

§ 242.46

HUD. That documentation shall include:

(1) A justification explaining the urgent and compelling circumstances that make it necessary to begin construction without waiting for the application process to run its course. The justification must specify the harm the hospital would suffer from waiting.

(2) A plan detailing how the hospital will finance the limited construction if the application for mortgage insurance is denied.

(3) A statement that financing the limited construction by means other than a HUD-insured mortgage in the event the application is denied will impose no significant financial hardship on the hospital. The statement shall be accompanied by supporting historical and projected financial data.

(4) A statement that the hospital recognizes that HUD's agreement to include the cost of the limited construction in a subsequently approved application does not in any way indicate that the application will be approved.

(5) A resolution of the governing body (or, at HUD's discretion, the executive committee of the governing body) of the mortgagor attesting to paragraphs (c)(1) through (4).

(d) *Early Start.* Subsequent to the issuance of a commitment, if the hospital and lender request the commencement of the project, the work may commence after the review and approval of the request by HUD, including the agreement by the hospital and the lender to any conditions that HUD may require. Any work undertaken prior to the initial endorsement shall be at the sole risk of the hospital.

(e) *Prepayment of inspection fee.* The hospital shall pay a non-refundable inspection fee to HUD before the work described in paragraph (c) or (d) of this section commences. The fee shall be based on the amount of the pre-commitment and/or early start work requested to be included in the insured mortgage loan.

(f) *No expressed or implied intent.* Approval to proceed under paragraphs (c) or (d) of this section shall in no way be construed as indicating any intent, expressed or implied, on the part of HUD to approve, disapprove, or make any undertaking or promise whatsoever

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with respect to the application or with respect to any commitment for mortgage insurance. Any work under paragraphs (c) or (d) of this section shall be undertaken at the sole risk and responsibility of the hospital.

§ 242.46 Insured advances—building loan agreement.

Prior to the initial endorsement of the mortgage for insurance, the mortgagor and mortgagee shall execute a building loan agreement, approved by HUD, setting forth the terms and conditions under which progress payments may be advanced during construction. To be covered by mortgage insurance, or to be included as an eligible cost, each progress payment involving mortgage proceeds and the owner's equity requirement shall be approved by HUD.

§ 242.47 Insured advances for building components stored off-site.

(a) Building components. In insured advances for building components stored off-site, the term building component shall mean any manufactured or pre-assembled part of a structure that HUD has specifically identified for incorporation into the property and has designated for off-site storage because it is of such size or weight that:

(1) Storage of the number of components required for timely construction progress at the construction site is impractical, or

(2) Weather damage or other adverse conditions prevailing at the construction site would make storage at the site impractical or unduly costly.

(b) *Storage.* (1) An insured advance may be made for up to 90 percent of the invoice value (to exclude costs of transportation and storage) of the building components stored off-site, if the components are stored at a location approved by the mortgagee and HUD.

(2) Each building component shall be adequately marked so as to be readily identifiable in the inventory of the off-site location. Each component shall be kept together with all other building components of the same manufacturer intended for use in the same project for which insured advances have been made and separate and apart from similar units not for use in the project.

(3) Storage costs, if any, shall be borne by the contractor.

(c) *Responsibility for transportation, storage, and insurance of off-site building components.* The general contractor of the insured mortgaged property shall have the responsibility for:

(1) Insuring the components in the name of the mortgagor while in transit and storage; and

(2) Delivering or contracting for the delivery of the components to the storage area and to the construction site, including payment of freight.

(d) *Advances.* (1) Before an advance for a building component stored off-site is insured:

(i) The mortgagor shall:

(A) Obtain a bill of sale for the component;

(B) Give the mortgagee a security agreement; and

(C) File a financing statement in accordance with the Uniform Commercial Code; and

(ii) The mortgagee shall warrant to HUD that the security instruments are a first lien on the building components covered by the instruments except for such other liens or encumbrances as may be approved by HUD.

(2) Before each advance for building components stored off-site is insured, the mortgagor's architect shall certify to HUD that the components, in their intended use, comply with HUD-approved contract plans and specifications. Under those circumstances permitted by HUD in which there is no architect, compliance with the HUD-approved contract plans and specifications shall be determined by HUD.

(3) Advances may be made only for components stored off-site in a quantity required to permit uninterrupted installation at the site.

(4) At no time shall the invoice value of building components being stored off-site, for which advances have been HUD insured, represent more than 50 percent of the total estimated construction costs for the insured mortgaged project as specified in the construction contract. Notwithstanding the preceding sentence and other regulatory requirements that set bonding requirements, the percentage of total estimated construction costs insured by advances under this section may ex-

ceed 25 percent but not 50 percent if the mortgagor furnishes assurance of completion in the form of a corporate surety bond for the payment and performance each in the amount of 100 percent of the amount of the construction contract. In no event will insurance of advances for components stored off-site be made in the absence of a payment and a performance bond.

(5) No single advance that is to be insured shall be in an amount less than \$10,000.

§ 242.48 Insured advances for certain equipment and long lead items.

The Commissioner may allow advances for certain pieces of equipment or other construction materials for which a manufacturer, fabricator, or other source requires an interim payment(s) in order to assure the timely manufacture or fabrication and delivery to the project site. Such advances can be made only if a bill of sale or an invoice describes the material or equipment and its completion and delivery dates in no uncertain terms, and that such displayed timetable is necessary to meet the requirements of the overall construction schedule cited in the construction contract.

§ 242.49 Funds and finances: deposits and letters of credit.

(a) *Deposits.* Where HUD requires the mortgagor to make a deposit of cash or securities, such deposit shall be with the mortgagee or a depository acceptable to the mortgagee. Any such deposit shall be held in a separate account for and on behalf of the mortgagor, and shall be the responsibility of the mortgagee.

(b) *Letter of credit.* Where the use of a letter of credit is acceptable to HUD in lieu of a deposit of cash or securities, the letter of credit shall be issued to the mortgagee by a banking institution acceptable to the lender. The mortgagee shall be responsible to HUD for collection under the letter of credit. In the event a demand for payment thereunder is not immediately met, the mortgagee shall forthwith provide a cash deposit equivalent to the undrawn balance of the letter of credit.

(c) *Mortgagee not issuer.* The mortgagee of record may not be the issuer