

§ 242.61 Management.

The mortgagor shall provide for management of the hospital in a manner satisfactory to HUD.

(a) *Contract Management of Hospital.* The mortgagor shall not execute a management agreement or any other contract for management of the hospital without HUD's prior written approval. (Management of the hospital, which requires HUD's prior written approval, refers to management of the hospital not management of components within the hospital such as the hospital cafeteria or hospital pharmacy.) Any management agreement or contract for management of the hospital shall contain a provision that it shall be subject to termination without penalty and with or without cause, upon written request by HUD addressed to the mortgagor and management agent.

(b) *Principals.* HUD shall have the authority to require that any principals of the mortgagor, including but not limited to board members of a corporate entity, be removed, substituted, or terminated for cause upon written request by HUD addressed to the mortgagor.

(c) *Employees.* HUD shall have the authority to require that any key management employees of the mortgagor (as defined and determined solely by HUD) be terminated for cause upon written request by HUD addressed to the mortgagor.

(d) *Procedures upon receipt of request under paragraphs (a) through (c) of this section.* Upon receipt of such requests under paragraphs (a) through (c) of this section, the mortgagor shall immediately terminate said management agreement, principals, or employees within the shortest applicable period HUD determines appropriate and shall make arrangements satisfactory to HUD for ongoing proper management of the hospital.

[72 FR 67546, Nov. 28, 2007, as amended at 73 FR 35923, June 25, 2008]

§ 242.62 Releases of lien.

The mortgagor shall not sell, dispose of, transfer, or permit to be encumbered any security property without the prior approval of the lender and

Commissioner, subject to thresholds or such other standards as HUD may establish for the approval requirement. Where there is a partial release of lien, the lender must make a determination, subject to prior review and approval by HUD, that the remaining or replacement property subject to the first lien provides adequate security for the remaining principal indebtedness.

§ 242.63 Additional indebtedness and leasing.

The mortgagor shall not enter into any long-term debt, short-term debt (including receivables or line of credit financing), equipment leases, or derivative-type transactions, except in conformance with policies and procedures established by HUD.

§ 242.64 Current and future property.

All current or future property (including personalty) of the mortgagor on or off mortgaged real estate (except that specifically restricted by donors or specifically excluded by HUD) will be considered as part of the HUD-insured hospital and subject to all provisions of the HUD regulatory agreement. All equipment acquired by the hospital following initial endorsement and at any time during the term of the loan shall become subject to the lien of the security agreement and any Uniform Commercial Code Financing Statements filed pursuant to the security agreement, unless the mortgagor specifically requests and HUD, for good cause, approves subordination of the lien of the insured mortgagee on specific personalty for specific periods of time. The first lien on the realty (as defined in the regulatory agreement and as identified in the security instrument) cannot be subordinated in whole or in part.

§ 242.65 Distribution of assets.

The Commissioner shall establish financial thresholds and procedures for the distribution of surplus cash and other assets. Surplus cash that meets the definition in 24 CFR 242.1, or cash that has been expressly approved for distribution by HUD, may be distributed to other organizations formally affiliated with the mortgagor, a parent organization with which the mortgagor

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is also affiliated, partners, or stockholders, in accordance with those financial thresholds and procedures set forth in the regulatory agreement. Other assets may be distributed to other organizations formally affiliated with the mortgagor, a parent organization with which the mortgagor is also affiliated, partners, or stockholders, in accordance with those financial thresholds and procedures set forth in the regulatory agreement, and in accordance with the release of lien conditions in 24 CFR 242.62, if applicable.

§ 242.66 Affiliate transactions.

Transactions with affiliates that are arms-length are permitted as specified in the Regulatory Agreement. Transactions with affiliates that are not arms-length are not permitted except with the prior written approval of HUD.

§ 242.67 New corporations, subsidiaries, affiliations, and mergers.

The mortgagor shall not establish, develop, organize, acquire, become the sole member of, or acquire an interest sufficient to require disclosure on the audited financial statements of the mortgagor, in any corporation, subsidiary, or affiliate organization other than those with which the mortgagor was affiliated as of date of application, without the prior approval of HUD. The mortgagor shall obtain HUD's written approval for all future mergers.

Subpart H—Miscellaneous Requirements

§ 242.68 Disclosure and verification of Social Security and Employer Identification Numbers.

The requirements set forth in 24 CFR part 5, regarding the disclosure and verification of Social Security Numbers and Employer Identification Numbers, and Employer Identification Numbers by “applicants for and participants in” assisted mortgage and loan insurance and related programs, apply to this program.

§ 242.69 Transfer fee.

Upon application for review of a transfer of physical assets or the substitution of mortgagors, a transfer fee

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of 50 cents per thousand dollars of the outstanding principal balance of the mortgage shall be paid to HUD. A transfer fee is not required if both parties to the transfer transaction are not-for-profit or public organizations.

§ 242.70 Fees not required.

The payment of an application, commitment, inspection, or reopening fee shall not be required in connection with the insurance of a mortgage involving the sale by the Secretary of any property acquired under any section or title of the Act.

§ 242.72 Leasing of hospital.

Leasing of a hospital in its entirety is prohibited. Notwithstanding this prohibition, any proposal in which leasing of the entire facility is a factor due to state law prohibitions against the mortgaging of health care facilities by state entities shall be considered on a case-by-case basis. Also, leasing of a hospital that has an existing Section 242-insured loan is permitted if HUD determines that leasing is necessary to reduce the risk of default by a financially troubled hospital.

§ 242.73 Waiver of eligibility requirements for mortgage insurance.

The Secretary may insure under this part, without regard to any limitation upon eligibility contained in this subpart, any mortgage assigned to him or her in connection with payment under a contract of mortgage insurance, or executed in connection with a sale by him or her of any property previously insured under this part and acquired subsequent to a claim.

§ 242.74 Smoke detectors.

Each occupied room must include such smoke detectors as are required by law.

§ 242.75 Title requirements.

In order for the mortgaged property to be eligible for insurance, HUD shall determine that marketable title thereto is vested in the mortgagor as of the date the mortgage is filed for record. The title evidence shall be examined by HUD and the endorsement of the mortgage note for insurance shall be evidence of its acceptability.