagee and HUD Field Office. (This neither commits HUD to the change, nor relieves the architect or the contractor of having to submit the Form described below.)

3. All on-site changes to construction documents and requests for time extensions must be submitted for approval on Form HUD-92437, Request for Construction Changes - Project Mortgages. (Time Extension requests must not include other types of changes on the Form. For required documentation see subparagraph D., below.)
 - a. Required attachments for physical changes are:
 - (1) Appropriate modifications to the contract drawings and specifications
 - (2) Architect's statement that the change:
 - (a) Conforms to the original intent of the contract drawings and specifications, or
 - (b) Is necessary to overcome an impediment to construction, or is an addition desired by the owner.
 - b. The Form must be signed by:
 - (1) Mortgagor
 - (2) Contractor
 - (3) Architect (if an Owner-Architect Agreement is in effect)
 - (4) Authorized official for the mortgagee
4. All offsite changes must be:
 - a. Requested in a letter or other format acceptable to the Field Office, but not Form HUD-92437.
 - b. Documented and processed the same as on-site changes.
5. The HUD Field Office must promptly review all request submitted as described in 3 and 4, above. (Delays could affect construction or contractor requisitions.)

- a. Processing should normally take no more than 5 workdays and is directed by the Production Branch Chief through the Team Leader.
- b. All construction change requests must be reviewed, signed, and dated personally by the Production Branch Chief, deputy, or person designated to act in the absence of the Production Branch Chief. Facsimile or signature stamps are specifically prohibited.

C. Emergency Changes.

1. The only time a change can be made without prior written approval of the mortgagee and HUD is in emergencies that:
 - a. Endanger life or property or
 - b. Halt construction.
2. However, even then, the architect must notify the mortgagee and HUD and, as soon as possible, submit a Form HUD-92437.

D. Extensions in Construction Time. (For request procedure, see subparagraph B. above.)

1. Justified only by circumstances beyond contractor's control, such as:
 - a. Strikes.
 - b. Unusual weather conditions slowing construction. (Must be unusual for the area or for the season.)
 - c. Local authorities stopwork orders that aren't related to poor workmanship or noncompliance with contract documents.
 - d. Civil disturbances.
 - e. Construction damage from natural disasters.
 - f. Need to redesign and/or renegotiate contracts due to unforeseen job conditions. (Changes in

construction usually don't necessitate extensions except in early construction stage.)

2. Unjustified and rejected by Field Office when General contractor or subcontractor don't properly perform or schedule work or provide necessary available manpower to complete the job.
3. Required Documentation. Within 21 days of the date a construction delay occurs, the contractor must document it with the architect and include:
 - a. Date of occurrence and number of calendar days it covered.
 - b. Effect on construction progress.
 - c. Cause of the delay. If the cause is of continuing nature, submit the extension request when the cause ceases, but still record the initial date of occurrence and, its effects on construction.
 - d. Extension request must also include written consent of the surety and conform to AIA

E. Changes to Items of Delayed Completion. These are the only construction contract changes that the Field Office can approve after project completion. All others require Headquarters' consent.

F. Other Changes. These changes necessitated by error, omission, or negligence of architect, owner, or contractor must be so recorded by architectural staff, Design Representative or Inspector, on Form HUD-92437.

1. Record the reason for the determination.
2. Indicate that the cost effect must not be included in the insured mortgage amount.

G. Voiding Changes. If an approved change is not made, it must be nullified by a Form HUD-92437 restoring the drawings and specifications to the status prior to the change request or to a status acceptable to HUD.

H. Unapproved Changes. When there are unapproved changes in the

construction, the HUD Inspector must modify the amount of the contractor's requisition to cover:

1. The noncompliance (any change that has not formally been approved on Form HUD-92437); and
2. Construction removal that may be required if the unapproved change does not receive approval.

(excerpt from HUD Handbook 4435.01 Rev-1)

CONSTRUCTION CONTRACT CHANGES (change orders) to the scope of contract work, contract price or contract time must be requested by the mortgagor through the mortgagee on Form HUD-92437, Request For Construction Changes. Form HUD-92437 must be completed and supported in accordance with instructions on the form.

A. Necessary Changes are those that arise from:

1. Latent conditions (unseen site conditions for new construction and unseen building conditions for substantial rehabilitation projects) that differ from that defined by the construction contract documents.
2. Changes in the applicable codes, ordinances or other workings of the law after initial closing (for insured advances projects) or firm commitment (for insurance upon completion projects).
3. The architect's errors or omissions, including:
 - a. Failure to comply with applicable codes and ordinances, and
 - b. Failure to provide for conditions that may adversely affect occupant life safety or health, the project's physical integrity, or pose potential project liability.
4. Damage to completed construction:
 - a. Caused by a natural disaster declared by Federal or State government, to the extent such damage was not covered by casualty insurance,

and

- b. Under the owner's responsibility, i.e., contractor already paid for having acceptably completed that portion of the work, regardless of the cause of damage.

B. Betterment Changes are those that are economically justified. They must either increase net income, reduce long-term project maintenance and/or operating expenses, or otherwise enhance the mortgage security.

C. Equivalent Changes are those proposed because:

1. The specified item is not readily available and the substitution provides equivalent or better utility and performance for every significant consideration, including marketability, durability, and maintenance and operating costs, or
2. The proposed substitution reduces the contract price, therefore the mortgage, but provides equivalent or better utility and performance for every significant consideration, including marketability, durability, and maintenance and operating costs.

D. Surety Approval must be secured in writing before approving any change or aggregate of changes that increase the construction contract price 10 percent or more. There is no consent requirement where the project's assurance of completion is by a cash escrow or letter of credit.